Discussion points from the joint AFSA/ARITA/ASIC liaison meeting

5 December 2017

AFSA update

- AFSA's Annual Report was published on 27 October 2017.
- AFSA's Personal Insolvency Practitioner Compliance Report for 2016-2017 is expected to be published soon.
- The trends in personal insolvency were summarised, including the increase in debt agreements in the September 2017 quarter while bankruptcy numbers have remained relatively static. Business related bankruptcies are running at approximately 16% of total personal insolvencies.
- AFSA noted some areas of strategic focus, including stakeholder engagement and continuing to improve upon the digitalisation of services offered.

ASIC update

- ASIC will soon publish its annual overview of corporate insolvencies based on statutory reports lodged by external administrators for the 2016–17 financial year. The report will be available on the ASIC website. The statistics are relatively stable with no significant change in trends observed.
- Changes to the Commission – James Shipton will commence as the new Chair on 1 February 2018. The appointment of further Commissioners is being considered.
- The Government's announcement of a Royal Commission into banks and their agents was noted. Given that Receivers and Managers act on behalf of banks from time to time, this may have some impact on insolvency practitioners.

ARITA update

- 2017 was noted as ARITA's busiest year on record. Over 300 training sessions, events or workshops hosted, approximately 100 of which were ILRA related.
- ARITA's Code of Professional Practice review is continuing with consultation occurring as necessary. It will be principles based and supported by practice statements and templates that will be updated for ILRA changes.
- ARITA appeared at a Senate Select Committee hearing in October 2017 on Lending to Primary Production Customers. This appearance confirmed the challenging nature of insolvency appointments in this sector and the impact those appointments can have on practitioners.
- ARITA hosted a delegation from the Insolvency and Bankruptcy Board of India (IBBI) in October 2017 – the participation of ASIC and AFSA in presenting to the IBBI was noted and appreciated.

Insolvency law reform

- AFSA noted that the Bankruptcy Amendment (Enterprise Incentives) Bill 2017 was introduced in the Senate on 19 October 2017 and has now been referred to a Parliamentary committee for report by 19 March 2018.
- ASIC noted that it is considering the impact that the proposal to reduce the period of bankruptcy from 3 years to one year might have on its regulatory activities.
- ARITA noted they have a list of 30 frequently asked questions (FAQs) on its website (member only access) to assist those working through the practical aspects of law reform.

- AFSA noted that the "Notice of Proposals to Creditors" form is being remodelled to accommodate trustees seeking approval of multiple resolutions. This is being developed and AFSA will consult on a draft form of this notice in the near future.
- It was agreed that there would be ongoing discussions about law reform implementation and a roundtable between ASIC, AFSA and ARITA held during Quarter 2 2018, to consider issues related to the practical implementation of the law reform and to identify and agree potential joint actions that could be taken to assist practitioners with the implementation of the reforms, and further reforms made to address drafting issues in the legislation.

Untrustworthy pre-insolvency advisors and illegal phoenix activity

- This area remains an area of strong interest across a number of Commonwealth agencies, including ASIC and AFSA.
- AFSA noted that more work is being done in the area of data analytics – for example in identifying and attending creditor's meetings where it is believed that untrustworthy pre-insolvency advisors have had involvement.
- ASIC also noted data analytics will help it to better target disruption activities.
- AFSA and ASIC encourage the profession to come forward with any intelligence it may have on untrustworthy, pre-insolvency advisors. All insolvency practitioners are encouraged to continue to refer suspected misconduct by pre-insolvency advisors to AFSA, including the potential misuse of the PPSR.
- ASIC noted that anecdotal feedback on its warning letters to Directors regarding untrustworthy pre-insolvency advisors has been very positive.
- ASIC and ARITA's submissions in response to the Government's consultation paper "Combatting illegal Phoenixing" were noted.

AFSA's Personal insolvency practitioners' compliance report 2016-17 (PIPCR)

- AFSA's PIPCR is due for release prior to the end of 2017. The following trends were noted at the meeting:
  (i) **Inspections** – trends in errors identified through the inspections programme are consistent, with about 80% of errors being at the Category C level (one off or procedural in nature). The highest proportion of inspection errors are being seen where there is a lack of investigation into potential administration assets or a lack of documentation in relation to what investigations occurred. The next most significant area of errors was inadequate communication.
  (ii) **Complaints** - there were 147 complaints received against registered trustees in 2016-17 (prior year 189), in the last financial year 12 were justified (previous financial year 10). The highest level of justified complaints was in relation to general administration and accounting (an increase in the previous year), and a lack of information or communication (at the same level as last year).

Communication with practitioners and creditors

- ARITA noted its commitment to producing plain English guides for practitioners.
- ASIC, AFSA and ARITA agreed the importance of communications with stakeholders in mitigating against possible complaints.
- ASIC noted that the work with its Behavioural Economics team to improve information for creditors and other stakeholders is continuing and it expects to meet shortly with ARITA to share its work on creditor correspondence and reports.
- ASIC also discussed the importance of gauging the effectiveness of its engagement and communication with practitioners and have commenced analysis of penetration and reach of email communications.

Mental health working group (MHWG)

- The MHWG consists of representatives from AFSA, NAB, ASIC, ARITA, PIPA and ATO. The object of the MHWG is the development of resources and training to assist practitioners, and their staff, to identify and manage bankrupts/debtors/creditors with mental health issues.
- The MHWG is in the process of developing a training module/program through Mental Health First Aid Australia (MH First Aid), a Victorian-based not-for-profit organisation.
- The training and resources are expected to be finalised by MH First Aid before March 2018.
- ARITA representatives, and AFSA and ASIC staff have attended development discussions.
- Further work will be done to assist with the promotion of those resources in early 2018.

Gender and age diversity

- It is noted that female registered liquidators comprise approximately 8% of 710 and registered trustees approximately 10% of 220. The age profile of practitioners was also noted. It was agreed that the lack of gender diversity should be considered further.
- It was also agreed that further information will be gathered to help understand why this is occurring and what are the relevant barriers. A strategy will then be developed on what can be done to address both gender and age diversity in the profession.

ASIC ARITA AFSA Guidance/Education subcommittee

- Prior to 2017, a joint ASIC/ARITA/AFSA guidance/education sub-committee (comprising one representative from each organisation) was established to assist with information sharing and communications (so each organisation knew what the others were planning to focus upon) and to assist with a focus of those activities on key issues. The activities of this sub-committee were suspended to focus on implementation of the law reform. With the ILRA now introduced, it was agreed that this sub-committee reconvene from early 2018.

Next meeting

- To be confirmed – approx. June 2018