

17 November 2017

Mr Andrew Fawcett  
Senior Executive Leader, Strategic Policy  
Australian Securities and Investments Commission  
GPO Box 9827  
MELBOURNE VIC 3001

Dear Mr Fawcett

### **Submission on ASIC's performance against the Regulator Performance Framework**

Thank you for the invitation to provide feedback in relation to the proposed new metrics to measure ASIC's performance against the Regulator Performance Framework (RPF).

We are making this submission as the professional body representing registered liquidators, who make up a small, but critical part of ASIC's regulated population. We recognise the importance of the work undertaken by ASIC in regulating registered liquidators and the equally important role our members play in assisting ASIC to discharge its duties in maintaining confidence in the market.

On this basis, we believe it is therefore also important to ensure that ASIC receives genuine, accurate and constructive feedback, as we know is sought, as part of the Regulator Performance Framework process in order to ensure that ASIC remains an effective regulator.

### **How we approached this submission**

In order to provide a representative view of ASIC's performance in relation to registered liquidators, we undertook a survey of our professional members. We asked our professional members to rate ASIC on a series of questions which we extracted from the consultation paper. The rating was from one to five, with one being very poor and 5 being very good. The results of that survey are included under each of the KPIS below. We also provided an opportunity for members to provide written comments and we have included a representative summary of those comments.

We received 90 responses to the survey, with 68 of those being from registered liquidators. This is approximately 10% of all registered liquidators. Responses were received from a cross section of firm sizes from sole practitioners to very large firms. We therefore consider this survey to be statistically valid and, therefore, representative of the population.

## KPI1 and KPI6

- KPI1: ASIC does not unnecessarily impede the efficient operation of regulated entities
- KPI6: ASIC actively contribute to continuous improvement of regulatory frameworks

Question	Rating
1. ASIC demonstrates an understanding of the markets in which its regulated population operates, and best practice regulatory approaches in those markets.	2.47
2. ASIC promote public discussion of market and regulatory developments by engaging with stakeholders through regular meetings, external committees and panels, and hosting the ASIC Annual Forum	2.49
3. ASIC make it easier for regulated entities to do business, including by: <ul style="list-style-type: none"> <li>(i) implementing measures to reduce red tape and the compliance burden on business (including for innovative business models)</li> <li>(ii) effectively and efficiently considering applications by regulated entities for relief from the law</li> </ul>	1.75
4. ASIC contributes to continuous improvement of regulatory frameworks by providing advice to government, and identifying where reform to existing regulatory frameworks may be required	2.29

### **Summary of key comments raised by survey respondents:**

- There were many comments that ASIC did not provide the necessary support to the professional in respect of the consultation and implementation of the Insolvency Law Reform Act (ILRA). Regulatory guides have not been updated, forms have errors, forms not being made available until the last minutes and sufficient guidance not being provided on new forms. The view is that the ILRA has increased red-tape burden and unnecessarily increased costs for administrations.
- ASIC consults, but there are concerns that regard is not had to feedback and any suggested changes are not implement.
- Lodging paper documents at Traralgon has caused problems (some documents cannot be lodged via the portal and must go to Traralgon for lodgement). Documents are not lodged until received and liquidators cannot control slow postal delivery. Late lodgement can result in fines which are inappropriate in these circumstances.

## KPI2 and 5

- KPI 2: Communication with regulated entities is clear, targeted and effective
- KPI 5: Regulators are open and transparent in their dealings with regulated entities

Question	Rating
5. ASIC manages interactions with regulated entities in an efficient manner	2.58
6. ASIC communicates with stakeholders on issues that affect its regulated population, such as our assessment of the key risks and long-term challenges facing our regulated population (through its corporate plan; guidance it provides about its regulatory expectations; its approach to enforcement; and its decisions on applications for relief)	2.56
7. ASIC consults with its regulated population on policy proposals that affect them.	2.35
8. ASIC reports to stakeholders on its performance	2.87

### **Summary of key comments raised by survey respondents:**

- ASIC consults, but insufficient time is allowed for proper consultation. Consultation appears process driven and not genuine.
- There are concerns that an approach is determined, but that approach is not necessarily reasonable or responsive to the relevant population's needs.
- Customer contact centre is not helpful on technical insolvency questions – specialist staff are required.
- Statistics appear selectively reported, and it can be difficult to conduct a proper analysis of information provided.
- Reports are regularly issued but the bulk of the content is meaningless to regulated populations, with content feeling “cut and paste”.
- Concerns were expressed that ASIC’s regulatory approach is to audit and prosecute, rather than educate and monitor, with a focus on easy compliance outcomes rather than complex enforcement.
- Concerns were raised about cost recovery for “poor performing” liquidators against generally compliant practitioners and the impact that the industry funding model will have on small practices.
- Considering the amount of change the insolvency profession has experienced this year, there has been little in the way of communication or guidance from ASIC.

### KPI 3 and KPI 4

- KPI 3: Actions undertaken by regulators are proportionate to the regulatory risk being managed
- KPI 4: Compliance and monitoring approaches are streamlined and coordinated

Question	Rating
9. ASIC takes a risk-based approach to its surveillance activities	2.26
10. ASIC adopts a proportionate approach to enforcement, including being transparent about how it approaches its enforcement role and why it responds to particular types of breaches of the law in different ways.	2.14
11. ASIC minimizes the impact on the regulated population of complying with requests for information, including improving its data management and analytics	2.39
12. ASIC cooperates and coordinates with other regulators when undertaking relevant surveillance activities	2.81

### **Summary of key comments raised by survey respondents:**

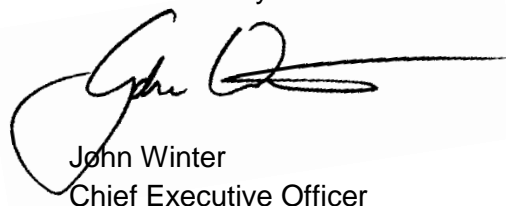
- Inappropriate focus on liquidator conduct to the exclusion of taking action against directors when offences are reported to ASIC.
- Statistical approach to regulation with an inappropriate focus on minor infractions rather than serious breaches.
- Inappropriate allocation of resources to compliance based regulation.
- Lack of transparency around ASIC's enforcement processes.
- Greater work could be done to simplify and streamline interaction between ASIC and the ATO.

### Summary

In summary, it is clear that the profession has concerns about ASIC's current regulatory approach towards registered liquidators and the cost of that regulation.

Should you wish to discuss any aspect of this submission, please contact Ms Kim Arnold, ARITA's Policy and Education Director, on 02 8004 4340.

Yours sincerely



John Winter  
Chief Executive Officer