

AFSA – ARITA - ASIC Discussion Points

21 April 2021

Attendees: Greg Yanco, Thea Eszenyi, Adrian Furby, Danny McCarthy, John Winter, Narelle Ferrier, Scott Atkins, Michael Brereton, Jason Porter, Rachel Burdett, Hamish McCormick, Gavin McCosker, Paul Shaw, David Bergman, Tim Cole, Cherie Frost

Apologies: Kim Arnold, Laura Higgins

ARITA update

- ARITA noted their new board which will take effect from its AGM in May. Noted Scott Atkin's term as President ends and Michael Brereton takes over as the new President and Rachel Burdett the new Deputy President.
- ARITA provided an overview of its financial performance for 2020.
- ARITA noted the market feedback it has received and a level of distress being experienced among some of its members. This will be reflected in ARITA's strategic planning which will have a focus on innovation such as moving to outside insolvency markets e.g. Chartered Accountants for non-insolvency and exploring the international market.
- ARITA endorsed AFSA's proposed approach to share a greater percentage of work to female trustees to encourage improved gender diversity within the profession.

AFSA update

- AFSA noted a continuing focus on harms and preparing for a potential surge in insolvencies.
- AFSA are continuing to focus on data, with statistics released each fortnight.
- A full review of AFSA's costs and charges will occur shortly in full consultation with stakeholders. If there is any increase in costs and charges they will occur from July 2022. It is noted that the last time AFSA's costs and charges increased was in 2015.
- AFSA provided an update on the proposed new method of distributing estates from the OT to registered trustees and the feedback received to date. One aspect that received a significant amount of feedback was in relation to the proposal to share a greater percentage (20%) of work to female trustees to encourage gender diversity. There has been a wide range of views expressed and we are in the process of considering feedback. The criteria will be closely monitored upon implementation and we would appreciate any feedback or suggestions from ARITA and its members. A final decision will be made this month on how we proceed with a target date for implementation of 1 July 2021. Information sessions for practitioners will be organised around May to answer any questions about the new approach.

ASIC update

- ASIC noted the ongoing work to deliver the Modernising Business Registers (MBR) program and that government has announced the appointment of the Commissioner of Taxation as the Registrar of the new business register system. ASIC registry staff have moved to the ATO under a Machinery of Government (MoG) administrative change to assist the Registrar. The MBR program includes introduction of the director identification number.
- ASIC noted that cyber-security will be one of the key strategic priorities for the next financial year.

Law Reform

- ARITA noted its Law Reform training for the Small Business restructuring and simplified liquidations model has had a slow take up with 700+ having undertaken the course so far. Feedback received from practitioners suggests this is due to the model not fitting with practitioner's business model.
- Noted the ongoing discussion regarding proposed legislative reform for a one year period of bankruptcy. AFSA noted that the Attorney-General's Department (AGD) provided an update at the recent Information Session for RTs and the submissions made on the recent AGD discussion paper are currently under consideration.
- Noted Treasury's public consultation on the [National Credit Protection Amendment \(Debt Management Services\) Regulations 2021](#). These new regulations will require parties offering debt management services to hold an Australian Credit Licence. The new regulations may capture some informal debt agreements.
- Noted sunset of Bankruptcy Regulations and new Bankruptcy Regulations 2021 which came into effect on 1 April. Noted that changes were made to the re-numbering of regulations.
- ASIC noted the small business insolvency reforms that commenced on 1 January 2021 and that access to the temporary restructuring relief ceased on 31 March 2021.
- ASIC also noted changes to the director resignation rules which came into effect on 18 February 2021 whereby the director, or the company, must notify ASIC within 28 days of the director's resignation. Failure to do so will result in the document lodgement date being the effective resignation date unless an application is made to ASIC or the court to adopt an earlier date. Under the amendments, companies can no longer be left with no director.

Industry trends and current issues

- ARITA noted they are continuing to hear from small insolvency practices that they are doing it tough with very little in the way of new work over the past year. ARITA will be publishing a guide to help members manage if they are in financial distress, including in an individual capacity. The message has been reiterated to members to also reach out to ASIC and AFSA should they be experiencing any form of financial distress.
- ARITA noted an emerging trend regarding the sharp decline in bank referred work and the impact this is having on receiverships. The observation is practitioners doing this type of work are now dealing with secured parties who don't have the requisite knowledge of the rules and regulations with regard to receiverships and are purely outcomes focussed, perhaps at the expense of due process. This is being seen to leading to some unusual outcomes.
- In AFSA's statistics for the March quarter 2021, personal insolvencies fell 53% compared to the March quarter 2020. Bankruptcies fell 47% and debt agreements also fell 61% compared to last year. Over the year, the most common industries that people entering into some form of personal insolvency arrangement worked in have been construction, health care, social assistance and retail trade.
- AFSA's Director Data Analytics gave a short presentation about the reasons why modelling for the future is difficult in the current uncertain environment.
- ASIC noted corporate insolvencies have fallen 40-50% compared to last year. ASIC has been publishing weekly statistics on external administration and controller appointment numbers. With the impacts of COVID exceeding 12 months, the weekly statistics now include a base level, determined by reference to the average appointment numbers calculated using appointment data for the three years preceding COVID.
- ASIC noted that had been an apparent increase in controller appointments; possibly in relation to lending by non-traditional financiers or for small asset financing rather than traditional bank lending.

Continuing Professional Education

- ARITA noted their shift to training using its online platform, with Government agencies to be offered participation in online forums which would replace ARITA's traditional conferences and provide greater reach to the profession.
Action: AFSA, ASIC and ARITA to discuss a coordinated approach to participation.
- Noted that recent corporate insolvency law reforms has changed the CPE requirements for registered liquidators to 120 hours over 3 years rather than 40 hours every year. This change has not been reflected in the personal insolvency legislation, introducing a divergence between the corporate and personal legislation. This has potential to increase the compliance risk within the industry. AFSA noted it has been liaising with AGD in regard to this issue to seek harmonisation if possible.
- ASIC and AFSA are collaborating to release guidance about what constitutes CPE which will be shared with ARITA shortly as part of the consultation process.
- ASIC noted advice it has received that it is unable to remove conditions imposed on a liquidator's registrations by a Committee even if it appears the requirements of the condition have been satisfied. These conditions can currently only be removed or amended by the Committee.
Action: AFSA, ASIC and ARITA to further discuss registration conditions issue.

Practitioner trends

- ASIC note that there was 649 Registered Liquidators as at the end of March. ASIC also noted a steady number of applications for registration as a liquidator (including for registration to practice only as a restructuring practitioner) and that the number of registered liquidators has returned to the level it was at June 2019.
- AFSA noted the number of registered trustees has dropped below 200 for the first time in over 10 years. Of the 199 RTs, 19 or 9.5% are female. While there has been a recent influx of applications, not all have passed and those that have passed have been offset by retirements or involuntary de-registrations.

Trustee Compliance monitoring

- ASIC noted the privacy risks associated with an increased use of electronic communication. A recent case has seen the unintended release of private information. All are encouraged to raise awareness of this issue.
- AFSA noted that it will be publishing its Regulatory Charter on the [AFSAsandpit](#) today. All are encouraged to provide feedback.
- AFSA noted they have begun planning their 2021-22 compliance program. ASIC and ARITA will be consulted with and all ideas for strategic focus areas are welcome.

Independence

- AFSA will publish a 'Principles of Independence' report in late April. We encourage all to read this report and share it with staff and networks as ongoing breaches adversely impact on the credibility of the system.

Insolvency Mental Health Awareness Program

- A draft joint communication from AFSA, ARITA and ASIC to promote mental health issues has been developed and is awaiting feedback.
- It was suggested that a more targeted one page fact sheet for practitioners to support their own mental health could be beneficial.
Action: AFSA, ASIC and ARITA to discuss a one page fact sheet for practitioners own mental health.

Gender and age diversity of insolvency practitioners

- ASIC noted that recent corporate insolvency law reform to what is considered “relevant employment” has introduced greater flexibility for Registration Committees in assessing eligibility for registration as a liquidator and may support diversity.
- Noted an academic has shown interest in undertaking a research project using the data collected from the joint survey on gender diversity. The academic will draft a scope of work for the research they propose to undertake.
Action: AFSA, ASIC and ARITA to discuss research scope of work further.
- ARITA noted the work their Balance Taskforce is undertaking to strategically build better practices. An article summarising their focus was published in the ARITA journal last quarter.