



Improving guidance: Proposals paper



Introduction

AFSA is committed to ensuring that we provide our stakeholders with purposeful, current and accessible resources and content. We have recently conducted a review of the insolvency practice guidance and have recognised that the framework is overly complex.

AFSA is seeking feedback on the quality and user-friendliness of our resources for practitioners including Inspector General Practice Statements, Inspector General Practice Directions, Official Receiver Practice Statements and Official Trustee Practice Statements.

Background

AFSA recognises that its insolvency practice guidance framework is overly complex. AFSA currently publishes 54 different insolvency guidance documents directed at a range of stakeholders. They are separated under different statutory appointments including the Inspector-General, the Official Trustee and the Official Receiver. In comparison to guidance issued by our international peers, the current AFSA guidance model appears unnecessarily complex and does not reflect an end-to-end process. The guidance in most cases is not ordered intuitively and there are different guidance documents on the same or similar topics.

The naming of the guidance is inwardly focused with names representing the statutory office that has published the guidance, for example *Inspector-General Practice Direction1 - Independence of Insolvency Practitioners*.

There are no filters to determine which guidance is relevant to a particular user. A practitioner cannot easily find a list of relevant guidance nor can they easily find a range of guidance on a particular subject.

To address these shortcomings, this paper outlines proposals to improve the accessibility of the guidance and make it more user-centric in the following areas:

- Naming of documents
- User-focused framework and filtering
- Amalgamation of similar guidance

Proposed changes

Naming of documents

It is proposed to remove the current nomenclature (IGPD, IGPS, ORPS, OTPS) and numbering system and simply use the actual subject titles, with the statutory prefix and document number serving as an internal reference which will appear under the heading. For example, Inspector-General Practice Direction 1 - Independence of Insolvency Practitioners would become Independence of Insolvency Practitioners with IGPD1 as the internal reference appearing underneath the title. While this change may be considered cosmetic, it is designed to give more focus on the subject of the guidance rather than the source of the guidance.

User-focused framework and filtering

1. The nature of the guidance

To help users locate guidance documents, they will be classified in three ways:

1. Professional conduct and supervision
2. Processes to support practitioners
3. Guidance for debtors, creditors and practitioners

Users will be able to search AFSA's insolvency guidance by one, a combination or all these categories.

The guidance displayed for each of these categories will be in chronological order. For example, guidance about registration of trustees will appear before guidance about deregistration of trustees and guidance about bankruptcy notices will appear before guidance about sequestration orders.

2. Type of user

The insolvency guidance falls into 5 user categories:

1. Guidance applicable to all insolvency practitioners (e.g. independence, fit and proper requirements, guidelines for remitting money to the Commonwealth under s.254, offences, advertising and promotional activities)
2. Guidance applicable only to Registered Trustees (e.g. remuneration notifications)
3. Guidance only applicable to Registered Debt Agreement Administrators (e.g. certification duties)
4. Guidance made available to Official Trustee clients but of interest to other trustees
5. Guidance focused on debtors or creditors (e.g. temporary debt protection and applying for a bankruptcy notice)

Users will be able to search AFSA's insolvency guidance by one, a combination or all these user types.

3. Subject areas

Guidance will be searchable by subject category including:

1. Registered Trustee (non-government trustee) remuneration
2. Trustee duties
3. Registered Debt Agreement Administrator duties
4. Registration of practitioners
5. Discipline of practitioners
6. Regulatory oversight – regulatory charter, reviews, inspections, complaints
7. Official Trustee guidance
8. Types of insolvency administration
9. Meetings of creditors
10. AFSA Registry/Official Receiver services
11. All content

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Users will be able to search AFSA's insolvency guidance by one, a combination or all of these subject types

Amalgamation of similar guidance

AFSA publishes 3 guidance documents about objections to discharge. These are 'Objections to discharge from bankruptcy' (IGPD7 and OTPS5; separate publications but similar) and 'Trustees' guidelines for issuing objections to discharge when statements of affairs not yet filed' (IGPD11).

It is proposed to retain IGPD7 and retire the latter two publications, given that the subject matter is sufficiently covered in IGPD7.

Similarly, it is proposed to retire 'Standards for trustees and controlling trustees' (IGPD9) because the subject is sufficiently covered in 'Proper performance of duties of a bankruptcy trustee' (IGPD14).

'Paying unclaimed money to the Commonwealth under s.254' (IGPD20) is closely related to 'Refunds from the Commonwealth of unclaimed money' (ORPS10) and these could also be amalgamated.

Consultation

AFSA is currently conducting a consultation about these proposals and all feedback is welcome. The consultation closes on 1 October 2021 and more information is available at sandpit.afsa.gov.au