

INSOLVENCY AND TRUSTEE SERVICE AUSTRALIA

Responses relating to personal insolvency

MAY 2009

1- GENERAL OVERVIEW	Personal insolvency
<p>1.1 Do insolvency professionals play a role in administering insolvency proceedings under your insolvency regime? If so, please give a brief description of this role.</p>	<p>Yes. Registered Trustees administer bankrupt estates. The role includes investigating the bankrupt's financial affairs; realising assets for the benefits of creditors; and ensuring that the bankrupt discharges duties imposed under the <i>Bankruptcy Act 1966</i> (the Act).</p> <p>Registered Debt Agreement Administrators (RDAAs) administer debt agreements (an alternative to bankruptcy). RDAAs deal with the debtor's property and payments in accordance with the agreement, and are obliged to notify creditors of default by the debtor.</p> <p>Solicitors may also be "controlling trustees" in relation to personal insolvency agreements under Part X of the Act (see 4.2.1).</p>
<p>1.2 In your jurisdiction, insolvency professionals are (please indicate all that apply):</p> <ul style="list-style-type: none"> – government employees – private sector professionals – companies – legal entities – other, please specify 	<p>Government employees (as delegates of the Official Trustee in Bankruptcy); private sector professionals (as registered trustees and RDAAs); and companies (as RDAAs).</p>
<p>1.3 In your jurisdiction, are insolvency professionals licensed professionals?</p>	<p>Yes. Registered trustees are licensed.</p> <p>Persons/ companies who administer more than 5 debt agreements are required to be licensed as RDAAs.</p>
<p>1.3.1 If the professionals are licensed, is the license renewable and under which conditions?</p>	<p>Yes, a registered trustee's licence is renewable. A registered trustee's registration will be extended for a further three years where the person applies in writing, provides satisfactory details of professional indemnity insurance, and has paid the renewal fee (as determined under legislative instrument) and any late payment penalty.</p> <p>An RDAA's registration will be renewed for a</p>

	further three years if the application is made prior to the expiry of the existing registration and is in the approved form. A renewal fee applies.
1.3.2 In your jurisdiction, is there a register of licensed insolvency professionals?	Yes, the register is maintained by ITSA. The list of registered trustee and RDAs is contained on the ITSA website.
2- QUALIFICATIONS, LICENSING AND TRAINING	Personal insolvency
2.1.1 In your jurisdiction, are insolvency professionals required to have a professional designation/ qualifications? (lawyer, accountant, insolvency, etc.)? If so, please specify.	<p>Yes. Registered trustees are required to have completed the requirements for a degree, diploma or similar in a course of study in accountancy of not less than three years duration; and a course of study in commercial law of not less than two years duration.</p> <p>From 30 June 2009, RDAs are required to have a Certificate IV in Financial Services (Accounting) (or equivalent degree, diploma or similar qualification).</p>
2.1.2 If insolvency professionals have a choice of professional designation/qualification, do the different designations/qualifications have an impact on their performance?	N/A.
2.2. In your jurisdiction, are insolvency professionals required to have any additional qualifications concerning the licenses (working experience, passed licensing exam, etc)?	<p>Yes. A Registered Trustee: a statement setting out the applicant's experience, knowledge and abilities must accompany the application. This includes 'relevant employment' on a full-time basis for not less than 2 years in the preceding 5 years. 'Relevant employment' involves assisting a liquidator or trustee in their duties; providing advice in relation to bankruptcy; and experience in insolvency administrations outside bankruptcy, including administration of receiverships, winding up of corporations and any other similar function.</p> <p>An RDA: must pass the basic eligibility test as prescribed by the Act. Generally, the test will exclude individuals who, in the previous 10 years, have been bankrupt or have been convicted of an offence involving fraud.</p> <p>RDAs must also possess the ability (including the knowledge) to satisfactorily perform the role. Basically, RDAs need knowledge of: relevant legislation; financial and banking options; and common business structures.</p>

<p>2.3 Does your organization license private sector insolvency professionals to carry out on the administration of insolvency estates? If not, does another institution do so? Please specify.</p>	<p>Yes, ITSA performs this role. The Inspector-General in Bankruptcy makes the decision on the registration of RDAs.</p> <p>A Committee convened by the Inspector-General makes the decision on the registration of trustees.</p>
<p>2.4 In your jurisdiction, are insolvency professionals required to have training in a specific field of knowledge or expertise (legal training, accountant training, etc.)? If so, please specify and state who provides it.</p>	<p>Yes. See above.</p>
<p>2.5 In your jurisdiction, are there any continuing education programs in place for insolvency professionals? If so, please describe them and state who conducts them.</p>	<p>Yes. The Insolvency Practitioners Association of Australia (IPA), in association with the Queensland University Of Technology (QUT) conducts the Insolvency Education Program (IEP). The IEP is a specialist course that provides a professional qualification for insolvency specialists and is a prerequisite for full membership of the IPA. It combines academic study provided through distance education by QUT and practical workshops led by experienced insolvency practitioners. The IPA also conducts an Introduction to Insolvency Program (IIP) course; and other specialised courses including a one day course dealing with corporate insolvency reporting requirements.</p>
<p>2.6 Is there a program to monitor the knowledge of insolvency professionals? If so, please describe.</p>	<p>The Bankruptcy Regulation Branch (BR) of ITSA monitors the knowledge of insolvency professionals through gathering intelligence on how they are performing across each of the 6 core roles that BR performs. These 6 core roles are: (i) Registrations and renewals; (ii) Inspections; (iii) Education; (iv) Complaints; (v) Inspector-General Reviews and (vi) Disciplinary action. ITSA also maintains a risk rating of 1 to 4 for each practitioner.</p>
<p>2.7. If none of the above apply in your jurisdiction, are any of these matters regulated by enforceable practice; and if so, please describe.</p>	<p>These matters are also regulated by enforceable practice. If a Registered Trustee or RDA is demonstrating they do not or no longer have the requisite knowledge ITSA may institute disciplinary proceedings to have the practitioner removed from the industry. ITSA becomes aware of a practitioner's level of knowledge through the combined intelligence gathered in (i) – (v) (answer to Q 2.6).</p>

3 - CAPACITY	
3.1 Do economic conditions have any impact on the workload and performance of insolvency professionals? Please provide a brief explanation.	Generally, poor economic conditions mean an increased workload for insolvency practitioners. Quite often practitioners employ additional people or contractors through this period to cope with the increased workload. Further, a practitioner's systems and controls (i.e. accounting system, quality assurance, internal controls) are assessed regularly by ITSA to ensure they can cope with an increase in workload / number of matters administered.
3.2 Can an insolvency professional make arrangements to close his office for a short period of time without having any impact on his practice (e.g. making an agreement with another insolvency professional)?	Generally this does not occur, but an arrangement could be made.
3.3 Does a program exist to take care of the proceedings of insolvency professionals if they should become unable to continue administering their proceedings?	See answer to Q 8.1.2.
3.4 In the coming years, do you expect a shortage of insolvency professionals?	No. <i>The above answer was provided by the IPA. ITSA is not in a position to comment.</i>
3.5 Can your organization influence the number of licenses issued?	ITSA makes the decision on registration however the number of licenses issues is not a relevant consideration in determining whether a person should be registered.

4 - INSOLVENCY PRACTICES	Personal insolvency
4.1 What percentage of insolvency professionals work in an office where the estimated number of insolvency professionals is of: <ul style="list-style-type: none"> - 1 insolvency professional - 2 insolvency professionals - 3-5 insolvency professionals - 6-10 insolvency professionals 	Information not available at present.

<p>– over 10 insolvency professionals</p>	
<p>4.2.1 In your jurisdiction, how are insolvency proceedings assigned to insolvency professionals? Please describe.</p>	<p>With respect to bankruptcy, a debtor presenting a debtor's petition or a creditor filing a creditor's petition can obtain a consent from a trustee to become the trustee of the estate. If no consent is obtained, the (Government) Official Trustee will be the trustee.</p> <p>With respect to a debt agreement proposal, a debtor may authorise a specified person to deal with the identified property in the way specified in the debt agreement. The proposal is subject to acceptance by creditors.</p> <p>With respect to a Personal Insolvency Agreement a debtor may authorise a solicitor or trustee to be a controlling trustee. The proposal is subject to acceptance by creditors.</p>
<p>4.2.2 Are there any regulations in place to name a third party acting as the debtor's administrator to deal with the designated insolvency professional? If so please describe.</p>	<p>No.</p>
<p>4.2.3 In your jurisdiction, are insolvency professionals restricted in the number of cases they can be appointed to?</p>	<p>No.</p>
<p>4.3.1 In your jurisdiction, are insolvency professionals limited to insolvencies in a specific sector of activity?</p>	<p>No.</p>
<p>4.3.2 If an insolvency professional is limited to a specific sector, is it:</p> <ul style="list-style-type: none"> – a personal choice – a restriction related to skills – a restriction related to training – a decision by a regulatory organization – other, please specify 	<p>Not applicable.</p>

<p>4.3.3 Does the legislation in your jurisdiction facilitate the review of a decision to appoint an insolvency professional (removal, replacement, etc.)?</p>	<p>Yes. The Bankruptcy Act provides that a committee convened by the Inspector-General must consider an application to become a Registered Trustee and interview the applicant. The applicant may apply to the Administrative Appeals Tribunal (a tribunal independent of the Inspector-General and ITSA) for review of the committee’s decision.</p> <p>An applicant to become a RDAA may, if the Inspector-General refuses the application, apply to the Administrative Appeals Tribunal for review of that decision.</p>
<p>4.4 In your jurisdiction, is there a code of conduct for insolvency professionals? If so, please briefly describe.</p>	<p>The Bankruptcy Regulations contain <i>Performance Standards for Trustees (including Controlling Trustees)</i>. The Bankruptcy Act provides that the Inspector-General may ask a trustee for a written explanation why the trustee should continue to be registered if the Inspector-General believes the trustee has failed to comply with the prescribed standards. See further information at 8.3.</p> <p>The Insolvency Practitioners Association of Australia (IPA), which enjoys a wide membership amongst insolvency practitioners, provides the Code of Professional Practice for Insolvency Practitioners (IPA Code) as the standard for professional conduct in the insolvency profession.</p> <p>The primary purposes of the IPA Code are to educate IPA members as to their professional responsibilities; and provide a reference for stakeholders against which they can gauge the conduct of Practitioners.</p>
<p>4.5 In general, the level of investment by insolvency professionals in improving their practice, excluding technological costs (e.g. training, administrative processes) is:</p> <ul style="list-style-type: none"> – low – medium – high 	<p>Information not available. However see 5.1</p>
<p>4.6 In your jurisdiction, are there any programs or mechanisms in place to assist an insolvency professional with realizing an asset when there are insufficient funds in the estate? If so, please briefly describe how they work and</p>	<p>The <i>Guidelines relating to the provision of funding for trustees</i> under section 305 of the Bankruptcy Act 1966 provides funding where there are insufficient funds in the estate. Funding will ordinarily not be approved for instituting proceedings unless the trustee has approached creditors to provide cash advances or indemnities in respect of costs.</p>

how effective they are.	
4.7 In your jurisdiction, are there any special rules that apply to insolvency professionals when they are dealing with proceedings involving a particular kind of organization such as a bank or insurance company? If so, please describe.	The <i>Cross Border Insolvency Act 2008</i> does not apply to banks or financial institutions.
5 - TECHNOLOGY	Personal insolvency
5.1 In general, the level of investment in technology by insolvency professionals in your jurisdiction is: <ul style="list-style-type: none"> - low - medium - high 	High. <i>The above answer was provided by the IPA. ITSA is not in a position to comment.</i>
5.2 In general, technological changes are well received and implemented quickly in insolvency practices?	Yes.
6 - PROFESSIONAL INDEMNITY INSURANCE	Personal insolvency
6.1 Does your insolvency regime require or provide insolvency professional indemnity insurance and/or insolvency specific coverage?	Yes.
6.2.1 Does your insolvency regime require insolvency professionals to personally undertake substantially all aspects of administration?	Yes. However they can delegate tasks to employees and/or engage third parties (e.g. solicitors).
6.2.2 If not, which aspects of administration can be delegated / assigned to other parties? Under what conditions?	Not applicable.

7 - REMUNERATION	Personal insolvency
7.1 In your jurisdiction, how are insolvency professionals remunerated? Please provide details.	Trustees' remuneration arrangements must generally be agreed by creditors (see 7.3.1 below for more details and exceptions to this general rule). Subject to this, trustees are free to decide the manner in which they wish to be remunerated. Most seek to be remunerated on a time-based charge, but other options include commissions based on a percentage of assets realised in the administration, or a fixed fee.

	RDAA's are only entitled to charge a fixed fee which must be a percentage of the total amount that the debtor has agreed to pay creditors under the debt agreement.
7.2 In general, the remuneration per case: <ul style="list-style-type: none"> - is non-profitable - covers costs only - is profitable - covers earnings only 	It is assumed remuneration for private insolvency practitioners is set at a level to ensure a profit level allowing for the income of the professional and overheads and expansion costs as appropriate.
7.3 If fees are a component of insolvency professionals' remuneration:	
7.3.1 Is a specific mechanism in place to approve fees?	<p>Yes. Under the Bankruptcy Act 1966 trustee remuneration (including fees) must be approved by creditors. However, two exceptions to this general rule exist:</p> <p>(1) trustees are entitled to a minimum statutory amount of remuneration which does not require creditor approval. This amount as at 1 May 2009 is A\$1,538 and is adjusted quarterly to reflect movements in the Consumer Price Index; and</p> <p>(2) as an alternative to seeking creditor approval for amounts above the minimum statutory amount, or in cases where creditor approval cannot be obtained, trustees may claim remuneration under the Bankruptcy Regulations 1996. In particular, regulation 8.08 allows trustees to claim remuneration at 85% of the scale of charges set out in the <i>IPAA Guide to Hourly Rates</i> published by the IPA</p>
7.3.2 Does marketplace competition influence the ability of the insolvency professional to demand fair fees?	<p>Yes, as it should; that is, competition has a proper effect on fee rates.</p> <p><i>The above answer was provided by IPA. ITSA is not in a position to comment on the level of competition or its effect in relation to fee-setting by insolvency professionals.</i></p>
7.3.3 Are fees proportional to the complexity of files or to the liability incurred by the insolvency professional?	<p>Fees are usually calculated on a time basis; hence they are related to complexity, not potential liability. But rates of fee are set taking into account the nature of the work, the risk of liability, and the risk of not being paid. In particular matters, fee rates may be set higher the more risk that is involved.</p> <p><i>The above answer was provided by the IPA. ITSA is not in a position to comment.</i></p>

<p>7.3.4 Are the fees generated sufficient to serve as an incentive to join the profession or continue to practice?</p>	<p>Generally, but fees are set at a high rate to cover the issues raised in 7.3.3. In corporate insolvency, there is no government agency to administer assetless companies; hence practitioners will often administer these for less or no fee. In personal insolvency, there is a government agency to administer assetless bankruptcies; hence private practitioners will usually take on bankruptcies with assets; although in many cases these often do not provide a full fee for work performed. In the case of both personal and corporate insolvency, the law requires certain minimum work to be done by a practitioner, whether or not there are assets to allow payment.</p> <p><i>The above answer was provided by the IPA. ITSA is not in a position to comment.</i></p>
<p>7.4 If fees are not a component of insolvency professionals' remuneration, please specify what both the remuneration and the fees include.</p>	<p>Not applicable.</p>
<p>8 - MONITORING INSOLVENCY PROFESSIONALS</p>	<p>Personal insolvency</p>
<p>8.1.1 In your jurisdiction, is there a mechanism for monitoring the administration activities of the insolvency professionals? If so, please describe.</p>	<p>Under the <i>Bankruptcy Act 1966</i> (the Act) the Inspector-General in Bankruptcy is responsible for ensuring that:</p> <ul style="list-style-type: none"> • bankruptcy trustees (which includes both private sector “registered trustees” and the Official Trustee); • solicitors who are “controlling trustees” in relation to personal insolvency agreements under Part X of the Act; and • administrators of debt agreements under Part IX of the Act; <p>conduct themselves properly in administering matters under the Act.</p> <p>Officers in ITSA’s Bankruptcy Regulation Branch carry out the role of monitoring the administration activities of personal insolvency professionals as delegates of the Inspector-General.</p> <p>Supervision occurs primarily through a targeted</p>

	<p>annual inspection program which involves a sample of files, examination of insolvency practitioners’ systems and practices, and attendance at creditors’ meetings.</p> <p>The purpose of the inspection program is to monitor compliance and evaluate the financial and qualitative standard of trusteeship and administration. The sample of administrations targeted for inspection is based on a risk assessment of each practitioner, including an evaluation of systems and controls as well as the level and seriousness of prior errors found in their administrations, and designated risk criteria associated with particular types of administrations.</p> <p>Further information is contained in the Inspector-General’s Practice Statement No.11 (IGPS 11): <i>Monitoring and Inspection of Bankruptcy Trustees and Debt Agreement Administrators</i> – hyperlink below.</p> <p>IGPS 11</p> <p>The IPA also monitors the conduct of its members to ensure standards set in the IPA Code are met and it may take disciplinary action against them, including suspension or termination of membership. Action may also include peer review of files or training. However membership of the IPA is not required in order to practise as a trustee or liquidator. Other professional associations – such as the law societies and accounting bodies – may take disciplinary action in respect of misconduct of practitioners who belong to those bodies.</p>
<p>8.1.2 Are there any regulations that allow for the replacement or substitution of an insolvency professional from a case? If so, please describe.</p>	<p>The Inspector-General has the power to cancel the registration of a registered trustee or registered debt agreement administrator (the cancellation process is described in 8.1.3 below). In the case of a solicitor controlling trustee or an unregistered debt agreement administrator, the Inspector-General may declare them ineligible to act.¹</p> <p>If registration is cancelled or ineligibility declared then the Official Trustee would generally take over the administration of the estates or debt agreements</p>

¹ Solicitors who wish to be controlling trustees do not require registration under the Act. Debt agreement administrators do not require registration if they administer five or fewer debt agreements.

	<p>administered by the trustee or administrator whose registration has been cancelled or ineligibility declared, until such time as a replacement trustee or administrator was appointed by the creditors or parties to the debt agreement.</p> <p>Under the Act creditors may, by resolution, remove a registered trustee and appoint another registered trustee in his or her place. This also applies in respect of solicitors who are controlling trustees under Part X of the Act.</p> <p>The Court also has the power to remove a trustee or debt agreement administrator from office, if it considers this appropriate, following an application by the Inspector-General, a creditor or a debtor to inquire into the conduct of the trustee or administrator.</p>
<p>8.1.3 Which measures may the supervisory authority take in case of non-compliance (omissions) of insolvency professionals?</p>	<p>As mentioned, the ultimate sanction against a registered trustee or RDAA is cancellation of registration. In the case of a solicitor controlling trustee or an unregistered debt agreement administrator the sanction is declaration of ineligibility.</p> <p>The Inspector-General may consider the following matters in determining whether registration should be cancelled (or in the case of a solicitor controlling trustee or unregistered debt agreement administrator, in determining whether the person should be declared ineligible):</p> <ul style="list-style-type: none"> (i) the importance of the duty that has not been complied with or the breach of the Act; (ii) the seriousness of the effect of a failure to comply, including the impact the failure to comply has; and (iii) a practitioner’s performance history, including whether previous failures to comply with the Act or undertake the duties have been raised. <p>Generally, where the problems or deficiencies in a practitioner’s conduct are minor and non-systemic, they will be given opportunity to rectify these problems or deficiencies without the Inspector-General resorting to issuing a notice seeking a written explanation as to why registration should not</p>

	<p>be cancelled.</p> <p>The issuing of such a notice will be considered in cases where the issue is serious or has not been rectified within a reasonable time. Under the Act, a notice may be issued where the Inspector-General believes that the trustee:</p> <ul style="list-style-type: none">• no longer possesses a qualification or ability that is prescribed by the regulations as being required for registration;• no longer has the ability (including knowledge) to perform satisfactorily the duties of trustee;• has been convicted of an offence involving fraud or dishonesty since registration;• is not insured;• is no longer practising;• has contravened any conditions imposed by a committee (see further below) on the trustee's practice;• has failed to carry out the duties or exercise the powers of a trustee properly;• has failed to comply with a prescribed standard (see further below under 8.3); or• where the trustee is also a debt agreement administrator - has failed to properly carry out the duties of a debt agreement administrator. <p>In relation to a debt agreement administrator, the Inspector-General may seek a written explanation why the administrator's registration should not be cancelled (or why an unregistered administrator should not be declared ineligible) if the Inspector-General has reasonable grounds to believe that the administrator:</p> <ul style="list-style-type: none">• does not have the ability (including the knowledge) to satisfactorily perform the duties of an administrator in relation to a debt agreement;• has failed to properly carry out the duties of an administrator in relation to a debt agreement;• does not possess the qualifications or experience prescribed by regulations; or
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	<ul style="list-style-type: none">• has contravened a condition of registration. <p>The Inspector-General <u>must</u> cancel an individual's registration as a debt agreement administrator if the Inspector-General is satisfied that the individual no longer passes the basic eligibility test (see 2.2 above) set out in the Act.</p> <p>If the Inspector-General is not satisfied with the response from a registered trustee, the Inspector-General may form a committee to consider terminating the trustee's registration. The committee consists of the Inspector-General, another public official and a registered trustee chosen by the Insolvency Practitioner's Association of Australia. The committee will consider information obtained in the course of investigations into matters handled by the trustee and will interview the trustee and other parties. It can determine whether the trustee should continue to be registered or whether conditions should be imposed on the trustee's registration. The Inspector-General must comply with the committee's decision.</p> <p>In the case of a RDAA, the final decision as to whether the registration should be cancelled is made by the Inspector-General upon review of the response from the administrator.</p> <p>If registration is cancelled the trustee or administrator must be provided with reasons for the decision and may apply to the Administrative Appeals Tribunal for a review of that decision.</p> <p>Further information on cancellation of registration and other compliance measures is contained in IGPS 8: <i>Involuntary Cancellation of Trustee Registration</i> and IGPS 9: <i>Involuntary Cancellation of Registration of Debt Agreement Administrators and Ineligibility Process</i> – hyperlinks below.</p> <p>IGPS 8 IGPS 9</p> <p>As explained earlier, the IPA and other professional bodies can pursue various measures for non-compliance against their members who are trustees or liquidators. In the case of the IPA, these include the imposition of a fine, education and training, and peer review of files, as well as suspension or termination of membership.</p>
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<p>8.1.4 Are disciplinary procedures one of those measures? If so, please describe.</p>	<p>Where, either as a result of an annual inspection (see 8.1.1) or the investigation of a complaint (see 8.1.5) it comes to the attention of the Inspector-General that a practitioner is not complying with the duties or standards imposed under the legislation, a range of action is open to the Inspector-General.</p> <p>The action taken will depend on the seriousness of the breach or deficiency. Apart from cancellation of registration described in 8.1.3, the practitioner may be counselled; have conditions placed upon his or her registration; or be required to make modifications to his or her practice. The Inspector-General may also directly intervene in the trustee's or administrator's conduct of a particular administration, including through court proceedings (for example, under the Act the Inspector-General may apply to the Court to inquire into the conduct of a trustee or administrator and the Court may make such order as it thinks proper, including removing the trustee or administrator from office).</p> <p>Further information on disciplinary procedures is contained in IGPS 8 and IGPS 9.</p> <p>As explained earlier, the IPA and other professional bodies may take action, including disciplinary action, against their members who are trustees or liquidators.</p>
<p>8.1.5 In your jurisdiction, is there a mechanism for registering complaints against insolvency professionals?</p>	<p>Complaints about the conduct of insolvency practitioners may be made to ITSA's Bankruptcy Regulation Branch. All complaints received are examined in detail. In many instances complaints are quickly finalised without the need for in depth investigations. In these instances, complainants may be:</p> <ul style="list-style-type: none"> • informed that the trustee, solicitor controlling trustee or administrator's conduct is not in breach of the duties and standards under the Act; • directed to their trustee or administrator for additional information; or • provided with information about any alternative remedies available to them (for example, certain decisions of a trustee are reviewable by the Courts).

	<p>The remaining complaints are investigated further and if deficiencies are identified, disciplinary action may be taken as described above in 8.1.4.</p> <p>Further information is contained in IGPS 10: <i>Complaint handling process for complaints against bankruptcy trustees and debt agreement administrators</i> – hyperlink below.</p> <p>IGPS 10</p> <p>The IPA and other professional bodies will take complaints from the public about their members which are then investigated and which may result in disciplinary or other action being taken.</p>
<p>8.2 In general, when the performance of an insolvency professional is inadequate, the main reason is:</p> <ul style="list-style-type: none"> – lack of familiarity with the type of insolvency proceeding – office is understaffed – too many files at once – the fees are not adequate for the workload – non-cooperation with other bodies of insolvency proceedings – do not fully follow the best practices of administering the estate – other reasons, please describe 	<p>Generally speaking, the main reasons for inadequate performance of a personal insolvency professional cover matters such as: lack of knowledge of meeting procedures and creditor’s claims; insufficient records of key decisions and unreasonable delays; inadequate financial record-keeping, overcharging and/or overservicing; inadequate investigations and communication. These issues largely fall under one or more of the categories mentioned in the question.</p> <p>Statistics on common findings from the annual inspection program and causes of justified complaints against personal insolvency practitioners are set out in ITSA’s Annual Report. A hyperlink to ITSA’s 2007-08 Annual Report is below (see in particular from the last paragraph on page 25 through to the end of page 27).</p> <p>ITSA 2007-08 Annual Report</p>
<p>8.3 Do service standards or guidelines for insolvency professional services exist? If so, please describe.</p>	<p>Regulations made pursuant to the Act set out performance standards for trustees (including solicitor controlling trustees). The standards prescribe requirements that apply to bankruptcies and personal insolvency agreements (under Part X of the Act) and cover the following topics:</p>

	<ul style="list-style-type: none">• General – acting honestly and impartially, dealing with conflicts of interest, complying with privacy principles, mandatory inquiries;• Assets – investigation, securing and sale;• Remuneration and costs;• File maintenance and access to information;• Meetings of creditors;• Trust accounts;• Reporting to creditors;• Dealing with creditor’s claims;• Distribution of dividends; and• Income contributions <p>These standards are used as a benchmark when undertaking annual inspections and in investigation of complaints. Breaches of the standards can lead to disciplinary action.</p> <p>The standards do not apply to debt agreement administrators. However, the Inspector-General has issued <i>Guidelines relating to the registration and cancellation of a registered debt agreement administrator and ineligibility of an unregistered debt agreement administrator under the Bankruptcy Act 1966</i>. These guidelines include requirements which are similar in some respects to the standards applying to trustees, including in relation to taking fees and expenses; handling and properly accounting for money; and responding in a timely manner to reasonable requests from debtors and creditors.</p> <p>Further information on the guidelines is contained in IGPS 4: <i>Guidelines and Processes for Registration of Debt Agreement Administrators</i> – hyperlink below.</p> <p>IGPS 4</p> <p>The IPA also has a Code of Professional Practice for Insolvency Practitioners which applies to those registered trustees who are members of the IPA. The IPA Code deals with some of the same subject matter as the legislative standards mentioned above.</p> <p>The Accounting Professional and Ethical Standards Board (APESB) is working on a new standard (APES 330: <i>Insolvency Services</i>) which will apply to those members of the accounting profession in</p>
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	<p>public practice who provide insolvency services (most registered bankruptcy trustees are also members of professional accounting bodies). The new standard is scheduled to commence on 1 January 2010 and will cover issues such as:</p> <ul style="list-style-type: none"> • Fundamental responsibilities of members in public practice; • Professional independence; • Expert witness obligations; • Dealing with property; • Professional fees and expenses; and • Documentation quality and control.
<p>9 - LIQUIDATION VS REORGANIZATION</p>	<p>Personal insolvency</p>
<p>9.1 In general, does the insolvency regime in your jurisdiction promote the liquidation or reorganization of businesses?</p>	<p>Liquidation is a term that, in Australia at least, generally refers only to bodies corporate. The personal insolvency regime in Australia is not concerned with the liquidation or reorganisation of bodies corporate.</p> <p>However, where an individual or group of individuals (such as a partnership) carries on an unincorporated business, that business may be impacted if the individual, or one or more of the group of individuals, becomes bankrupt or enters into other personal insolvency arrangements.</p> <p>The personal insolvency regime in Australia does not ‘promote’ either the cessation (liquidation) or reorganisation of businesses. Whether, or to what extent, it is necessary to close or reorganise a business would depend on the circumstances surrounding the particular personal insolvency.</p>
<p>9.2.1 Are insolvency professionals able to influence the choice of insolvency proceedings, i.e., liquidation or reorganization? If so, in what manner?</p>	<p>In terms of liquidation vs. reorganisation – as mentioned in response to 9.1, the personal insolvency regime does not promote one over the other. Once a trustee is engaged to administer a bankrupt estate he/she is given broad discretion as to how that administration proceeds, subject to adhering to any duties prescribed by the legislation (e.g. the duty to administer the estate as efficiently as possible, and to exercise powers and perform</p>

	<p>functions in a commercially sound way). Thus any decision whether to close or reorganise a business carried on by a bankrupt would need to be considered in light of the practitioner's statutory duties.</p> <p>In the case of a personal insolvency agreement or a debt agreement - the extent to which, if at all, a business carried on by the debtor entering the agreement is impacted by the agreement is likely to be contained in the proposal put to creditors before the agreement is entered. The controlling trustee or debt agreement administrator may have some influence in assisting in the preparation of the proposal put to creditors.</p> <p>More generally, people contemplating personal insolvency proceedings – whether by petitioning for their own bankruptcy, or entering into a personal insolvency agreement or a debt agreement with their creditors - are encouraged to seek advice from parties including financial counsellors and insolvency practitioners (such as bankruptcy trustees and debt agreement administrators).</p> <p>In providing this advice insolvency practitioners may have some influence in the choice of insolvency proceeding that a debtor may take. However, in offering such advice insolvency practitioners must act in the best interests of the person seeking the advice and not merely advise a course of action that may benefit the adviser (e.g. a bankruptcy trustee should not advise a person to make themselves bankrupt if, in fact, the person would be better off entering a debt agreement with his/her creditors).</p>
<p>9.2.2 If insolvency professionals can influence the choice of a proceeding, do they consider:</p> <ul style="list-style-type: none"> – the complexity of the case – the ease of administering the insolvency proceeding – the fees for the insolvency proceedings – the appropriateness of the insolvency 	<p>As indicated in response to 9.1 and 9.2.1, the personal insolvency regime does not promote either liquidation or reorganisation, and any decision by an insolvency practitioner in this regard would need to take into account all of the practitioners' statutory duties.</p>

proceedings given the context of the business – other (please specify)	
9.3 Are there different requirements for complex reorganization cases, such as higher levels of qualifications for the insolvency professionals or higher fees? If so, please specify.	Not likely to be relevant to personal insolvency. No additional (higher) qualifications are required. However, insolvency professionals may seek to adjust their fees for more complex administrations. See generally above in response to the questions in section 7.