



## Practitioner independence vital for personal insolvency system



Malcolm Howell, Partner, Jirsch Sutherland

A new report released last month by The Australian Financial Security Authority (AFSA) has highlighted the critical role that the independence of insolvency practitioners plays in maintaining the integrity of Australia's personal insolvency system.

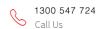
The report, <u>Practitioner Independence in the personal insolvency system</u>, is designed to clarify what practitioner independence means in practice and to address the misconceptions surrounding it. "Independence is the cornerstone of the personal insolvency industry because practitioners – particularly registered trustees – have significant powers which may impact on the outcomes for creditors and debtors," the report states.

AFSA Deputy Chief Executive, Gavin McCosker, reiterated the critical foundation that independence provides to the insolvency system. "Put simply, practitioner independence is fundamental to the insolvency system in Australia," he says. "Using examples from case law and industry guidance, our report will help all stakeholders to better understand our expectations of independence – highlighting the importance of transparency in maintaining confidence in the system overall.

"The report provides clarity for practitioners, while also helping other parties involved understand the importance of integrity and fairness."

McCosker says that while much of the responsibility for independence lies with practitioners, it's also important that debtors and creditors engage with the system.

"For creditors, engaging with the system is the best defence against unfair activity. Carefully reviewing the Insolvency Practitioner declaration and raising any concerns is vital," he says. "For debtors in financial difficulty, it is important to be wary of untrustworthy pre-insolvency advisors who are unregulated and may seek to influence the proper work of insolvency





practitioners. Reporting untrustworthy behaviour can help protect your interests in the long term."

## **Conflicts of interest**



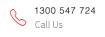
• act impartially and objectively in exercising a duty

avoid a real or perceived conflict between duty and interest

• be unaffected by influences that may compromise professional judgement

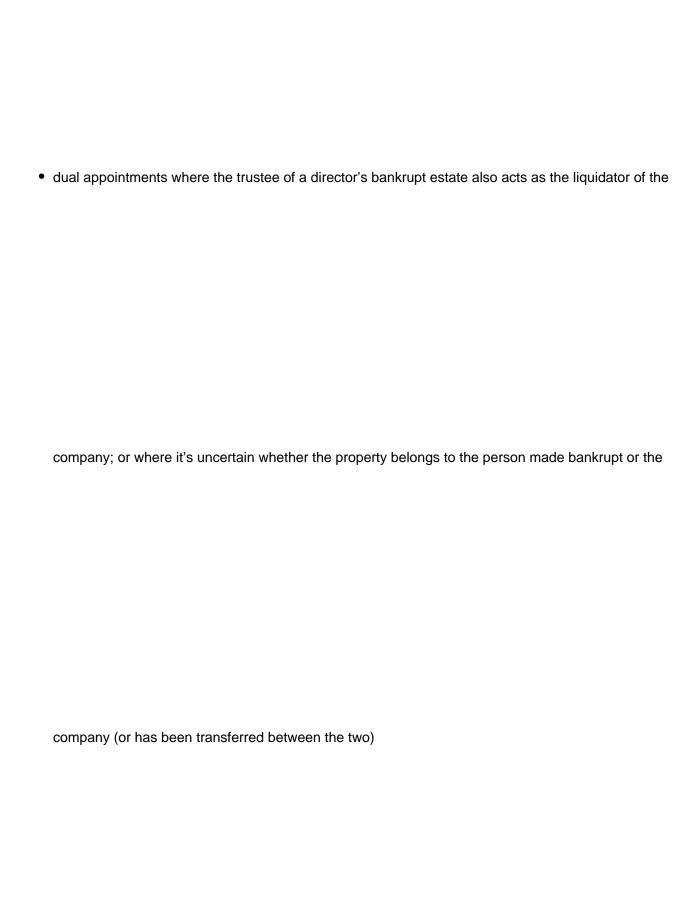
AFSA details some common examples of conflicts of interest, including:



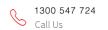




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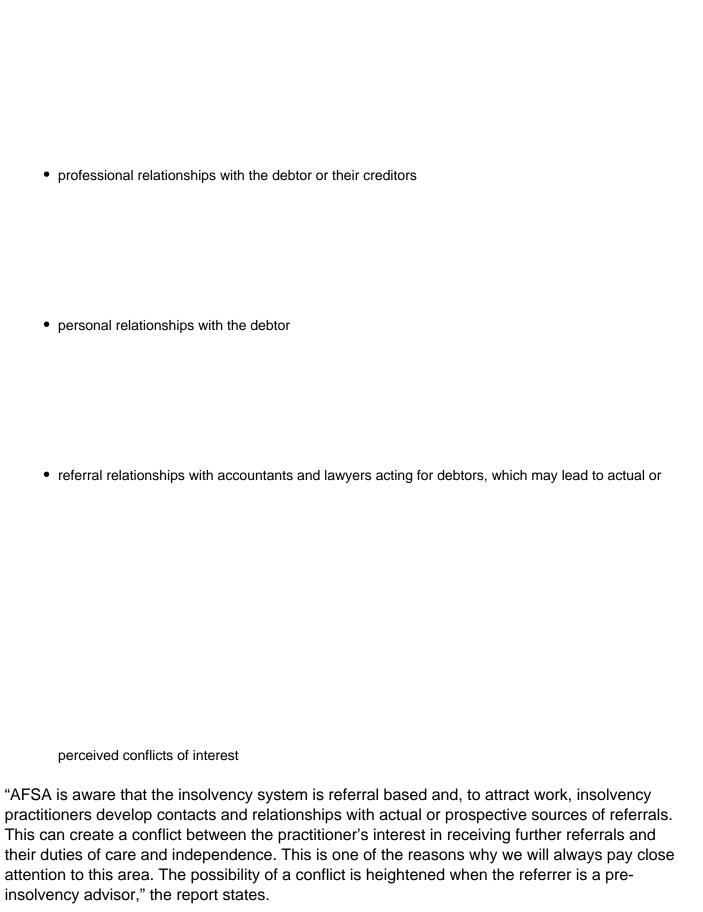






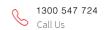


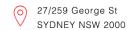
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Jirsch Sutherland Partner and Bankruptcy Trustee Malcolm Howell says the words of the former Federal Court Judge, the Hon Justice John S Lockhart AO QC, still ring true today – nearly 40 years later.

"In a 1982 determination, Mr Lockhart stated that: 'A trustee must be scrupulously careful to ensure that he never allows himself to be placed in a position of conflict or potential conflict. A registered trustee must not only be impartial; he must be seen to be impartial'," says Howell.

"It's vital that Bankruptcy Trustees remain objective and independent, particularly if a referral source – such as accounting or legal professionals – endeavours to influence a practitioner's decision. Throughout the bankruptcy process, it's paramount to have open and honest communication and full disclosure with creditors, who are key stakeholders."

\*Re Partridge (unreported FCA Lockhart J 22 September 1982)