



Australian Government

Australian Financial Security Authority

## OFFICIAL RECEIVER PRACTICE STATEMENT 13

# VOTING ON DEBT AGREEMENT, VARIATION AND TERMINATION PROPOSALS

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If you have any comments, suggestions or queries about an issue referred to in this practice statement, please contact the National Manager, Insolvency and Trustee Services, at [registry@afsa.gov.au](mailto:registry@afsa.gov.au).

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## 1. PURPOSE

- 1.1. This practice statement is designed to provide guidance on how the Official Receiver conducts the voting process including assessing and counting the votes in relation to all types of proposals.

## 2. BACKGROUND

- 2.1. If the debtor is eligible to make a debt agreement and the proposal complies with legislative requirements, the Official Receiver sends the proposal, explanatory statement and statement of claim and voting (“SOCAV”) with a report to each secured and unsecured creditor for their vote.
- 2.2. The Official Receiver determines the right of a creditor to vote and the amount for which they may vote based on the documents provided by the debtor and the SOCAV completed by the creditor.
- 2.3. Creditors may vote yes or no or may abstain and, by lodging a completed SOCAV, provide details of their claim for dividend purposes. It is important for a creditor to return a completed SOCAV to the Official Receiver so that the administrator has the benefit of the names of creditors and the amounts claimed in a summary provided by the Official Receiver when they decide each creditor’s entitlement to a dividend.

## 3. PRACTICE

- 3.1. In order to lodge a valid vote, the SOCAV must be completed and returned before the end of the deadline date to establish all the following information:
  - the right to be a creditor
  - the amount of unsecured debt
  - whether security is held and, if so, the value of security
  - the net amount of debt if the security has been realised or valued
  - whether the creditor is a related entity and, if so, the amount of the purchase price of the debt
  - whether the creditor votes yes or no or abstains.

The creditor is given the option to provide a reason why they voted “no”.

- 3.2. In the case of debt agreement proposals and variation proposals, the deadline date is 35 days after the date on which the Official Receiver accepted the proposal to send to creditors for voting and recorded it on the National Personal Insolvency Index (“NPII”). The exception is where the proposal is accepted and recorded in December when the voting period is 42 days.
- 3.3. In the case of termination proposals, the voting period is 14 days, except for proposals lodged in December when the voting period is 21 days.
- 3.4. SOCAVs received after the end of the deadline date will not be accepted.
- 3.5. To be eligible to vote creditors must have a provable debt, being either an unsecured debt or an estimated shortfall on a secured debt at the time the proposal is recorded on the NPII.
- 3.6. The Official Receiver decides the amount of the vote based on the information provided:
  - by the debtor on the explanatory statement and the statement of affairs
  - by the creditor in the SOCAV
  - through contact with the administrator including documents held by the them
  - by contact with the debtor and/or creditor.
- 3.7. The provable debt and the dollar value of the vote is the amount owing at the date the proposal is accepted by the Official Receiver and recorded on the NPII. Interest is calculated to this date and must be rebated if the contract provides for lump sum interest over the life of the loan.
- 3.8. The amounts claimed by creditors may vary from the amounts disclosed by the debtor. If there is a material difference between the amount claimed and the amount disclosed by the debtor, a compliance telephone call is made to the creditor and/or debtor to assist in deciding the amount of the creditor’s vote.
- 3.9. If the creditor lodging a SOCAV was not disclosed on the proposal, a compliance call is made to the creditor and/or debtor to assist in deciding whether the creditor has a provable debt and the amount for which they may vote.

- 3.10. Where the unsecured debt of an undisclosed creditor is material or there is a material difference in the amount claimed compared to the amount disclosed by the debtor (for example, where the amount may materially reduce the estimated dividend), the proposal is cancelled or the proposal to vary or terminate is withdrawn.
- 3.11. Secured creditors, as defined in section [5](#) of the *[Bankruptcy Act 1966](#)* (“the Act”) are entitled to vote for the shortfall after deducting the value of security or for any actual shortfall after repossession. Compliance checks are made if there is doubt as to whether the value given to the security reflects the market value after taking into account expenses of repossession and sale.
- 3.12. A related entity, as defined by section 5 of the Act, who has purchased a debt, may only vote for the amount which was paid for the assignment of the debt.
- 3.13. To change a vote, the creditor must lodge a fresh SOCAV prior to the deadline date.
- 3.14. When a SOCAV passes all compliance checks, the vote is recorded and is verified the day after the deadline date before the voting result is recorded on the NPII as a debt agreement or rejection.
- 3.15. The vote result is based on a majority in value of the unsecured debt of creditors who lodge a valid vote on a SOCAV.
- 3.16. Information on the progress of voting is not provided to any party. However, the debtor or an affected creditor may apply to the Official Receiver to make arrangements to inspect, or obtain a copy or extract of, a SOCAV.
- 3.17. The debtor, creditors and administrator are notified of the vote result.

## 4. REFERENCES

- [Bankruptcy Act 1966](#)
- Bankruptcy Act section [185EA](#)