



Australian Government

Australian Financial Security Authority

OFFICIAL RECEIVER PRACTICE STATEMENT 14

CANCELLATION OF A DEBT AGREEMENT PROPOSAL BY THE OFFICIAL RECEIVER AND WITHDRAWAL OF A DEBT AGREEMENT PROPOSAL BY THE DEBTOR

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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.

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1. PURPOSE

- 1.1. This practice statement is designed to provide guidance as to when the Official Receiver will cancel a debt agreement proposal and the process for the debtor to withdraw a debt agreement proposal.

2. BACKGROUND

- 2.1. The Official Receiver has discretion to cancel a debt agreement proposal during the voting period on the basis of non-disclosure of or incorrect information on the proposal and/or explanatory statement on which the creditors are relying when making a decision on their vote.
- 2.2. Where someone other than the debtor has consented to administer the agreement, the administrator lodges a certificate with the proposal certifying that the administrator has reasonable grounds that all the information required is disclosed. There should be few instances where a proposal is cancelled for reasons of non-disclosure.
- 2.3. There is nothing to prevent a debtor from withdrawing their proposal before or during the voting period.

3. PRACTICE

- 3.1. A proposal will be cancelled if any of the following provisions apply:
 - an affected creditor has not been disclosed on the statement of affairs and there is a material effect on the proposal
 - a material particular has been omitted or is incorrect on the statement of affairs or explanatory statement
 - there has been a material change in the debtor's circumstances that was not foreshadowed on the statement of affairs and explanatory statement which, in the opinion of the Official Receiver, is capable of affecting a creditor's decision on the vote
 - any other information comes to light that if it was known at the time the proposal was accepted for voting, the proposal would

not have been accepted (including information which means the debtor was not eligible to propose a debt agreement).

- 3.2. In determining what is “material”, the impact as a whole is assessed as well as:
 - whether there a material reduction in the estimated dividend to creditors
 - whether the total unsecured debt exceeds the limit
 - the proportion of the total of the undisclosed unsecured debt to the total unsecured debt
 - non-disclosure of assets or understatement of the value of divisible assets
 - understatement of income and allowances or omission of employment
 - overstatement of household expenses and incorrect statement on dependants.
- 3.3. If a proposal is cancelled, a debtor is able to submit a new proposal provided that they are eligible. In any new proposal, debtors must amend their proposal to overcome the reasons for the cancellation, otherwise it will not be accepted for voting.
- 3.4. A debtor may, in writing, withdraw a proposal prior to the deadline date. The reason for withdrawal is monitored.
- 3.5. Administrators cannot ask for a proposal to be withdrawn unless they are a creditor withdrawing a proposal to terminate or vary.
- 3.6. If a debtor does not supply a reason why they want to withdraw, the proposal can still be withdrawn. There is no provision requiring the debtor to supply a reason.
- 3.7. Where the Official Receiver becomes aware of sufficient information to cancel a proposal it may be cancelled before the debtor withdraws it.
- 3.8. The debtor and creditors are notified of the cancellation or withdrawal with a copy to the administrator.
- 3.9. The debtor may apply to the Administrative Appeals Tribunal for review of the decision to cancel.

4. REFERENCES

- [*Bankruptcy Act 1966*](#)
- Bankruptcy Act subsection [185ED\(2\)](#)