



Australian Government

Australian Financial Security Authority

## OFFICIAL RECEIVER PRACTICE STATEMENT 15

# PROPOSAL TO VARY A DEBT AGREEMENT AND WITHDRAWAL OF A PROPOSAL BY THE OFFICIAL RECEIVER

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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 the Official Receiver accepting or rejecting proposals to vary debt agreements for sending to creditors for a vote and when a proposal to vary will be withdrawn by the Official Receiver.

## 2. BACKGROUND

- 2.1. A proposal to vary a debt agreement generally arises from a change in the debtor's circumstances, for example:
- a reduction in income resulting in a reduction in the amount they can afford
  - an increase in the number of dependants, such as an additional child or partner's loss of income
  - an increase in household expenses
  - loss on repossession during the debt agreement resulting in an increased value of provable debts
  - an increase in income from a new job resulting in an ability to increase in payments
  - support from a third party to assist with payments
  - the ability of the debtor to offer a lump sum to complete the agreement.

## 3. PRACTICE

- 3.1. Only a debtor or, in limited circumstances, an affected creditor may lodge a proposal to vary a debt agreement. An administrator may only lodge a proposal to vary if they are an affected creditor.
- 3.2. The proposal to vary must use the approved form, accompanied by an explanatory statement on the approved form showing all changes in circumstance. A certificate from the administrator is not required.
- 3.3. The difference between the original agreement (perhaps already varied) and the variation must be clear for the creditors to be well informed when they vote. If the difference or the variation is unclear, a compliance telephone call is made to the debtor and/or administrator. A comment in the Official Receiver's report may clarify the position for creditors. Alternatively, the proposal will be

rejected with the reason of the lack of clarity not being in the interests of creditors.

- 3.4. The Official Receiver will examine the explanatory statement accompanying the proposal to ensure that the changes to the debtor's circumstances are fully disclosed and consistent with the proposal to vary the debtor's payments. The explanatory statement should include details of positive and negative changes to the debtor's circumstances. This ensures, for example, that a variation to reduce payments based on the birth of a child which also discloses and increase in income as a result of tax changes can be considered by creditors in light of all the changes in the debtor's circumstances. Where there is an inconsistency, a compliance telephone call is made to the debtor.
- 3.5. It is not practical to accept a proposal to vary from a creditor relating to payment or action by the debtor, unless there has been negotiation with the debtor to ensure that the debtor is able to complete the varied agreement. For example, if a creditor proposes to vary an agreement by increasing the amount of each payment without negotiating agreement with the debtor, there is no basis for expecting that the debtor has the ability to complete such an agreement.
- 3.6. A proposal to vary lodged by a creditor relating to payment or action by the debtor, without documented agreement by the debtor, will not be accepted to send to creditors for voting. Compliance telephone calls are made to the debtor and administrator to establish whether agreement has been obtained. A compliance telephone call is made to the creditor explaining the practicalities of proposing such a variation without agreement by the debtor.
- 3.7. An alternative is for the creditor to persuade the debtor to lodge their own proposal.
- 3.8. There are a limited number of instances where a creditor may propose a variation which does not affect the payments and obligations of the debtor, for example, proposing to change the administrator.
- 3.9. A proposal to change the administrator must be accompanied by a consent to the appointment signed by the proposed administrator. The proposal will not be accepted unless the person is a registered administrator or trustee or the Official Receiver is satisfied that the person passes the basic eligibility test for an administrator.

- 3.10. If a proposal to vary has already been rejected by creditors, a further proposal to vary in the same terms will not be accepted unless creditors have indicated they will reconsider this variation. The proposal is not accepted because it is not in the creditor's interest. If a fresh proposal provides for a material benefit to creditors, it is sent for voting.
- 3.11. If completion of the debt agreement occurs before the deadline date for the proposal to vary, the debt agreement is completed.
- 3.12. A debtor or creditor may withdraw their proposal to vary during the voting period.
- 3.13. The Official Receiver may withdraw a proposal to vary during the voting period if they become aware that the explanatory statement was deficient because:
  - it omitted a material particular or was incorrect in a material particular
  - a material change in circumstances was not foreshadowed which is capable of affecting a creditor's decision whether to accept or not to accept the proposal.
- 3.14. The Official Receiver must give the debtor and affected creditor's notice of any withdrawal of a proposal.
- 3.15. If the Official Receiver decides to withdraw a proposal to vary the debtor or an affected creditor may apply to the Administrative Appeals Tribunal for a review of the decision.

## 4. REFERENCES

- [Bankruptcy Act 1966](#)
- Bankruptcy Act subsection [185E\(3\)](#)
- Bankruptcy Act section [185M](#)
- Bankruptcy Act section [185MA](#)
- Bankruptcy Act section [185MD](#)