



Australian Government

Australian Financial Security Authority

OFFICIAL RECEIVER PRACTICE STATEMENT 16

PROPOSAL TO TERMINATE A DEBT AGREEMENT AND WITHDRAWAL OF A PROPOSAL

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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 on when proposals to terminate are accepted or rejected by the Official Receiver for sending to creditors for vote and when a proposal to terminate will be withdrawn by the Official Receiver.

2. BACKGROUND

- 2.1. The reasons for a debtor or creditor to propose a termination include:
- failure of the debtor to start or maintain payments with little likelihood of completing the debt agreement
 - a change to the debtor's circumstances where they can no longer afford payments and a variation to reduce payments is not feasible
 - material non-disclosure of employment or income which would have affected the creditors' original decision to support a debt agreement
 - a material reduction in the estimated dividend to creditors because of significant undisclosed debt
 - a material omission of a divisible asset which would have affected the creditors' original decision to accept the debt agreement. A "divisible asset" is anything of value other than assets protected in bankruptcy which are household and personal items, tools of trade, superannuation and a low value car.
- 2.2. Termination should generally arise from the failure by the debtor to perform the terms of the debt agreement or disclose a material particular affecting the creditors' original decision.
- 2.3. Debtors or creditors may withdraw a proposal to terminate.
- 2.4. The Official Receiver has the discretion to withdraw a proposal if they become aware of material reasons for doing so.

3. PRACTICE

- 3.1. Only a debtor or a creditor who is a party to the debt agreement may lodge a proposal to terminate a debt agreement. Administrators may only lodge a proposal to terminate when they

are an affected creditor.

- 3.2. The proposal to terminate must be in the approved form and accompanied by an explanatory statement in the approved form.
- 3.3. A creditor lodging a proposal to terminate must obtain and lodge with the proposal a status report from the administrator of the debt agreement showing whether the payments are up to date, the amount of arrears and the likelihood of the debtor continuing payments to complete the debt agreement.
- 3.4. A proposal to terminate without a current status report will not be sent for a vote until the creditors can be given an up to date report on the agreement.
- 3.5. The practice of obtaining a status report with a proposal to terminate is aimed at ensuring that agreements that are up to date are not terminated. Creditors must be kept informed by the administrator if an agreement is in arrears and should communicate with the administrator to ensure they are adequately informed before considering a termination.
- 3.6. Where an agreement is self-administered, the creditor should obtain up-to-date information from the debtor as to their ability to perform the agreement.
- 3.7. If a proposal to terminate is lodged by a creditor when payments by the debtor are up to date, the proposal is not processed. A valid reason is required, for example where there is non-disclosure of income, debts or assets which materially affect the dividend rate to creditors. Creditors not having received dividends from the debt agreement may not be a valid reason because payment of a dividend is the responsibility of the administrator.
- 3.8. Where there is no valid reason, a compliance telephone call is made to the debtor, administrator or creditor to clarify the reason prompting the proposal to enable the Official Receiver to report to the creditors.
- 3.9. If a debtor lodges a proposal to terminate they must be adequately informed of the consequences of termination because the debtor is ineligible to propose another debt agreement for 10 years.
- 3.10. The debtor may propose a termination to be released from the debt agreement to enable them to lodge a debtor's petition for their bankruptcy.

- 3.11. If the proposal to terminate is received from a creditor who is not disclosed in the proposal, the creditor should provide both a status report from the administrator and an acknowledgement or evidence from the administrator that they are a party to the debt agreement.
- 3.12. If a proposal to terminate has already been rejected by creditors, a further proposal to terminate is not accepted unless creditors have indicated they will reconsider a termination or there has been a significant change in the debtor's circumstances. The proposal is not accepted on the grounds that it is not in the creditors' interests.
- 3.13. If completion of the debt agreement occurs before the deadline date for the proposal to terminate, the debt agreement is completed.
- 3.14. A debtor or creditor may withdraw their proposal to terminate prior to the deadline date.
- 3.15. The Official Receiver may withdraw a proposal to terminate 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 creditors decision whether to accept or not to accept the proposal.
- 3.16. The Official Receiver must give the debtor and all parties to the debt agreement notice of any withdrawal of a proposal.
- 3.17. If the Official Receiver decides to withdraw a proposal to terminate, 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 [185P](#)
- Bankruptcy Act section [185PA](#)
- Bankruptcy Act section [185PD](#)