



Australian Government

Australian Financial Security Authority

## OFFICIAL RECEIVER PRACTICE STATEMENT 12

# WHEN A DEBT AGREEMENT PROPOSAL IS ACCEPTABLE FOR SENDING TO CREDITORS FOR THEIR VOTE

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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. The debt agreement system provides for debtors with unsecured debts not exceeding a threshold amount offering a proposal to creditors where it is not feasible for the debtor to negotiate individually with all creditors to deal with their unmanageable debt. Information about eligibility to make a debt agreement can be found in [Official Receiver Practice Statement 11 – Who is eligible to make a debt agreement?](#)
- 1.2. This practice statement is designed to provide guidance regarding the considerations by the Official Receiver when assessing a debt agreement proposal in order to determine whether it complies with legislative requirements before it can be sent to creditors for their vote. These legislative requirements include:
  - the debtor is eligible to propose an agreement
  - the proposal must be in the approved form
  - the proposal must be lodged within 14 days of the debtor signing and dating the proposal and associated documents
  - where an administrator consents to act as administrator, he or she must provide a certificate to the Official Receiver confirming consent
  - it must be in the creditors' interests to send the proposal for voting
  - where a proposal is subject to the occurrence of a specified event within a specified period after the proposal is accepted by creditors, the period is not longer than seven days.

## 2. PRACTICE

### Approved forms

- 2.1. The proposal, explanatory statement and statement of affairs must be lodged on the approved forms.
- 2.2. The proposal must be lodged within 14 days of the debtor signing and dating the proposal and associated documents to ensure that the information for creditors is up-to-date and accurately discloses the debtor's current circumstances.
- 2.3. Where it is apparent that the debtor has signed one page of a multi-page document, whether it be the explanatory statement or statement of affairs, and that he or she did not have the complete document at the time of signing it, it must not be accepted. For example, documents where the debtor signs only the signature pages and the other pages are attached later are not acceptable.
- 2.4. Where it is apparent that the document signed by the debtor has been subsequently changed without the debtor's clear agreement, it must not be accepted. For example, where some fields are blank at the time of signing

and these are later completed or where changes are made to information after signing by the debtor, the proposal is not acceptable.

- 2.5. In cases where there is doubt about whether the debtor has signed a complete document or has signed a changed document, a compliance telephone call to the debtor is made to confirm whether he or she signed the complete document that was lodged and is aware of all the information in the document.
- 2.6. It is essential for the debtor to view all pages when signing the documents to ensure that accurate information is provided to creditors and because the debtor may commit an offence if he or she provides false or misleading information on a statement of affairs and/or explanatory statement.

### **Certificate by administrator**

- 2.7. Where an administrator consents to administer a debt agreement, he or she is required to provide a certificate to the Official Receiver confirming consent and that he or she has:
  - given the debtor a copy of the [prescribed information](#), which summarises the options available to manage debts and the consequences
  - reasonable grounds to believe that the debtor is likely to be able to make the payments offered in the debt agreement
  - reasonable grounds to believe that the debtor has made full disclosure of the information required on the forms.
- 2.8. The Official Receiver expects that an administrator will keep a copy of the prescribed information sheet signed by the debtor and copies of records from the debtor such as payslips, creditors' statements and agreements as well as a record of enquiries made to establish the reasonable grounds for providing the certificate to the Official Receiver. These records are an essential source of information when a question arises about the eligibility of the debtor.

### **Where the debtor has only one debt**

- 2.9. The debt agreement system is not generally meant for debtor who has only one creditor because he or she is able to negotiate with the creditor or access the creditor's hardship application provisions. It is not appropriate to ask a single participating creditor to vote on something that is essentially an agreement that should be reached directly with the debtor.
- 2.10. Where a debt agreement proposal involving a single creditor is lodged, it will not be accepted for processing unless the debtor is able to establish that there are exceptional circumstances that would justify accepting it. Given the Official Receiver's decision under subsection 185E(3) of the Act is concerned with what is in the interests of creditors, where a single creditor proposal is received the Official Receiver will notify that creditor and advise that it is

proposed not to accept the proposal and allow the creditor 48 hours to respond.

### **Not in the interests of creditors**

- 2.11. The Official Receiver has discretion not to accept a debt agreement proposal to send to creditors for voting where it would not be in the creditors' interests to do so. In exercising this discretion, the Official Receiver is not making a decision about whether the debt agreement would be in the interests of creditors; rather, the discretion merely ensures that creditors are able to vote on an informed basis.
- 2.12. Where a debtor's affairs are so complex that they result in a lack of clarity for creditors, consideration is given to whether the creditors' interests are better served by not sending a proposal for their vote. Bankruptcy or a Part X personal insolvency agreement may be a better option to enable the debtor's affairs to be fully investigated.

### **Conditional proposals**

- 2.13. To achieve a release from joint debts, proposals from two or more joint debtors need to be made conditional upon all proposals being accepted by creditors.
- 2.14. There may be other occurrences of a specified event within seven days when the acceptance of a proposal is conditional.
- 2.15. Where a proposal is subject to the occurrence of a specified event within a specified period after the proposal is accepted by creditors, the period must not be longer than seven days.
- 2.16. If the condition is unable to be satisfied within seven days of the deadline date, the proposal will not be accepted.
- 2.17. A proposal conditional upon an event contrary to any provision of Part IX is not accepted. Examples are an unsecured creditor:
  - not participating in dividends
  - accepting a different dividend rate to others in the proposal
  - forgiving a debt.
- 2.18. Any forgiveness of a debt by a creditor should be completed prior to the debt agreement proposal being lodged.
- 2.19. If proposals are conditional, both proposals are sent for voting at the same time to ensure that creditors, particularly joint creditors, consider the two proposals together.
- 2.20. If both proposals are not received on the same day, processing is suspended until both proposals are able to be sent to creditors together.

- 2.21. Where conditional proposals are accepted for the vote, all the debtor's conditional proposals must be accepted for all the debt agreements to come into force.
- 2.22. Where a proposal is subject to another form or condition, whether that condition has been satisfied is checked prior to deciding the vote result.

### **Person authorised to deal with property**

- 2.23. Where a debt agreement proposal authorises a person to sell or deal with property, 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.

### **Fresh and resubmitted proposals**

- 2.24. The debtor may lodge a fresh proposal remedying any defects in an original proposal that was not accepted by the Official Receiver.
- 2.25. Major creditors indicate that they are not interested in voting for the same proposal if it is resubmitted unless there is an additional benefit to them or they have indicated that they are prepared to reconsider the proposal in its original form.
- 2.26. A fresh or resubmitted proposal is only accepted and sent for voting if:
  - there is an increase in the estimated dividend to creditors or another benefit to them
  - the creditors have stated that they will reconsider the proposal in the same form.
- 2.27. A fresh eligibility check is performed (for example, that the administrator is still eligible, the limits are not exceeded etc).
- 2.28. The fresh proposal is compared to any previous proposal to understand the extent to which the original proposal has changed and any different benefit to the creditors. If a fresh proposal has no statement on the explanatory statement regarding creditors having agreed to reconsider and accept the new proposal, the major changes are checked to ensure it is based on the debtor's ability to pay, for example:
  - the term of the agreement has changed
  - the level of administrator's fees has decreased
  - details of income and support by a third party show an increased capacity
  - a change to household expenditure through deliberate change in expenditure by the debtor to reduce expenses on non-essential items as shown on the explanatory statement.
- 2.29. A fresh proposal will not be accepted if there is an issue that has not been

addressed from a previous proposal unless the matter is clarified in a compliance telephone call made to the debtor or consenting administrator.

- 2.30. A fresh proposal will not be accepted if it is a straightforward resubmission without a change and/or a statement on the explanatory statement that creditors have agreed to reconsider and accept the proposal.

### **Review of decision**

- 2.31. The debtor may apply to the Administrative Appeals Tribunal for a review of the Official Receiver's decision on whether to accept the proposal for processing and send to creditors for their vote.