



Australian Government

Insolvency and Trustee Service Australia

## INSPECTOR-GENERAL PRACTICE GUIDELINE 1

### Debt Agreement Administrators Guidelines relating to advertising

DRAFT

Release Date<sup>1</sup>: September 2010

**PLEASE NOTE:** This draft Practice Guideline is released for comment and consultation at the Registered Debt Agreement Administrators Professional Development Day on 9 September 2010. It is therefore possible that the content of this Practice Direction may change before being finalised and published to [ITSA's Policies and Practices Website](#)

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<b>Contents</b>	<b>Page no.</b>
<b>Introduction.....</b>	<b>1</b>
<b>Overview of Codes of Professional Practice and legislation.....</b>	<b>1</b>
<b>Inspector-General Expectations .....</b>	<b>2</b>
<b>Practical Examples.....</b>	<b>3</b>
<i>Acceptable advertisement.....</i>	<i>3</i>
<i>Unacceptable advertisement.....</i>	<i>3</i>
<b>ITSA Role .....</b>	<b>4</b>
<i>Regulation and Enforcement.....</i>	<i>4</i>
<b>Conclusion .....</b>	<b>4</b>

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## Introduction

1. The purpose of this document is to outline the Inspector-General in Bankruptcy's expectations and best practice principles in relation to advertising by a debt agreement administrator (DAA).
2. There is no specific legislative duty regarding advertising in *The Bankruptcy Act 1966*.
3. This guideline is supported by the:
  - (i) Debt Agreement Practitioners Association (DAPA) Code of Professional Practice ([DAPA Code of Professional Practice](#));
  - (ii) Insolvency Practitioners Association ([IPA Code of Professional Practice](#));
  - (iii) *Trading Practices Act 1974* (Cth) and
  - (iv) State and Territory Fair Trading legislation.
4. All DAAs regardless of professional membership status should consider the DAPA and IPA Codes of Professional Practice in conjunction with this practice guideline and the relevant federal and state legislation when formulating and delivering their advertising and marketing strategies.
5. The guidelines in this Practice Guideline are applicable to all DAAs regardless of the size of their operation and whether or not they are registered.

## Overview of Codes of Professional Practice and legislation

6. Paragraph 8.1 of the DAPA Code states:

### **8.1 Advertising, publicity and solicitation**

Members may promote their business through general and targeted advertising using the full range of media and marketing techniques including through web sites, print, direct mail and brochures but members are required to ensure that advertising will not be misleading, dishonest or deceptive.

It is extremely important that members continually review all advertising and marketing material to ensure that that material complies with relevant legislation. Advertising can be innovative, exciting and competitive; but it must also be honest, balanced and accurate.

The penalties for misleading and deceptive advertising and other practices can be very costly.

#### **Intent**

It is important to realise that purpose or intent does not have to be proved to establish a breach of the misleading conduct laws or the Code. It is the likely effect of the representation that counts. Advertising may be found to be misleading or deceptive irrespective of whether a member had any intention to mislead or deceive.

7. The Inspector-General's expectations with regard to advertising are in direct accord with the above paragraph of the DAPA Code. In particular the Inspector-General stresses the expectation that DAAs are required to ensure that advertising will not be *misleading* as a means of attracting potential but unsuitable debtors into a debt agreement.
8. It is noted that the IPA Code at paragraph 11.6, similarly endorses the principles expressed above.
9. There are federal, state and territory laws governing the false, misleading and deceptive conduct of businesses operating within Australia. In particular, subsection 52(1) of the Trade Practices Act states:

*'Misleading or deceptive conduct*

*(1) A corporation shall not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.*

## **Inspector-General's Expectations**

10. The Inspector-General's expectations are based upon the need for:
  - (i) Debtors to have direct and reliable access to ITSA's independent website.. In the past some DAAs have used the phrase or acronym "itsa" as Google sponsored advertising. This created the potential for users attempting to access the ITSA website to be misled into accessing the DAA's website. Should it come to the Inspector-General's attention that this practice is reoccurring, ITSA Regulation and Enforcement will take immediate remedial action..
  - (ii) The duties of a DAA and options under the Bankruptcy Act for debtors in financial distress to be clearly and accurately stated in language that is easily understood by the target audience.
  - (iii) Ensuring confidence in the personal insolvency system and in particular, the accurate representation of ITSA's involvement in the Part IX system.
11. Therefore, DAAs are to ensure that they are aware of and comply with the relevant Federal, State and Territory legislation when developing and implementing their advertising and marketing.
12. It is important to acknowledge that advertisements may be misleading or deceptive even when there is no such **intention**. DAAs should therefore consider how their advertising may be interpreted or how it may affect the person receiving the message. This involves understanding the target audience and appreciating their backgrounds, vulnerabilities, circumstances and understanding of the financial environment. See the [DAPA Code](#) at paragraph 8.1 as shown above.
13. It is acceptable for a Registered DAA to state on the advertisement their/its ITSA Registration Number.

14. It is expected that the registered name of both the corporate and individual DAA is easily identified in the advertisement.

## Practical Examples

### Acceptable advertisement

15. “Are you faced with debt problems?  
Do you feel there is no way out?  
**YOU HAVE OPTIONS!**  
Come and speak with us to explore your options.”

### Unacceptable advertisements

16. The following table represents some hypothetical examples of unacceptable advertising.

<i>Unacceptable advertisement</i>	<i>Why it is unacceptable</i>
<p>“STOP DEBT NOW. Commonwealth Government guaranteed and Regulated Debt Agreement will free you of debt forever.”</p>	<p>The advertisement makes 2 incorrect claims- that the debt agreement is guaranteed by the Commonwealth Government and that a person who enters into a debt agreement will be released from all of his or her debts. A debt agreement will only release a debtor from unsecured debt incurred up to the time the debt agreement proposal is accepted for processing, and then only if the terms of the agreement are complied with and completed.</p>
<p>“If you complete the debt agreement you will get full release from only those creditors listed in the debt agreement.”</p>	<p>This statement incorrectly states the intention of the Bankruptcy Act.</p>
<p>“All stages of the debt agreement are legislated, monitored and facilitated by ITSA.”</p>	<p>This misrepresents ITSA’s involvement in the process and again uses ITSA’s name as leverage to give assurance to the target audience.</p>
<p>“Debt agreements show up more favourably on your credit record than a bankruptcy.”</p>	<p>This is factually incorrect as there is no difference in the reporting of debt agreement and bankruptcy on a credit record. Also, the lending policies of banks and other credit providers are matters for the individual</p>

	institutions.
<i>“You can choose which debts to include and which ones to exclude eg you will want to maintain electricity in your home so it may be best to exclude essential services.”</i>	This is factually incorrect and misrepresents the intention of the Bankruptcy Act.

## ITSA Role

### ***Regulation and Enforcement and DAS***

17. ITSA Regulation Registration Officers will search Google and other relevant search engines on a regular basis to identify inappropriate redirections to insolvency based websites from search ID such as “ITSA”, “itsa.gov.au” etc ... - if necessary, corrective action will be taken.
18. ITSA Regulation and Enforcement and DAS will also regularly and randomly review DAA websites to ensure the information contained therein is accurate and up to date. If information is found to be misleading or does not conform with the principles in this practice guideline the DAA will be asked to remedy.

### **Conclusion**

19. This Practice Guideline outlines the Inspector-General’s position in relation to forms of advertising by DAAs.
20. When there are other specific issues where clarification is required, following consultation with DAS, the Inspector-General will continue to develop policy and practice statements to assist and guide practitioners.