



Australian Government

Insolvency and Trustee Service Australia

Official Receiver's Practice Statement

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 on a matter referred to in this Practice Statement, please contact us at any time by [email](#) or by mail addressed to:

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1. PURPOSE

- 1.1 To provide guidance on how the Official Receiver is satisfied that a debt agreement proposal complies with legislative requirements before proposals are sent to creditors for their vote. See also [practice statement](#) on who is eligible to make a debt agreement.
- 1.2 To provide guidance as to when the Official Receiver will exercise discretion not to accept a proposal for voting on the basis that it would not be in the interests of creditors to do so.

2. BACKGROUND

2.1. If the Official Receiver is satisfied that the debtor is eligible to propose a debt agreement, the Official Receiver must also be satisfied that the proposal complies with other legislative requirements before the proposal can be accepted to send to creditors for voting.

2.2 The legislative requirements include -

- proposal must be in the [approved form](#);
- 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 they are required to provide a certificate to the Official Receiver confirming their consent;
- it must be in the creditors interests to send the proposal for voting; and
- 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.

2.3. The debt agreement system provides for debtors with limited amounts of unsecured debt to offer a proposal to several creditors where it is not feasible for the debtor to negotiate individually with each creditor to deal with their unmanageable debt.

2.4. The debt agreement system is not generally meant for debtors who have only one debt because they are able to negotiate with the creditor or access the creditor's hardship application provisions.

2.5. Where a debtor's affairs are so complex that they result in a lack of clarity for creditors, consideration is given to whether the creditor's interests are better served by not sending a proposal for their vote. Bankruptcy or a Part X personal debt arrangement may be a better option to enable the debtor's affairs to be fully investigated.

3. PRACTICE

Approved forms

3.1. The proposal, Explanatory Statement and [Statement of Affairs](#) must be lodged in the [approved form](#).

3.2. 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.

3.3. 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 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 other pages are attached later are not acceptable.

3.4. Where it is apparent that the document signed by the debtor has been subsequently changed without their clear agreement it must not be accepted. For example, where some fields are blank at the time of signing and later completed; or where changes are made to information after signing by the debtor.

3.5. 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 or not the debtor signed the complete document that was lodged and is aware of all the information in the document.

3.6. 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 they provide false or misleading information in a statement of affairs or explanatory statement.

Certificate by administrator

3.7. Where an administrator consents to act as administrator they are required to provide a certificate to the Official Receiver confirming their consent and that they have –

- given the debtor a copy of the “Prescribed Information” sheet 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; and
- reasonable grounds to believe that the debtor has made full disclosure of the information required on the forms.

3.8 The Official Receiver expects that administrators would keep a copy of the “Prescribed Information” sheet signed by the debtor and records from the debtor such as pay slips, creditors statements and agreements as well as a record of their enquiries made to establish they had reasonable grounds to provide the certificate to the Official Receiver. These records are an essential source of information when a question arises about the eligibility of the debtor.

Not in the interests of creditors

3.9. The Official Receiver has a 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. The discretion merely ensures that creditors are able to vote on an informed basis. It is not possible to be definitive as to the circumstances when the Official Receiver would exercise this discretion. The following circumstances are examples of where the Official Receiver would use this provision -

- Where there is one creditor listed on the explanatory statement and statement of affairs and the debtor has not attempted to negotiate directly with the creditor or use hardship variation provisions available from the creditor.
- The proposal must be capable of being understood by creditors. Before rejecting a proposal the Official Receiver will make a compliance telephone call to determine if

the proposal is capable of being understood by creditors with addition of a comment in the Official Receiver's report to creditors.

3.10. The debtor may lodge a fresh proposal remedying any defects in the original proposal.

Conditional proposals

3.11. 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.

3.12. There may be other occurrences of a specified event within seven days when the acceptance of a proposal is conditional.

3.13. 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.

3.14. If the condition is unable to be satisfied within seven days of the deadline date the proposal will not be accepted.

3.15. 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.

3.16. Any forgiveness of debt by a creditor should be completed prior to the debt agreement proposal being lodged.

3.17. 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.

3.18. If both proposals are not received on the same day, processing is suspended until both proposals are able to be sent to creditors together.

3.19. Where conditional proposals are accepted for the vote, all the debtors' conditional proposals must be accepted for all the debt agreements to come into force.

3.20. Where a proposal is subject to another form of condition whether the condition has been satisfied is checked prior to deciding the vote result.

Person authorised to deal with property

3.21. 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

3.22. 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 re-consider the proposal in its original form.

3.23. 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; or

- The creditors have stated that they will reconsider the proposal in the same form.

3.24. A fresh eligibility check is performed; eg the administrator is still eligible, limits are met.

3.25. 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.

3.26. If a fresh proposal has no statement in the Explanatory Statement that creditors have agreed to reconsider and accept the 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 administrators 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 in the explanatory statement.

3.27. A fresh proposal will not be accepted if there is an issue which 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.

3.28. A fresh proposal will not be accepted if it is a straightforward resubmission without change or statement in the Explanatory Statement that creditors have agreed to reconsider and accept the proposal. It would not be in the interests of creditors to accept such a proposal without creditors' agreement.

Review of decision

3.29 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.

4. REFERENCES

Bankruptcy Act 1966 s185C(2); 185C (2B); 185C(2F); 185E(3); 185H(3)