

# Inspector-General Practice Direction 13

Debt agreement administrators' guidelines to certification requirements

## 1. Introduction

1.1 The purpose of this Inspector-General Practice Direction (IGPD) is to outline the Inspector-General in Bankruptcy's regulatory role in regard to the duty a debt agreement administrator (DAA) has to certify debt agreement proposals (DAP) that are lodged with AFSA's Debt Agreement Team (DAT). It incorporates changes contained in the Bankruptcy Amendment (Debt Agreement Reform) Act 2018 (the Debt Agreement Act). The majority of the changes contained in the Debt Agreement Act commenced on 27 June 2019. <sup>1</sup>

1.2 This IGPD includes best practice principles about the need to obtain and retain documentation. It is complemented by practical examples and outlines the expectations of the Inspector-General in respect to set-up fees and the requirement to disclose certain information to debtors before they sign a DAP.

1.3 The [Bankruptcy Act 1966](#) (the Act) sets out the legislative framework for a DAA's duty to certify. This framework provides a specific duty to properly certify in accordance with sections 185C and 185M and the [Guidelines](#)<sup>2</sup>.

1.4 At the outset, it should be clearly noted that it is not the role of the Inspector-General or DAT to advise which records must be sighted, obtained and retained in order to properly certify.

## 2. Set-up fees

2.1 Before entering into a debt agreement, a DAA will usually charge an upfront set-up fee to certify the DAP. Set-up fees are often paid progressively by the debtor before the DAP is being voted on by creditors. Any amount outstanding at the time the DAP is accepted by creditors is then paid through the debt agreement at the same rate of return as other creditors.

2.2 The period of time for a debtor to repay a set-up fee before a DAP is lodged should:

- i. not be extended to a period longer than the amount of time it takes for a DAA to perform their certification duties
- ii. not be used as a trial run or test period to ascertain whether a debtor can meet payment obligations under a debt agreement.

The Inspector-General would generally expect this period not to extend beyond 3 months between the time of first payment and the time the DAP is accepted by creditors.

### 3. Disclosure of information to debtors

3.1 From 1 January 2021, all DAAs must disclose prescribed information to a debtor within a particular time frame before the debtor signs the DAP. This is part of an industry-wide condition of registration determined by the Minister pursuant to subsection 186F(4) of the Act.

3.2 DAAs must comply with a two-stage process of disclosure to ensure debtors receive information that will help them make informed decisions. An administrator can provide this information verbally or in writing using the 'additional information sheet' with the 'prescribed information sheet'. Each DAA will be required to add their own relevant information to the document, such as fees and complaints handling processes. The information provided to debtors must be factual and objective.

3.2 At least **5 business days** before a debtor signs a DAP, a DAA must provide the debtor the following information:

- information about how a debt agreement operates and the consequences of entering into one
- alternative options
- information about how a debtor can access free financial counselling services
- that entering a DAP with the Official Receiver (OR) is an act of bankruptcy
- the consequences of failing to make payments required under a debt agreement
- an estimate of the remuneration payable to a DAA for work performed preparing the proposal and to administer the debt agreement (if accepted by creditors)
- an estimate of realisations charge payable by the DAA to AFSA in administering the debt agreement
- the fee payable to the OR for lodging a debt agreement
- information about the role of the Inspector-General in relation to DAAs

At least **one business day** before a debtor signs a DAP, a DAA must provide the debtor the following information:

- alternative options (instead of entering into a debt agreement)
- the consequences of lodging a DAP with the OR
- information about sources of financial advice or guidance for people contemplating entering a debt agreement
- that lodging a DAP with the OR is an act of bankruptcy
- the amount of remuneration payable to a DAA for work performed preparing the proposal and to administer the debt agreement (if accepted by creditors and the debtor makes all payments required under the agreement)
- the amount of realisations charge payable by the DAA to AFSA in administering the debt agreement (if the debtor makes all payments required under the agreement)
- the fee payable to the OR for lodging a debt agreement
- information about the role of the Inspector-General in relation to DAAs

- information about internal and external dispute resolution processes available to the debtor in relation to the conduct of a DAA
- information about how a debtor can make a complaint to the Inspector-General in relation to the conduct of a DAA

3.3 The DAA must make a record of the above disclosure to the debtor within two business days of giving the information. It can be recorded as a written file note or call record. It must be retained by a DAA for 6 years from the day a debt agreement is made. The retention of this information will assist the Inspector-General should any investigations or inquiries be made for any conduct between the period of first contact between the DAA and the debtor, and the signing of the DAP.

## 4. Overview of duty to certify

### Debt Agreement Proposal

4.1 At the time a DAP is lodged with the DAT, a DAA is required to certify pursuant to subsection 185C(2D) of the Act:

- the DAA must consent to deal with the identified property in the way specified in the proposal
- the DAA has given the debtor the information about alternative means of dealing with financial difficulty as prescribed by the regulations
- the DAA has reasonable grounds to believe that the debtor is likely to be able to discharge the obligations created by the agreement as and when they fall due having regard to the circumstances in existence at the time when the debtor's statement of affairs<sup>[4]</sup> was signed by the debtor
- the DAA has reasonable grounds to believe that all information required to be set out in the debtor's statement of affairs and proposal explanatory statement, has been set out and they have a reasonable basis for believing that the debtor has properly disclosed their affairs to creditors.

For DAPs lodged with the Official Receiver (OR) on or after 27 June 2019, the following also apply:

- where a broker has referred a debtor to the DAA, the DAA must specify the nature of their relationship with the broker, and set out any payments made or to be made to the broker
- where a related entity of the administrator is an affected creditor, the DAA must specify the name and nature of their relationship with the affected creditor.

4.2 A DAA is required to ensure the certification provided to DAT with the DAP is correct. If a DAA does not certify these matters in a proposal, the proposal will not be accepted. DAAs must complete the certificate using the online form.

4.3 For single creditor proposals, practitioners should be aware that the OR has a published policy in relation to how it deals with this class of proposals.<sup>[3]</sup>

4.4 For DAPs lodged after 27 June 2019, the OR will have the power to refuse to accept a DAP or variation proposal where they believe it will cause undue hardship to a debtor.

## Variations

4.5 For DAPs lodged after 27 June 2019, any subsequent variation proposals must be certified by the DAA that the debtor will discharge their obligations under the varied agreement.

4.6 Where a variation proposal is made to extend a debt agreement for up to 5 years pursuant to subsection 185M(1DB) of the Act, a DAA must provide a certificate stating that they have reasonable grounds to believe that the debtor has suffered a substantial change in circumstances not foreseen at the time of the DAP. They must also certify that the debtor is not likely to discharge their obligations under the original agreement.

## 5. Inspector-General expectations

### (i) Consent

5.1 It is essential that a DAA consents to act. Should the creditors accept the debtor's proposal, the completed consent allows a DAA to act as soon as the debt agreement commences.

5.2 The DAA must sign the certification to consent. An electronic signature is acceptable, however the signature must be that of the DAA. A DAA cannot delegate the signing of the certificate to another person.

### (ii) Prescribed Information

5.3 The DAA must give the debtor the prescribed information and ensure the debtor reads, understands and signs the form. It is expected that DAAs will explain the meaning of the prescribed information to debtors and answer any questions debtors have. DAT then checks this has been appropriately completed via a sample of compliance telephone calls to debtors. The Inspector-General's functions and powers are delegated to the Regulation and Enforcement (R&E) division of AFSA. R&E also checks a sample of debtors through the course of its inspection program.

5.4 The original of the signed prescribed information form must be retained on the DAA's file in paper or electronic form.

5.5 It is particularly important that DAAs explain the effect of personal insolvency administrations on credit agency reporting and the record on the [National Personal Insolvency Index](#) (NPII). DAAs should also explain that lodging a DAP is an act of bankruptcy, even if it is not accepted, and that creditors could use this to apply to the court to make a debtor bankrupt.

5.6 In assisting debtors to make informed choices about alternative means of dealing with financial difficulty, the DAA will need to be capable of providing debtors with information about the options available to them. This includes, but is not limited to, the Act, general bankruptcy concepts relevant to a debtor formulating a DAP, the explanatory statement and completing a statement of affairs that discloses income, property and liabilities. It is expected that a DAA will be able to explain to a debtor what the differences are between the various options and the consequences.

5.7 To be capable of doing this, the type of general insolvency and business knowledge expected of the DAA includes the following matters:

1. A basic knowledge of the Act. In particular, a DAA needs to know the options and their impact on a debtor. This includes the bankruptcy, personal insolvency agreement and debt agreement options available under the Act; how people become bankrupt; what property a bankrupt could retain; bankrupt's and creditor's rights; income contributions and a general awareness of antecedent transactions.
2. A detailed knowledge of debt agreement legislation detailing the duties of a DAA including legislative requirements for a DAA to cooperate with the Inspector-General's inquiries and investigations.
3. A general knowledge of other financial and banking options available including refinancing, mortgages, informal arrangements and banking industry hardship provisions.
4. Knowledge of common business structures such as companies, partnerships, trusts and sole traders, the liability and tax implications arising from these structures, commercial and financial transactions and documents, including leases, hire purchase, guarantees, caveats, mortgages and other security, and basic contract law.

### (iii) Affordability and Sustainability

5.8 To properly certify that a DAA has reasonable grounds for believing that the debtor is likely to be able to discharge the obligations created by the agreement as they fall due, they are expected to demonstrate the following abilities based on their knowledge and business systems:

- i. to evaluate financial choices and understand money and debt, including how to budget and plan
- ii. to recognise and competently inform debtors on life events that affect everyday financial decisions, including events in the general economy
- iii. to determine what budgeting processes are needed to assist the debtor
- iv. how they plan to assist the debtor determine what they can afford to pay. For example, does the DAA plan to use supporting systems such as the Australian Bureau of Statistics Expenditure Survey or Household Income and Labour Dynamics in Australia research to assist determine whether the debtor's disclosed expenses are reasonable?

5.9 DAAs must look behind the budget supplied by the debtor and apply independent tests such as allowance for lifestyle expenses, copies of payslips to verify all sources

of income including overtime, allowances and the nature of employment. Where a debtor is employed on a casual basis, it is expected that a DAA would require further evidence (such as copies of payslips over a longer period of time) to establish the debtor's level of income compared to a debtor working full time. It is not acceptable to certify that the debtor can afford what is being proposed without a detailed review of the debtor's budget.

#### (iv) Full Disclosure

5.10 To properly certify that a DAA has reasonable grounds to believe that the debtor has made full and true disclosure of their claims in the proposal and accompanying explanatory statement and statement of affairs, they must have an understanding of what enquiries can be easily made both from the debtor and other resources.

5.11 For example, a DAA is expected to know what evidence they will require from a debtor concerning income, expenses, liabilities and assets; what simple checks can be undertaken and what evidence they will retain depending on the debtor's circumstances.

5.12 There is no prescribed requirement about the enquiries a DAA should make to establish reasonable grounds that the debtor has made full and true disclosure of their affairs. Full disclosure of all creditors is important to ensure that creditors are:

- i. notified of the DAP
- ii. fully aware of a debtor's current circumstances and make informed decisions
- iii. suspending collection action against the debt
- iv. given the opportunity to provide details of their debt and vote.

5.13 In most cases it may be appropriate for the DAA to examine bank and credit card statements, review employment history and payslips, and ask if tax returns have been filed. Credit reporting records or creditors contacted to clarify amounts may also be needed.

#### (v) Disclosure of brokers

5.14 A broker is any person or corporation who acts as an intermediary or agent and facilitates a debt agreement proposal with the DAA as an administrator of the agreement. A DAA must disclose in the DAP any broker who refers a debtor to them. The details that must be disclosed include the name of the broker, the nature of the relationship with the broker and any payments made or to be made to the broker for the referral.

5.15 It is imperative that DAAs are open and frank in their disclosure of brokers, to ensure that all referral arrangements are accounted for and that affected creditors are fully informed when voting on whether to accept the DAP.

## (vi) Disclosure of related entities

5.16 A DAA must disclose any related entity that is an affected creditor in the DAP. It must state the name and relationship between the affected creditor and the administrator. This is to ensure that the voting process is transparent. For DAPs lodged with the OR on or after 27 June 2019, the OR will not invite creditors who are related entities of the administrator to vote on proposals, and any votes made by a related entity to the administrator will be disregarded by the OR.

## 6. Reasonable grounds to certify

6.1 Most certifications will require the DAA to take reasonable grounds to certify. It is not possible to be too prescriptive in outlining what constitutes reasonable grounds. Each debtor's circumstances vary and will require different levels of verification. This is to be monitored and assessed on a case-by-case basis.

6.2 For example, if a debtor has a house and vehicle, it is not always expected nor mandatory that the DAA has completed property and vehicle searches and received appraisals before formulating the proposal. What would be reasonable depends on the circumstances. The same approach is applicable for certifying variation proposals. Where there has been a material change in the value of an asset, the administrator would be expected to conduct searches before formulating the variation proposal. Administrators may also consider adding a file note to explain their decision not to complete searches where they believe it is not required. Regarding the major asset items it would be reasonable for the DAA to check the extent of the secured debt with the debtor and whether it is separate or joint, and ask the debtor to explain the basis on which a particular value was estimated. Depending on the responses further enquiry may be required. This is particularly relevant if the debtor resides and has property in a different state to that of the DAA. If the debtor did not comply then the DAA may form the opinion that the certification required under s185C(2D) should not be given and the proposal could not be lodged with DAT for processing.

6.3 A breach of the certification duty will arise if:

- i. R&E looks at records retained and has concerns about the quality, extent of questioning and verification by the DAA before certification (e.g. the prescribed information being provided, the accuracy of information or the sustainability of the DAP; monitoring of staff brokers or agents)
- ii. DAAs are unable to present evidence to show they verified issues that are clearly inconsistent or that appear to R&E as dubious before they certified.

DAAs and R&E need to assess each on a case-by-case basis based on what is reasonable in the debtor's circumstances.

## Reasonable Grounds – Assigned Debts

6.4 Determining which creditors vote on a proposal is ultimately a responsibility of the OR and it makes such decisions when it processes the DAP. However, in doing this the OR relies on the information disclosed by the debtor and certified as complete by the DAA. The Inspector-General has certain expectations of DAAs in relation to assigned debts, to ensure that DAPs and variations to debt agreements are properly managed.

6.5 DAAs should be aware of the legislative limits within which they conduct their enquiries and ensure this aligns with and complements the statutory role and responsibility of the OR. Division 2 of Part IX of the Act establishes that only the OR is empowered to undertake certain assessments and determine who may vote on a proposal. As such, a DAA's certification duty does not extend to making those assessments or decisions. The certification duty of the DAA pursuant to subsection 185C(2D) does not provide license for a forensic investigation scrutinising the validity of an assigned debt. It should not be confused with formalities required for the transfer of legal title under the various Conveyancing Acts operating in the States and Territories.

6.6 The DAA must have reasonable grounds to believe that the assignee has been assigned the debts. In this regard the following principles apply:

- The DAA is entitled to receive evidence that an assignment has been effected. However, an agreement for assignment does not need to take any particular form. The DAA could be satisfied where it is provided evidence of an agreement that enables it to identify the personal information of the debtor and reasonable details of the assigned debt (such as the amount outstanding, relevant account numbers where available and consideration paid by the assignee for the debt)
- The DAA must have regard to the substantive effect of the documentation that is provided and must not have undue regard to the form in which it is provided. As equitable assignees are capable of being a party to a debt agreement, it follows that assignments do not have to meet the legal title requirements before a DAA can be satisfied that the assignment is effective
- A single agreement may relate to more than one assignment of debt.

6.7 In determining the owner of a debt, consider what the debtor understands of their financial affairs. However, when conducting their enquiries, DAAs may become aware of assignments before the debtor received formal notice, so DAAs may have more up-to-date information. Generally speaking, the debtor will be the best source of information about the existence of debts, and creditors will be source of information about the owner of debts. When in doubt, it is open for the DAA to contact the assignee and for the assignor to clarify who they believe is the owner of the debt. This should resolve most questions about ownership. If, after this action, there remains doubt, the DAA should advise the OR when submitting the DAP. If creditors are aggrieved by the decision of the DAA, they may complain to the Inspector-General.

6.8 The duties of a DAA described above can be distinguished from those duties relating to assignments occurring after the DAP has been accepted. Where a debt is assigned during the administration of the agreement the OR's involvement is limited. Therefore it falls solely to the DAA to establish the owner of the debt and to whom dividends should be paid. Even so, DAAs are encouraged not to take an approach of form over substance to the assessment, particularly where the assignee and the assignor are not disputing the assignment. The principles in paragraph 5.6 are still relevant once a DAP has been accepted, and would reflect a reasonable approach by a DAA.

<b>Stage of Agreement</b>	<b>Assignment Information</b>	<b>How to Treat Assignment</b>	<b>Outcome</b>
Pre-DAP	Debtor is aware a debt has been assigned. Notice provided to RDAA.		RDAA includes assignee as creditor in DAP
	Debtor is not aware of assignment or hasn't understood what it means. Fails to advise RDAA of assignment.		RDAA can accept information from debtor and include original creditor in DAP
Post-DAP	RDAA becomes aware during voting period that debt was assigned pre-DAP acceptance	Principles reflected in IGPD13 apply	RDAA notifies OR
	OR becomes aware during voting period that debt was	OR determines whether there has been an	OR includes assignee as creditor

	assigned pre-DAP acceptance	effective assignment	
	Debt is assigned during voting period	Debtor, OR or RDAA may become aware of this, principles reflected in IGPD13 apply	RDAA notifies OR or  OR includes assignee as affected creditor and accepts vote
After DA in force	Debt is assigned	Principles reflected in IGPD13 apply	Assignee is now a party to the debt agreement, entitled to dividends

## 7. Retention of documentation

7.1 Documentation collated in support of a proposal and in the course of certifying is not to be forwarded to DAT when filing the proposal. On occasion DAT may request documentation for review.

7.2 DAAs are not committing a breach of their certification duty if they decide to keep only minor documentation, provided that on review by R&E, the information retained is sufficient to conclude the certification was reasonably made. This is with the exception of records that must be retained to comply with industry-wide conditions of registration relating to disclosure of information to debtors. DAAs are required to exercise sound judgement on a case-by-case basis. This is best illustrated by two examples.

### Example 1 - Acceptable retention of documentation

7.3 Debtor works for the local council as a clerk and earns \$45,000 pa. She owns a second hand 1985 Mazda vehicle worth \$5,000 and rents at \$270 pw in a known middle class area. She has no spouse or dependents and 5 credit card debts totalling \$40,000. The DAA has only kept copy of the proposal and statement of affairs, signed prescribed information and a file note recording what was sighted and the information it contains.

7.4 The information on the proposal and statement of affairs is consistent, salary and expenses reasonable and liabilities not excessive. In this example it is probably not essential to keep copies of all documentation. With sound judgment and common sense a DAA can form the view by viewing the rent agreement, pay slips and bank accounts/statements. R&E is likely to be satisfied if the evidence to that effect was a file note recording what was sighted and the information it contains. We would not expect to see a property search or other information regarding the house or the vehicle. R&E would not record any breach of certification duty.

## Example 2 - Unacceptable retention of documentation

7.5 A high-profile debtor (with a proven track record of the capacity to earn a very high income) living in Toorak, Melbourne discloses his only income as a disability pension. He has 3 credit card debts totalling \$40,000 and is supported by funds provided by his family and living in the family house. The DAA has kept a copy of the signed prescribed information, Centrelink slip, his last tax return and his 3 bank statements. The DAA believes they have properly certified.

7.6 Clearly these documents are not sufficient upon which to base certification. In this example we would expect significantly more. R&E expects more questions to be asked, and far more documentation regarding income from other sources, lifestyle expenses, debts disclosed, property, trusts etc. Such documentation would need to be retained on the DAA's file so we can be assured that adequate investigations were undertaken in order to properly certify.

## 8. Practical examples

### I. Consent

8.1 This element of the certification does not lend itself to a practical example.

8.2 R&E will review during inspections to ensure that only those that are authorised to consent do so.

### II. Prescribed Information

#### Example of acceptable certification

8.3 A debtor sees a DAA's advertisement and makes contact with the DAA. The debtor is taken through each part of the prescribed information and disclosure requirements by the DAA. All options suitable to the debtor's circumstances are explored, not only the Part IX option. The debtor reads the prescribed information and additional information sheet and asks questions of the DAA on parts that are not understood. The DAA ensures the debtor understands each option and the consequences of each option, particularly in respect of the impact on credit records and NPII. A signed copy of the prescribed information and any other information given is retained on the DAA's file. The DAA retains call records and file notes of their discussion.

## Example of unacceptable certification

8.4 A debtor makes contact with the DAA. Debtor is then referred to a broker who does not explain options to the debtor. Broker insists that a debt agreement is the best and only alternative. Debtor is advised to 'sign here' (on the prescribed information) saying 'it is only paperwork'. The prescribed information is not retained on the DAA's file; rather it is filed with DAT.

## III. Affordability and Sustainability

### Example of acceptable certification

8.5. Debtor is 21 years old and earning \$30,000 p.a. He has no spouse, no children and is living at home with his parents. Total unsecured debts of \$30,000. After performing a review of the debtor's lifestyle, past spending habits and future plans the budget prepared by the DAA discloses a weekly surplus of \$150 per week. The debtor proposes to pay creditors \$100 per week for a period of 3 years. The DAA retains a copy of the debtor's payslip and a file note detailing what documents were sighted. The DAA certifies that the proposal is affordable and sustainable.

### Example of unacceptable certification

8.6 Debtor is married with one child and earns \$65,000 p.a. Half of the debtor's salary is based on commission. Total unsecured debts are \$50,000. Spouse does not work and the child is enrolled in private high school commencing in 1 month. Debtor has had consistent health concerns over the last 5 years, some requiring hospitalisation. The family does not have private health cover. The budget prepared by the DAA discloses a weekly surplus of \$200 per week. The debtor proposes to pay creditors \$195 per week for a period of 3 years. No documentation is retained to evidence what investigations were carried out and what documentation was sighted. The DAA certifies that the proposal is affordable and sustainable.

8.7 This is clearly an example of unacceptable certification as the proposal is neither affordable nor sustainable. The impact of a salary dependent upon commission in light of the debtor's health concerns and likely absence from work casts doubt on this element of the certification. Further, there is no evidence of supplementary income to support the proposal and with the impending increase in expenses through the child's enrolment in a private school, the proposal is clearly not sustainable. It is likely that upon inspection, R&E will record this matter as a breach of certification duty, investigate to discover if the breach is systemic and if appropriate, supervise the implementation of a change in practice to ensure instances like this do not recur.

## IV. Full Disclosure

### Example

8.8 A debtor is a consultant to a law firm earning \$75,000 p.a. She owns a house in Sydney worth \$600,000 with \$550,000 owing on the mortgage. She also owns a one year old vehicle that she values at \$75,000 with \$70,000 owing to a secured creditor.

Unsecured debts total \$65,000 although she is unsure about a potential liability to the Australian Taxation Office (ATO).

## Acceptable certification

8.9 The DAA verifies through freely available property websites that the house's value is more in the vicinity of \$750,000. A phone call from the DAA to a local real estate agent confirms the value as approximately \$750,000. The mortgagee confirms with the DAA that their current debt is \$450,000. The DAA verifies through freely available vehicle websites that the vehicle's value is approximately \$60,000. The secured creditor confirms with the DAA that their current debt is \$70,000. The DAA reviews the debtor's prior year tax returns and assessments and discovers that there is an outstanding liability to ATO of \$75,000.

8.10 Taking into account the above points, it is clear both the asset and liability threshold amounts for a debt agreement have been exceeded. The DAA correctly decides not to proceed any further with the proposal. The debtor is again made aware of her options and referred to appropriate other sources of assistance.

## Unacceptable certification

8.11 This relates to the same example above. The DAA is unaware of property values in the area of Sydney in which the debtor owns her house. The DAA assumes that the house value of \$600,000 is correct and performs no independent verification of the value nor confirms the current indebtedness to the mortgagee. Similarly with the vehicle, the DAA performs no independent verification of the value of the vehicle nor confirms the amount owing to the secured creditor. With respect to the potential debt owing to the ATO, the DAA performs no independent verification and decides that in light of the uncertainty the amount owing to ATO should be disclosed in the proposal as \$1. Taking into account the above points, the DAA certifies that the debtor has made full and accurate disclosure of all assets and liabilities.

8.12 This is an example of certifying in breach of the Act, and upon inspection, R&E would take issue with the DAA as they have clearly breached their certification duty. The severity of the action taken by R&E will be dependent upon whether this type of breach was found to be systemic.

# 9. AFSA roles

## Debt Agreement team (DAT)

9.1 DAT checks that the DAA has given the certification in the approved form and that it contains all mandatory elements.

9.2 DAT will apply compliance checks largely by phoning the debtor to ensure that in a sample of cases the debtor has gone through an adequate process and been informed in relation to essential issues such as the prescribed information, fees and budget preparation.

9.3 If DAT believes an adequate process has not been followed, the OR may either reject the proposal for processing or cancel it during voting. Intelligence on such matters is provided to R&E and feedback given to the DAA.

## Regulation

9.4 Section 12 of the Act provides R&E under delegation from the Inspector-General the power to investigate and make inquiries where there are issues of concern either during an inspection or through a complaint. This power extends to any conduct of a DAA from the first point of contact between the DAA and the debtor. R&E will examine the level and thoroughness of certification performed by reference to these stated principles and the [Guidelines](#).

9.5 Where breaches of the law, including the Guidelines, or lack of record keeping are identified, a DAA will be asked to take appropriate remedial action including a change in practice. This may also lead to counselling or in serious or systemic cases to either litigation or disciplinary action being initiated including conditions being placed on a DAA's registration or cancellation of registration.

9.6. During inspections, R&E will examine the systems and controls a DAA has in place in respect to:

- i. the budgetary and assessment processes that will enable identification of the debtor's income and likely expenses during the period of the proposed agreement
- ii. processes that will ensure they are able to explain to the debtor what their obligations are and the consequences of failing to meet those obligations.

9.7 R&E will examine documented practices and check lists, delegations and, where a DAA is relying on others to assist, how the DAA properly supervises and trains their employees, agents or brokers to properly perform these duties on their behalf.

## 10. Conclusion

10.1 This Practice Direction outlines the principles informing the Inspector-General's approach to regulating some of the day-to-day issues faced by DAAs certifying DAPs. It will be against these principles and the standards contained in the Guidelines that a DAA's conduct of an administration will be assessed by R&E.

10.2 When there are other specific issues where clarification is required, following consultation with DAT, the Inspector-General will continue to develop policy and practice statements to assist practitioners.

### Footnotes

<sup>[1]</sup> The Debt Agreement Act gives the Minister power to make legislative instruments including instruments relating to the payment to income ratio (a new debt agreement eligibility requirement). If this instrument is made this IGPD will be updated to reflect the relevant amendments becoming operative

<sup>[2]</sup> Guidelines Relating to the Registration and Cancellation of Registration of a Debt Agreement Administrator under the Bankruptcy Act 1966

<sup>[3]</sup> See [Official Receiver Practice Statement 11 – Debt Agreements](#) (para 6.31 to 6.33)

<sup>[4]</sup> From 1 January 2020, the debtor's petition and statement of affairs were combined into the Bankruptcy Form. The Bankruptcy Form is also used by a person made bankrupt via sequestration order, in place of the former statement of affairs. References in this guidance document to a statement of affairs can be taken to also refer to the Bankruptcy Form.

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