

Inspector-General Practice Statement 4

Processes for registration of debt agreement administrators

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1. Introduction

1.1 This practice statement outlines the process for becoming a registered debt agreement administrator under the Bankruptcy Act 1966 (the Act). This includes an overview of the qualifications and capabilities needed, how you can apply to become a registered administrator and the process that occurs in assessing and registering debt agreement administrators. Further information can be found in the Guidelines relating to the registration and cancellation of registration of a debt agreement administrator (Guidelines).

1.2 AFSA Regulation and Enforcement has responsibility for administering the registration system on behalf of the Inspector-General in Bankruptcy and for ensuring that administrators are complying with the duties and obligations under the Act. As registration as a practitioner is now mandatory, from 27 June 2019 AFSA's Debt Agreement team (DAT) will not accept a debt agreement proposal from a person unless they are a registered trustee or a registered debt agreement administrator.

2. Overview of qualifications and capabilities needed

2.1 In order for you to become registered it will be necessary for you to have the mandatory qualifications required under the [Regulations](#), be a fit and proper person as required under the Act and to demonstrate that you have the ability to immediately satisfactorily perform the duties of a debt agreement administrator and comply with the obligations as set out in the Act.

2.2 As an administrator you will have to certify, at the time the debt agreement proposal is lodged with AFSA's DAT, that:¹¹

- you have consented to be the administrator

- the debtor has received the information about alternative means of dealing with financial difficulty as prescribed by the Bankruptcy Regulations
- having regard to the circumstances in existence at the time when the debtor's statement of affairs⁽²⁾ was signed by the debtor, you have 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
- you have reasonable grounds to believe that all information in the debtor's statement of affairs and proposal statement has been set out and a reasonable basis for believing that the debtor has properly disclosed their affairs to creditors

2.3 The lack of capability to properly certify these 4 matters will be relevant in Regulation and Enforcement determining whether to register an applicant. Further information on these points outlined in 2.1-2.2 and the detailed duties of an administrator are explained in the Guidelines.

2.4 If a debt agreement proposal is lodged after 27 June 2019, you must specify on the certificate under subsection 185C(2D) of the Act, any relationship or payments made to a broker who referred the debtor to you and the name and nature of any relationship with a related entity that is also an affected creditor.

3. The fit and proper test

3.1 From 27 June 2019 an additional fit and proper test has been introduced for individual and company applicants, and directors of any company applicants. The intent of this new requirement is to ensure that only people with the attributes of honesty, integrity, diligence, judgement and good character should be allowed to enter and operate within the personal insolvency sector.

3.2 The evidence to meet the fit and proper test is by way of referees. The referees may be the same individuals who confirm your knowledge and abilities, but also may be separately provided. The date of the referee reports must be within 3 months of the date of the application. The delegate will review the written references and may contact your referees or may require additional references to be provided.

3.3 Further information about the relevant considerations when determining whether a person is fit and proper can be found at Inspector-General Practice Statement 19: fit and proper requirements for personal insolvency practitioners.

4. The assessment process

4.1 An application for registration must be via the approved online form and submitted with:

- certified copy of qualifications
- certified copy of academic record relating to qualification
- two referee reports attesting to the applicant's business acumen and if known, their current knowledge and ability where the applicant has previously been

employed by an RDAA (must be dated within 3 months before the date of application)

- two referee reports attesting to the applicant being a fit and proper person in business, who displays attributes of honesty, integrity, diligence, judgement and good character (the referees used may be the same as those attesting to current knowledge and ability)
- a National Police Certificate issued by the Australian Federal Police, covering the previous 10 year period prior to making the application. This must be dated within the last 6 months.
- A police check from any country outside Australia where the applicant has resided for at least one year in the last 10 years. This should also be dated within the last 6 months.
- the prescribed application fee (contact AFSA to arrange payment of this fee)

4.2 On receipt of your completed application and fee, preliminary eligibility checks will be carried out. If you are found to be ineligible your application will be refused, you will be advised of the basis of the decision and your right of appeal and you may be entitled to a refund of the application fee.

4.3 If the preliminary eligibility checks have been successfully completed, the application will be assessed by a delegate of the Inspector-General to determine whether you should be registered. Once the assessment of abilities and character has commenced, irrespective of whether the delegate decides to register you or not, you will not be entitled to a refund of the application fee.

4.4 Suitability to become registered will be based on a person's demonstrated capability to perform the duties of a debt agreement administrator immediately upon registration. The focus of the assessment will be to determine whether you have the required knowledge and abilities as well as the appropriate business systems and controls to enable you to carry out the duties of an administrator immediately upon registration, and whether you are a fit and proper person to act as an administrator. With this in mind, whilst the Guidelines provide information about the required knowledge and systems, it is suggested you contact Regulation and Enforcement to discuss your intentions and ascertain the level of knowledge and type of systems you will be required to have.

4.5 The assessment will commence with an examination at interview aimed at assessing whether you, or in the case of a company, the person with overall management responsibility, have sufficient relevant knowledge and abilities to undertake the work and properly perform the duties. This will include consideration of prior relevant experience and employment, your response to ethically-based questions, and a review of references provided.

4.6 References will be reviewed to confirm your experience and skills, and that you are a fit and proper person. The delegate may contact your referees or ask for additional referees to be provided.

4.7 Should you demonstrate sufficient knowledge and abilities at interview, and meet the fit and proper test, an on-site inspection by Regulation and Enforcement of your business will occur to ascertain whether your business systems, controls and practices are sufficient. The delegate's decision on whether to approve the application will be based on all aspects.

Insurance

4.8 Prior to approving registration the delegate will also need to be satisfied that the applicant will take out:

- (i) adequate and appropriate professional indemnity insurance
- (ii) adequate and appropriate fidelity insurance

against the liabilities that the applicant may incur working as a debt agreement administrator.

4.9 The level of professional indemnity insurance to be taken out is expected to comply with the professional standards scheme of the national occupational association to which the administrator belongs. If the administrator does not belong to a national occupational association then a level of insurance equivalent with either of the schemes of Chartered Accountants Australia and New Zealand (CAANZ) or CPA Australia is considered adequate. There is no particular expectation about the level of fidelity insurance except that it be adequate and appropriate for the administrator's circumstances and should at least cover the value of assets held. Sole operators with no employees will not generally be required to hold fidelity insurance.

Interview

4.10 As part of the assessment of your application, you will initially be interviewed by delegates of the Inspector-General from Regulation and Enforcement at one of AFSA's offices. You will be questioned to assess your knowledge across a range of both technical and general business commerce areas. The interview will be an 'open text' style and will include an oral exam to determine your level of knowledge. The delegates will also question you on the systems and practices you have in place. You will be provided the questions 30 minutes before your allotted interview time to enable you to prepare responses. The interview should take around one hour.

4.11 The area where knowledge is required to be demonstrated, and the type of knowledge, is listed in detail below in the assessment of capabilities section.

4.12 To ensure an accurate record is maintained of the responses, the interview will be recorded.

4.13 In some instances the delegates may be uncertain from the oral exam about your level of knowledge in a particular area. In this case, rather than refuse the application at that time, the delegates may wish to check that area of knowledge by asking you to return at a later time to sit a short written exam on that particular area.

4.14 In the case of a corporate applicant, each person applying to become the individual with overall management responsibility of the company's debt agreement activities will also need to go through this process. It is desirable that the application by the person with overall management responsibility is made before or at the same time as the company application.

4.15 If there is only one person with overall management responsibility, the two interview processes can, with your permission, be held concurrently.

4.16 Should the delegate decide that you have not demonstrated sufficient knowledge or ability at the interview and any subsequent written exam held, the application will be refused. Should this occur, reasons for the refusal and your right of appeal will be provided to you. Refusal of a company's application does not automatically result in refusal of the separate application of the person with overall management responsibility and that person may wish a further interview to be undertaken in determining their individual application. Refusal of an application does not prevent the company from reapplying.

Referee reports

4.17 Two referee reports are required. Each report provided should contain the following details:

- the referee's name, address, email address and telephone number
- the referee's occupation
- the period during which, and the circumstances under which, the referee has known the applicant
- the referee's opinion about the following matters:
 - the applicant's abilities in oral and written communication
 - if known to the referee, the applicant's knowledge of the powers, duties and functions of a debt agreement administrator
 - the applicant's knowledge of business matters and ability to successfully conduct business activities
 - the referee's opinion as to the applicant's honesty, integrity, diligence, judgement and good character
 - whether, in the referee's opinion, the applicant has the skills and ability to carry out the duties of a debt agreement administrator within the meaning of the Bankruptcy Act, and if so, the referee's reasons for supporting the application.

Inspection of systems and controls

4.18 Once the applicant has successfully completed the oral exam and any subsequent written exam, the applicant will also need to demonstrate that they have adequate systems and controls in the business to perform the work.

4.19 This will be assessed by officers of Regulation and Enforcement who will arrange a time to visit your place of business. They will examine your business systems, controls and practices including accounting and banking arrangements and report their findings to the delegate. The level of the systems and controls you need will depend for example on your business size, structure and location.

4.20 If you intend to use agents, employees or brokers to provide some of the services to debtors, this may also include an inspection of the practices involving these parties, including the extent of training, quality assurance, documentation, your relationship with brokers and your ability to monitor and supervise the services being provided on your behalf.

4.21 Regulation and Enforcement will provide immediate feedback of any deficiencies identified when undertaking its inspection of the systems and controls and may defer making a decision whilst still keeping within the 45 day timeframe if these are capable of being remedied within that time.

Assessment of capabilities and character

4.22 The delegate's decision will focus on determining whether an administrator has the abilities and knowledge to properly perform the duties required and is a fit and proper person to act as an administrator. The duties of an administrator and how the delegate will assess the capabilities to perform those duties are outlined in the Guidelines.

4.23 In considering your application for registration, the delegate may refer to information held or made available by a relevant professional body such as the Personal Insolvency Professionals Association (PIPA). Applicants who are current members of PIPA are advised that the material they provide in their application may be shared with PIPA to seek their views on the applicant. The response provided may form part of the information the delegate will use to inform their decision.

4.24 In considering your application for registration, the delegate may also refer to publicly available information held or made available by other regulators and external dispute resolution schemes, such as ASIC, Australian Financial Complaints Authority (AFCA) etc. This information, such as enforceable undertakings or complaint findings, may form part of the information the delegate will use to inform their decision.

5. How do I apply to become registered as an administrator?

The form and how to submit

5.1 To apply to for registration, you will need to complete and submit the approved online form with AFSA. The form can be found on our website.

- [Form 24A Application for Registration as a Debt Agreement Administrator \(Individual or Person with Overall Management Responsibility\)](#)
- [Form 24B Application for Registration as a Debt Agreement Administrator \(Company\)](#)

5.2 You will also need to submit with the form:

- certified copies of your qualifications
- certified copy of academic record
- national criminal database check for yourself or company (for company applications), directors of the company and officers with overall management responsibility for the company's debt agreement activities
- criminal database check from any overseas countries where you have resided for at least one year in the last 10 years
- two references (or more) who can attest to your business acumen, knowledge, skills (where you have previously been employed by an RDAA) and good character.

5.3 There is an [application fee](#), which can be paid by direct credit but you will need to arrange this with Regulation and Enforcement. You can contact our call centre on 1300 364 785 to arrange this.

6. How long will it take for my application to be assessed?

6.1 Your application will be acknowledged within 5 business days of receipt of the completed application. If you are eligible you will be contacted to arrange a suitable date and time for an interview.

7. Notification of result

7.1 You will be advised of the outcome of the delegate's assessment of the application within 45 business days after the date of the interview.

7.2 If you are successful, a request will be made for:

- the payment of the [registration fee](#) covering the first 3 years of the registration
- evidence that you have taken out membership with the AFCA
- evidence you have taken out insurance against liabilities that may be incurred while working as a debt agreement administrator (both professional indemnity and fidelity insurance) or evidence that you will be covered by such insurance

once registered as a debt agreement administrator. A copy of the relevant insurance policy schedule confirming such cover will be requested.

7.3 Upon receipt of the registration fee the registration will be recorded on our website. A registration certificate will be sent to you. Your registration will also be subject to industry-wide conditions, which are mandatory for all registered debt agreement administrators. The Inspector-General may impose additional conditions. For further information on these conditions, please refer to the [Guidelines](#).

7.4 If you are not successful you will be provided with reasons for the decision and details of your right of appeal to the Administrative Appeals Tribunal (AAT). Industry-wide conditions cannot be removed by the Inspector-General and are not subject to appeal.

7.5 Your registration may have additional conditions imposed by the delegate. For further information on these conditions, please refer to the Guidelines.

8. Changing circumstances

8.1 The onus is on each administrator to advise Regulation and Enforcement of any changes to their business that might impact on their registration. Examples of changes that should be communicated include:

- changes of address and contact details
- changes of financial institution
- significant system changes, particularly regarding the accounting package used
- extended absences or likely loss of the registered person in a company with overall management responsibility
- disciplinary or enforcement action taken against individuals or the company by other regulators, professional associations or dispute resolution schemes
- changes in company directors.

9. Renewal of registration

9.1 You will be registered for 3 years and can apply to be registered for another 3 years, as long as your application for renewal is received before the end of your registration. The registration fee for a further three-year period will need to be paid prior to renewal.

9.2 We will endeavour to remind you to renew your registration 2 months before the time it is due to lapse.

10. How can I appeal decisions I don't agree with?

10.1 If you are not satisfied with a decision to deny registration or a decision to impose additional conditions on registration, you can apply for an administrative review to the Administrative Appeals Tribunal. Further details will be provided when any such decisions are made.

11. Further information

11.1 More information on debt agreement legislation, duties and regulation can be found on AFSA's website at www.afsa.gov.au. The application forms are also available on the website. If you require further information on the process for applying to become a registered debt agreement administrator, please contact the Regulation Practitioner Officer by email at rpo@afsa.gov.au, or by telephone on [1300 364 785](tel:1300364785).

11.2 For further information about voluntary or involuntary cancellation of registration refer to the Guidelines.

Footnotes

^[1]The Bankruptcy Amendment (Debt Agreement Reform) Act 2018 (largely commencing on 27 June 2019) 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 practice statement will be updated to reflect the relevant amendments becoming operative.

^[2]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.