



## **Bankruptcy (Registered Debt Agreement Administrator Conditions) Determination 2020**

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I, Christian Porter, Attorney-General, make the following determination.

Dated 24 August 2020

Christian Porter  
Attorney-General

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## 1 Name

This instrument is the *Bankruptcy (Registered Debt Agreement Administrator Conditions) Determination 2020*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 January 2021.	1 January 2021

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under subsection 186F(4) of the *Bankruptcy Act 1966*.

## 4 Registered debt agreement administrator conditions—general

- (1) For the purposes of subsection 186F(4) of the *Bankruptcy Act 1966*, this section sets out the conditions that a person's registration as a debt agreement administrator is subject to under subsection 186F(3) of that Act.

Note: The conditions apply to all persons (including companies that are registered debt agreement administrators). Subsection 186G(2B) of the *Bankruptcy Act 1966* also allows the Minister to determine additional conditions that only apply to such companies.

### *Advertising or promotion*

- (2) In the case of the advertising or promotion (in any form or medium) of the services of the administrator (whether the advertisement or promotion is done by, or on behalf of, the administrator):
- there must be included in the advertisement or promotion the full name of the administrator and the administrator's registration number; and
  - the advertisement or promotion must not be false, misleading or deceptive.

*Disclosure of information to debtors*

- (3) The administrator must, at least 5 business days before a debtor signs a debt agreement proposal where the person specified under paragraph 185C(2)(c) of the *Bankruptcy Act 1966* is the administrator, give the debtor the following information either orally or in writing using a form approved by the Inspector-General and published on the Australian Financial Security Authority's website:
- (a) information about how a debt agreement operates and the consequences of entering into a debt agreement;
  - (b) information about alternatives to entering into a debt agreement;
  - (c) information about free financial counselling services;
  - (d) a statement that it is an act of bankruptcy for a debtor to give the Official Receiver a debt agreement proposal;
  - (e) information about the consequences of the debtor failing to make payments required to be made under a debt agreement;
  - (f) an estimate of the amount of remuneration payable to the administrator for the following:
    - (i) preparing the proposal;
    - (ii) administering any debt agreement resulting from the acceptance of the proposal;
  - (g) an estimate of the amount of charge imposed by Part 3 of the *Bankruptcy (Estate Charges) Act 1997* that would be payable by the administrator in administering any debt agreement resulting from the acceptance of the proposal;
  - (h) the amount of the fee that may be payable under an instrument made under section 316 of the *Bankruptcy Act 1966* for giving the Official Receiver the proposal;
  - (i) information about the role of the Inspector-General in relation to registered debt agreement administrators.
- (4) The administrator must, after complying with subsection (3) in relation to a debtor and at least one business day before the debtor signs the debt agreement proposal, give the debtor the following information in writing using a form approved by the Inspector-General and published on the Australian Financial Security Authority's website:
- (a) information about alternatives to entering into a debt agreement;
  - (b) information about the consequences of giving the Official Receiver the proposal;
  - (c) information about sources of financial advice and guidance to persons facing or contemplating entering into a debt agreement;
  - (d) a statement that it is an act of bankruptcy for a debtor to give the Official Receiver a debt agreement proposal;
  - (e) the amount of remuneration payable to the administrator for the following:
    - (i) preparing the proposal;
    - (ii) administering any debt agreement resulting from the acceptance of the proposal (assuming the debtor makes all the payments required to be made under the agreement);

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- (f) the amount of charge imposed by Part 3 of the *Bankruptcy (Estate Charges) Act 1997* that would be payable by the administrator in administering any debt agreement resulting from the acceptance of the proposal (assuming the debtor makes all the payments required to be made under the agreement);
  - (g) the amount of the fee that may be payable under an instrument made under section 316 of the *Bankruptcy Act 1966* for giving the Official Receiver the proposal;
  - (h) information about the role of the Inspector-General in relation to registered debt agreement administrators;
  - (i) details of any internal or external dispute resolution processes available to the debtor in relation to the conduct of the administrator;
  - (j) details for making complaints to the Inspector-General in relation to the conduct of the administrator.
- (5) The administrator must ensure that information given to a debtor under subsection (3) or (4) is factual and objective.

*Making of records*

- (6) The administrator must make a record of information given to a debtor under subsection (3) or (4) before the end of the second business day after the day that information was given.

*Retention of records*

- (7) If:
- (a) the administrator makes a record under subsection (6); and
  - (b) the administrator administers a debt agreement resulting from the acceptance of the debt agreement proposal concerned;
- the administrator must retain the record until the end of 6 years beginning on the day the debt agreement was made.

*Membership of Australian Financial Complaints Authority*

- (8) The administrator must be a member of the Australian Financial Complaints Authority.
- (9) However, if:
- (a) a company is a registered debt agreement administrator; and
  - (b) an individual (a *manager*) who takes overall responsibility for managing the company's debt agreement activities is a registered debt agreement administrator;
- then subsection (8) does not apply to the individual in the individual's capacity as a manager.