



Australian Government

Australian Financial Security Authority

Chief Executive & Inspector-General
in Bankruptcy

14 March 2018

Mr Tim Watling
Committee Secretary
Senate Legal and Constitutional Affairs Legislation Committee

Dear Mr Watling

INQUIRY INTO THE BANKRUPTCY AMENDMENT (DEBT AGREEMENT REFORM) BILL 2018

Supplementary submissions from the Australian Financial Security Authority (AFSA) in relation to the Bankruptcy Amendment (Debt Agreement Reform) Bill 2018 are below.

RDAA advertising

In the course of the Committee's public hearing in Sydney on 5 March 2018, some questions were asked by the Committee of witnesses (other than AFSA) in relation to advertising by and on behalf of Registered Debt Agreement Administrators (RDAAs).

While there is no specific legislative duty regarding advertising or marketing in the *Bankruptcy Act 1966*, there are legislative requirements applicable to advertising and marketing generally in the *Australian Consumer Law (ACL)*, and these apply to RDAAs and RDAAs brokers.

The ACL is administered and enforced by the Australian Competition and Consumer Commission (ACCC), in conjunction with state and territory consumer protection bodies, with the involvement of the Australian Securities and Investments Commission (ASIC) on relevant matters. The protections in the ACL are generally reflected in similar provisions in the *Australian Securities and Investments Commission Act 2001* (ASIC Act), so that financial products and services are treated in the same way. AFSA refers potential breaches of the ACL by RDAAs (or their broker) to ASIC.

AFSA proactively monitors advertising in the media and online by RDAAs and their brokers to ensure compliance with the law. Guidance on those requirements is set

out in the Inspector-General Practice Guideline 1 (IGPG 1); *Guidelines relating to advertising and marketing of debt agreements*.

AFSA's monitoring activities include the review of advertising of debt agreements and services on television, radio, in print, and online. A total of 18 compliance reviews were undertaken in 2016–17, including 12 website and five Facebook advertisement reviews.

As a result of those investigations, 10 registered debt agreement administrators were deemed to have advertisements in breach of IGPG 1 that required remedial action to correct/remove the misleading or unbalanced advertising.

ASFA maintains a close working relationship with ASIC to address instances of misleading and unbalanced advertising. ASIC issued a media release on 3 May 2017 noting that an infringement notice of \$10,800 had been issued against Capital Debt Solutions Australia Pty Limited and that that firm had removed false claims from its website. Capital Debt Solutions and Debt Assist Australia Pty Limited removed false online statements that their debt agreements were 'Government approved'. Furthermore, the broker firm Bankruptcy Experts removed testimonials that could not be substantiated.

The proposed amendments under the Bill to provide an additional function to the Inspector-General through proposed paragraph 12(1)(bd), to enable inquiries and investigations with respect to any conduct of a RDAA (including conduct engaged in before a debt agreement proposal is given to the Official Receiver), would strengthen AFSA's ability to act in relation to suspected misleading or deceptive advertising or marketing by or on behalf of an RDAA.

RDAA complaints

In the course of the hearing on 5 March 2018, several references were made to issues concerning complaints about RDAAs. The Inspector-General has a role in relation to complaints made against personal insolvency practitioners. Information on AFSA's complaint handling process is set out in Inspector-General Practice Statement 10; Complaint handling process for complaints against bankruptcy trustees and debt agreement administrators. AFSA's previous submission dated 15 February 2018 noted that AFSA publishes details on its regulatory work annually, and that report includes information about complaints made against RDAAs¹.

Information for debtors

Another issue identified in the course of the hearing on 5 March 2018 concerned information provided to debtors to enable them to make informed decisions prior to entering into a debt agreement.

Regulation 9.01 of the Bankruptcy Regulations sets out prescribed information that is to be supplied to the debtor prior to acceptance of a debt agreement proposal (see

¹ See Personal Insolvency Practitioners Compliance Report 2016-17
https://www.afsa.gov.au/sites/g/files/net1601/f/afsa_pipcr_201617.pdf pages 25-27

s.185C(2D) and s.185E(1) Bankruptcy Act). The prescribed information is usually supplied to the debtor by the RDAA (or by the Official Receiver if the debtor lodges the application themselves). The Official Receiver has prepared prescribed information for provision pursuant to Regulation 9.01. This includes information about alternatives to entering into a debt agreement and information about sources of financial advice and guidance to persons contemplating entering into a debt agreement. AFSA is currently reviewing the prescribed information to ensure that it is as comprehensive and relevant as possible to assist debtors in understanding that information prior to entering a debt agreement. Relevant stakeholders will be consulted in relation to amendments to that information.

AFSA is also committed to delivering accessible and understandable information on personal insolvency options (aside from the prescribed information), and encourages debtors to seek information from other reliable sources, such as financial counsellors. A new website was launched by AFSA in November 2016, which has received a high user satisfaction rating.

If you require any further information, please contact Andrew Sellars,

Yours sincerely

Hamish McCormick
Chief Executive and Inspector-General in Bankruptcy