Bankruptcy Legislation Amendment (Debt Agreements) Act 2007

No. 44, 2007

An Act to amend the *Bankruptcy Act 1966*, and for other purposes

Note: An electronic version of this Act is available in ComLaw (http://www.comlaw.gov.au/)

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Bankruptcy Legislation Amendment (Debt Agreements) Act 2007

No. 44, 2007

An Act to amend the *Bankruptcy Act 1966*, and for other purposes

[*Assented to 10 April 2007*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Bankruptcy Legislation Amendment (Debt Agreements) Act 2007*.

2 Commencement

(1) Each provision of this Act 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**
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	10 April 2007
2. Schedule 1	The day after this Act receives the Royal Assent.	11 April 2007
3. Schedule 2	1 July 2007.	1 July 2007

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments commencing on the day after Royal Assent

Bankruptcy Act 1966

1 Subsection 5(1) (definition of *approved form*)

After “approved”, insert “, in writing,”.

2 Subsection 12(1A)

After “registered trustee” (first occurring), insert “or the administrator of a debt agreement”.

3 Subsection 12(1A)

After “registered trustee” (last occurring), insert “or administrator, as the case may be,”.

4 Subsections 12(1BA) and (1B)

Omit “or (ba)”, substitute “, (ba) or (bb)”.

5 After subsection 12(1C)

Insert:

(1D) For the purposes of paragraph (1)(bb), any conduct engaged in by the administrator of a debt agreement:

(a) in fulfilment, or purported fulfilment, of a duty of the administrator under this Act; or

(b) in breach of a duty of the administrator under this Act;

is taken to be conduct of the administrator that relates to a debt agreement, even if the conduct does not relate to a particular debt agreement.

6 At the end of subsection 12(2)

Add:

; and (d) require the production of any books kept by the administrator, or former administrator, of a debt agreement; and

(e) require the administrator, or former administrator, of a debt agreement to answer an inquiry made of the administrator or former administrator, as the case may be, in relation to the administration of the debt agreement; and

(f) at any time investigate the books of the administrator, or former administrator, of a debt agreement.

7 After subsection 20B(7)

Insert:

(7A) Any payment that the Official Trustee is authorised, required or permitted to make under:

(a) a debt agreement; or

(b) a personal insolvency agreement;

is to be made out of money in the Common Fund.

8 At the end of paragraph 155A(2)(e)

Add:

; or (iv) he or she failed to properly carry out the duties of an administrator in relation to a debt agreement; and

9 At the end of subsection 155A(2)

Add:

(f) has not had his or her registration as a debt agreement administrator cancelled under section 186K, within 10 years before making the application, on the ground that he or she failed to properly carry out the duties of an administrator in relation to a debt agreement.

10 At the end of paragraph 155A(4)(d)

Add:

; or (iv) he or she failed to properly carry out the duties of an administrator in relation to a debt agreement; or

11 At the end of subsection 155A(4)

Add:

(e) has had his or her registration as a debt agreement administrator cancelled under section 186K, within 10 years before making the application, on the ground that he or she

failed to properly carry out the duties of an administrator in relation to a debt agreement.

12 After paragraph 155H(1)(f)

Insert:

(fa) if the trustee is or was the administrator of a debt agreement—the trustee has failed to properly carry out the duties of an administrator in relation to a debt agreement; or

13 Subsection 185(1)

Insert:

basic eligibility test has the meaning given by section 186A.

14 Subsection 185(1)

Insert:

debt agreement activities of a company means the activities of the company in connection with:

(a) debt agreement proposals for which the company is to be the administrator; and

(b) debt agreements for which the company is the administrator.

15 Subsection 185(1)

Insert:

externally-administered body corporate has the same meaning as in the *Corporations Act 2001*.

16 Subsection 185(1)

Insert:

insolvent under administration has the same meaning as in the *Corporations Act 2001*.

17 Subsection 185(1)

Insert:

registered debt agreement administrator means a person who is registered under section 186D as a debt agreement administrator.

18 Division 7 of Part IX (heading)

Repeal the heading, substitute:

Division 7—General provisions relating to debt agreements

19 At the end of Part IX

Add:

Division 8—Registration of debt agreement administrators etc.

Subdivision A—Introduction

186A Basic eligibility test

Individuals

(1) For the purposes of this Division, an individual ***passes the basic eligibility test*** at a particular time (the ***test time***) unless:

(a) at any time during the 10-year period ending at the test time, the individual was:

(i) an insolvent under administration; or

(ii) a party (as a debtor) to a debt agreement; or

(b) at any time during the 10-year period ending at the test time, the individual was convicted of an offence involving fraud or dishonesty; or

(c) at the test time, the individual is disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001*; or

(d) at any time during the 10-year period ending at the test time, the individual's registration as a liquidator was cancelled under subsection 1292(2) or (3) of the *Corporations Act 2001*; or

(e) at any time during the 10-year period ending at the test time, the individual's registration as a trustee ceased under section 155I for a reason specified in paragraph 155H(1)(a), (aa), (b), (e), (f), (fa) or (g); or

(f) at any time during the 10-year period ending at the test time, the individual's registration as a debt agreement

administrator was cancelled under section 186K on the ground that:

(i) the individual contravened a condition that applied in relation to that registration; or

(ii) the individual failed to properly carry out the duties of an administrator in relation to a debt agreement; or

(g) at any time during the 10-year period ending at the test time, the individual's registration as a debt agreement administrator was cancelled as a result of an order under section 185ZCA; or

(h) at any time during the 10-year period ending at the test time, a declaration was made under section 186M in relation to the individual; or

(i) at any time during the 10-year period ending at the test time, a determination in relation to the individual was made under subregulation 9.06(3) of the *Bankruptcy Regulations 1996* as in force before the commencement of this section.

(2) Subparagraph (1)(a)(i) does not apply in relation to a bankruptcy that has been annulled under section 153B.

Companies

(3) For the purposes of this Division, a company ***passes the basic eligibility test*** at a particular time (the ***test time***) unless:

(a) at any time during the 10-year period ending at the test time, the company was an externally-administered body corporate; or

(b) at any time during the 10-year period ending at the test time, the company was convicted of an offence involving fraud or dishonesty; or

(c) at any time during the 10-year period ending at the test time, the company's registration as a debt agreement administrator was cancelled under section 186L on the ground that:

(i) the company contravened a condition that applied in relation to that registration; or

(ii) the company failed to properly carry out the duties of an administrator in relation to a debt agreement; or

(d) at any time during the 10-year period ending at the test time, the company's registration as a debt agreement administrator

was cancelled as a result of an order under section 185ZCA; or

(e) at any time during the 10-year period ending at the test time, a declaration was made under section 186M in relation to the company; or

(f) at the test time, a director of the company does not pass the basic eligibility test; or

(g) at any time during the 10-year period ending at the test time, a determination in relation to the company was made under subregulation 9.06(3) of the *Bankruptcy Regulations 1996* as in force before the commencement of this section.

Subdivision B—Registration of debt agreement administrators

186B Application for registration as a debt agreement administrator

(1) An individual or company may apply to the Inspector-General to be registered as a debt agreement administrator.

(2) The application must:

(a) be in the approved form; and

(b) be accompanied by such information and documents (if any) as are specified in the regulations; and

(c) if the application is not by way of renewal—be accompanied by the fee determined by the Minister by legislative instrument; and

(d) if the application is by way of renewal—be made before the expiry of the applicant's existing registration as a debt agreement administrator.

186C Inspector-General must approve or refuse to approve registration application

(1) After considering an application made under section 186B, the Inspector-General must, within 60 days of receiving the application:

(a) approve the application; or

(b) refuse to approve the application.

Approval of application made by an individual

(2) If:
  (a) the applicant is an individual; and
  (b) the application is not by way of renewal;

the Inspector-General must approve the application if the Inspector-General is satisfied that the applicant:
  (c) passes the basic eligibility test; and
  (d) has the ability (including the knowledge) to satisfactorily perform the duties of an administrator in relation to debt agreements; and
  (e) has such qualifications and experience (if any) as are prescribed by the regulations.

Otherwise the Inspector-General must refuse to approve the application.

(3) If:
  (a) the applicant is an individual; and
  (b) the application is by way of renewal;

the Inspector-General must approve the application.

Approval of application made by a company

(4) If:
  (a) the applicant is a company; and
  (b) the application is not by way of renewal;

the Inspector-General must approve the application if the Inspector-General is satisfied that the applicant:
  (c) passes the basic eligibility test; and
  (d) has the ability to satisfactorily perform the duties of an administrator in relation to debt agreements.

Otherwise the Inspector-General must refuse to approve the application.

(5) If:
  (a) the applicant is a company; and
  (b) the application is by way of renewal;

the Inspector-General must approve the application.

Guidelines

(6) In deciding whether to approve an application made under section 186B, the Inspector-General must have regard to any relevant guidelines in force under section 186Q.

Notice of decision

(7) If the Inspector-General refuses to approve an application made under section 186B, the Inspector-General must give the applicant a written notice of the refusal, and the reasons for it.

Review

(8) If the Inspector-General decides to refuse to approve an application made under section 186B, the applicant may apply to the Administrative Appeals Tribunal for review of the decision.

Conditions of registration

(9) If the Inspector-General approves an application under section 186B, the Inspector-General may decide that, if the applicant is registered as a debt agreement administrator under section 186D, the applicant's registration as a debt agreement administrator is subject to specified conditions.

(10) If the Inspector-General makes a decision under subsection (9), the Inspector-General must give the applicant a written notice of the decision and the reasons for it.

(11) If the Inspector-General makes a decision under subsection (9), the applicant may apply to the Administrative Appeals Tribunal for review of the decision.

(12) In subsection (11):

decision has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

186D Registration as a debt agreement administrator

(1) This section applies if:

(a) the Inspector-General approves an application under section 186C; and

(b) the applicant has paid the fee determined by the Minister by legislative instrument.

(2) The Inspector-General must register the applicant as a debt agreement administrator by entering on the National Personal Insolvency Index the details relating to the applicant that are prescribed by the regulations.

(3) After registering the applicant as a debt agreement administrator, the Inspector-General must give the applicant a certificate of registration.

186E Duration of registration as a debt agreement administrator

Subject to this Division, if a person is registered under section 186D as a debt agreement administrator, the registration remains in force for:

(a) if the registration is not by way of renewal—3 years beginning when the person's details are entered on the National Personal Insolvency Index; or

(b) if the registration is by way of renewal—3 years beginning immediately after the person's existing registration as a debt agreement administrator expires.

186F Conditions of registration—general

(1) This section applies to a person if the person is a registered debt agreement administrator.

(2) The Inspector-General may, by written notice given to the person, impose specified conditions on the person's registration as a debt agreement administrator.

186G Condition of registration—companies

(1) This section applies to a company if the company is a registered debt agreement administrator.

(2) It is a condition of the company's registration as a debt agreement administrator that each individual who takes overall responsibility for managing the company's debt agreement activities must be:

(a) a registered debt agreement administrator; or

(b) a registered trustee.

(3) Subsection (2) does not limit subsection 186C(9) or section 186F.

186H Application to change or remove registration conditions

(1) If there are conditions on a person's registration as a debt agreement administrator, the person may apply to the Inspector-General for the conditions to be changed or removed.

(2) The application must:
  (a) be in the approved form; and
  (b) be accompanied by such information and documents (if any) as are specified in the regulations.

(3) After considering an application made under subsection (1), the Inspector-General must:
  (a) decide that the conditions on the applicant's registration as a debt agreement administrator should not be changed or removed; or
  (b) decide that specified modifications should be made to the conditions imposed on the applicant's registration as a debt agreement administrator.

Note: See the definition of ***modifications*** in subsection 5(1).

Notice of decision

(4) If the Inspector-General decides that the conditions on the applicant's registration as a debt agreement administrator should not be changed or removed, the Inspector-General must give the applicant a written notice of the decision, and the reasons for it.

(5) If the Inspector-General decides that specified modifications should be made to the conditions imposed on the applicant's registration as a debt agreement administrator, the Inspector-General must give the applicant a written notice of the decision, and the reasons for it.

Review

(6) The applicant may apply to the Administrative Appeals Tribunal for review of a decision of the Inspector-General made under this section.

(7) In subsection (6):

decision has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

Subdivision C—Surrender and cancellation of registration as a debt agreement administrator

186J Surrender of registration as a debt agreement administrator

(1) This section applies to a person if the person is a registered debt agreement administrator.

(2) The person may, by written notice given to the Inspector-General, request the Inspector-General to accept the surrender of the person's registration as a debt agreement administrator.

(3) A request under subsection (2) must be in the approved form.

(4) The person ceases to be registered as a debt agreement administrator when the Inspector-General accepts the request.

(5) If the Inspector-General accepts a request given under subsection (2), the Inspector-General must remove the person's registration details from the National Personal Insolvency Index.

186K Cancellation of an individual's registration as a debt agreement administrator

Scope

(1) This section applies in relation to an individual if the individual is a registered debt agreement administrator.

Individual no longer passes the basic eligibility test

(2) The Inspector-General must cancel the individual's registration as a debt agreement administrator if the Inspector-General is satisfied that the individual no longer passes the basic eligibility test.

Other grounds for cancellation of registration

(3) The Inspector-General may ask the individual to give the Inspector-General a written explanation why the individual should continue to be registered as a debt agreement administrator, if the Inspector-General has reasonable grounds to believe that:

(a) the individual no longer has the ability (including the knowledge) to satisfactorily perform the duties of an administrator in relation to a debt agreement; or

(b) the individual has failed to properly carry out the duties of an administrator in relation to a debt agreement; or

(c) the individual no longer has the qualifications or experience prescribed by regulations made for the purposes of paragraph 186C(2)(e); or

(d) the individual has contravened a condition of the individual's registration.

(4) If:

(a) the Inspector-General does not receive an explanation within 28 days of requesting it; or

(b) receives an explanation, but is not satisfied with it;

the Inspector-General may cancel the individual's registration as a debt agreement administrator.

Notice of cancellation

(5) If the Inspector-General cancels, under subsection (2) or (4), an individual's registration as a debt agreement administrator, the Inspector-General must give the individual written notice of the cancellation, and the reasons for it.

Removal of registration details

(6) If the Inspector-General cancels, under subsection (2) or (4), an individual's registration as a debt agreement administrator, the Inspector-General must remove the individual's registration details from the National Personal Insolvency Index.

Guidelines

(7) In deciding whether to cancel, under subsection (2) or (4), an individual's registration as a debt agreement administrator, the Inspector-General must have regard to any relevant guidelines in force under section 186Q.

Review

(8) If the Inspector-General decides to cancel, under subsection (2) or (4), an individual's registration as a debt agreement administrator,

the individual may apply to the Administrative Appeals Tribunal for review of the decision.

186L Cancellation of a company's registration as a debt agreement administrator

Scope

(1) This section applies in relation to a company if the company is a registered debt agreement administrator.

Company no longer passes the basic eligibility test

(2) The Inspector-General must cancel the company's registration as a debt agreement administrator if the Inspector-General is satisfied that the company no longer passes the basic eligibility test.

Other grounds for cancellation of registration

(3) The Inspector-General may ask the company to give the Inspector-General a written explanation why the company should continue to be registered as a debt agreement administrator, if the Inspector-General has reasonable grounds to believe that:
   (a) the company no longer has the ability to satisfactorily perform the duties of an administrator in relation to a debt agreement; or
   (b) the company has failed to properly carry out the duties of an administrator in relation to a debt agreement; or
   (c) the company has contravened a condition of the company's registration.

(4) If:
   (a) the Inspector-General does not receive an explanation within 28 days of requesting it; or
   (b) receives an explanation, but is not satisfied with it;

   the Inspector-General may cancel the company's registration as a debt agreement administrator.

Notice of cancellation

(5) If the Inspector-General cancels, under subsection (2) or (4), a company's registration as a debt agreement administrator, the

Inspector-General must give the company written notice of the cancellation, and the reasons for it.

Removal of registration details

(6) If the Inspector-General cancels, under subsection (2) or (4), a company's registration as a debt agreement administrator, the Inspector-General must remove the company's registration details from the National Personal Insolvency Index.

Guidelines

(7) In deciding whether to cancel, under subsection (2) or (4), a company's registration as a debt agreement administrator, the Inspector-General must have regard to any relevant guidelines in force under section 186Q.

Review

(8) If the Inspector-General decides to cancel, under subsection (2) or (4), a company's registration as a debt agreement administrator, the company may apply to the Administrative Appeals Tribunal for review of the decision.

Subdivision D—Ineligibility of a person to act as a debt agreement administrator

186M Inspector-General may declare a person ineligible to act as an administrator

(1) This section applies to a person if:
  (a) the person is or was the administrator of a debt agreement; and
  (b) the person is not:
    (i) a registered debt agreement administrator; or
    (ii) a registered trustee.

(2) The Inspector-General may ask the person to give the Inspector-General a written explanation why the person should continue to be eligible to act as an administrator of debt agreements, if the Inspector-General has reasonable grounds to

believe that the person has failed to properly carry out the duties of an administrator in relation to the debt agreement.

(3) If:
  (a) the Inspector-General does not receive an explanation within 28 days of requesting it; or
  (b) receives an explanation, but is not satisfied with it;

the Inspector-General may declare that the person is ineligible, for a period of 3 years, to act as an administrator of debt agreements.

(4) If the Inspector-General makes a declaration under subsection (3), the Inspector-General must give the person written notice of the declaration, and the reasons for it.

Guidelines

(5) In deciding whether to make a declaration under subsection (3), the Inspector-General must have regard to any relevant guidelines in force under section 186Q.

Review

(6) If the Inspector-General decides to make a declaration under subsection (3) in relation to a person, the person may apply to the Administrative Appeals Tribunal for review of the decision.

Subdivision E—Miscellaneous

186N Return of certificate of registration

Surrender of registration as a debt agreement administrator

(1) A person commits an offence if:
  (a) the person has been given a certificate of registration under subsection 186D(3); and
  (b) the person gives a notice under subsection 186J(2) surrendering the person's registration as a debt agreement administrator; and
  (c) the person does not return the certificate of registration to the Inspector-General as soon as practicable after the Inspector-General accepts the notice.

Penalty: 1 penalty unit.

(2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Cancellation of an individual's registration as a debt agreement administrator

(3) An individual commits an offence if:
   (a) the individual has been given a certificate of registration under subsection 186D(3); and
   (b) the individual's registration as a debt agreement administrator is cancelled under section 186K; and
   (c) the individual does not return the certificate of registration to the Inspector-General as soon as practicable after the individual is given a notice under subsection 186K(5) in relation to the cancellation.

Penalty: 1 penalty unit.

(4) Subsection (3) does not apply if the individual has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

Cancellation of a company's registration as a debt agreement administrator

(5) A company commits an offence if:
   (a) the company has been given a certificate of registration under subsection 186D(3); and
   (b) the company's registration as a debt agreement administrator is cancelled under section 186L; and
   (c) the company does not return the certificate of registration to the Inspector-General as soon as practicable after the company is given a notice under subsection 186L(5) in relation to the cancellation.

Penalty: 1 penalty unit.

(6) Subsection (5) does not apply if the company has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

Strict liability

(7) Subsections (1), (3) and (5) are offences of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

186P Cessation of registration as a debt agreement administrator—no refund of fees

(1) This section applies if a person ceases to be registered as a debt agreement administrator.

(2) The person is not entitled to a refund of all or part of a fee paid by the person in relation to the person's registration as a debt agreement administrator.

186Q Guidelines relating to Inspector-General's powers

The Inspector-General may, by legislative instrument, formulate guidelines for the purposes of the following provisions:

(a) subsection 186C(6);

(b) subsection 186K(7);

(c) subsection 186L(7);

(d) subsection 186M(5).

Note: For consultation requirements, see Part 3 of the *Legislative Instruments Act 2003*.

20 Paragraph 316(1)(a)

Omit "subsections 163A(2),", substitute "subsection 163A(2), paragraphs 186B(2)(c) and 186D(1)(b) and subsections".

21 Transitional—approval of form

(1) This item applies to a written approval that:

(a) was given by the Inspector-General for the purposes of the definition of ***approved form*** in subsection 5(1) of the *Bankruptcy Act 1966*; and

(b) was in force immediately before the commencement of this item.

(2) The amendment of that definition by this Schedule does not affect the continuity of the approval.

(3) Section 33 of the *Acts Interpretation Act 1901* has effect, in relation to the instrument of approval, as if the amendment of that definition by this Schedule had been in force at the time when the approval was given.

22 Application of amendment—subsection 20B(7A) of the *Bankruptcy Act 1966*

Subsection 20B(7A) of the *Bankruptcy Act 1966* applies to payments made before, at or after the commencement of this item.

23 Transitional—sections 186C, 186K and 186L of the *Bankruptcy Act 1966*

Before 1 July 2007, paragraphs 186C(2)(d) and (4)(d), 186K(3)(a) and 186L(3)(a) of the *Bankruptcy Act 1966* have effect as if the amendments made by Schedule 2 to this Act, to the extent to which they relate to a duty of an administrator in relation to a debt agreement, had commenced at the same time as this item commences.

Schedule 2—Amendments commencing on 1 July 2007

Bankruptcy Act 1966

1 Subsection 5(1) (paragraph (b) of the definition of *administrator*)

Omit "appointed by the Inspector-General", substitute "who becomes the replacement administrator".

2 After subsection 12(1D)

Insert:

(1E) For the purposes of paragraph (1)(bb), if a person signs a certificate under subsection 185C(2D) in relation to a debt agreement proposal, the person's conduct in relation to the certificate is taken to be conduct of an administrator that relates to a debt agreement.

(1F) For the purposes of paragraph (1)(bb), if a person:

(a) gives a notification in compliance, or purported compliance with subsection 185N(5); or

(b) breaches subsection 185N(5);

the giving of the notification, or the breach, as the case may be, is taken to be the conduct of an administrator that relates to a debt agreement.

3 At the end of subsection 155A(2)

Add:

; and (g) has not had his or her registration as a debt agreement administrator cancelled, within 10 years before making the application, as a result of an order under section 185ZCA.

4 At the end of subsection 155A(4)

Add:

; or (f) has had his or her registration as a debt agreement administrator cancelled, within 10 years before making the application, as a result of an order under section 185ZCA.

5 Division 1 of Part IX (heading)

Repeal the heading, substitute:

Division 1—Introduction

6 Subsection 185(1)

Omit "(1)".

Note: The heading to subsection 185(1) is deleted.

7 Subsection 185(1)

Insert:

> ***account-freezing notice*** means a notice under subsection 186LB(2).

8 Subsection 185(1)

Insert:

> ***applicable deadline***:
>
> (a) in relation to a debt agreement proposal, means:
>
> (i) if Official Receiver accepted the proposal for processing in December—the end of the 42nd day after the acceptance; or
>
> (ii) otherwise—the end of the 35th day after the Official Receiver accepted the proposal for processing; or
>
> (b) in relation to a proposal to vary a debt agreement, means:
>
> (i) if the proposal was given to the Official Receiver in December—the end of the 42nd day after the proposal was given; or
>
> (ii) otherwise—the end of the 35th day after the proposal was given to the Official Receiver; or
>
> (c) in relation to a proposal to terminate a debt agreement, means:
>
> (i) if the proposal was given to the Official Receiver in December—the end of the 21st day after the proposal was given; or
>
> (ii) otherwise—the end of the 14th day after the proposal was given to the Official Receiver.

9 Subsection 185(1)

Insert:

bank means an ADI or any other bank.

10 Subsection 185(1) (definition of *debtor*)

Repeal the definition.

11 Subsection 185(1)

Insert:

designated 6-month arrears default has the meaning given by subsection 185LC(3).

12 Subsection 185(1) (paragraph (b) of the definition of *frozen debt*)

Repeal the paragraph, substitute:

(b) would be a provable debt in relation to the proposed debt agreement if it were made;

13 Subsection 185(1) (definition of *provable debt*)

Omit “making of the debt agreement”, substitute “acceptance of the relevant debt agreement proposal for processing”.

14 Subsection 185(1)

Insert:

working day means a day that is not:

(a) a Saturday or a Sunday; or

(b) a public holiday in any place in Australia.

15 Subsections 185(2) and (3)

Repeal the subsections.

16 Sections 185A and 185B

Repeal the sections.

17 Subsection 185C(1)

After “debtor”, insert “who is insolvent”.

18 Before paragraph 185C(2)(a)

Insert:

(aa) be in the approved form; and

19 At the end of subsection 185C(2)

Add:

; and (d) provide that:

(i) all provable debts in relation to the agreement rank equally; and

(ii) if the total amount paid by the debtor under the agreement in respect of those provable debts is insufficient to meet those provable debts in full, those provable debts are to be paid proportionately; and

(e) provide that a creditor is not entitled to receive, in respect of a provable debt, more than the amount of the debt; and

(f) provide that the amount of a provable debt in relation to the agreement is to be ascertained as at the time when the acceptance of the proposal for processing is recorded on the National Personal Insolvency Index; and

(g) if a creditor is a secured creditor—provide that, if the creditor does not realise the creditor's security while the agreement is in force, the creditor is taken, for the purposes of working out the amount payable to the creditor under the agreement, to be a creditor only to the extent (if any) by which the amount of the provable debt exceeds the value of the creditor's security; and

(h) if a creditor is a secured creditor—provide that, if the creditor realises the creditor's security while the agreement is in force, the creditor is taken, for the purposes of working out the amount payable to the creditor under the agreement, to be a creditor only to the extent of any balance due to the creditor after deducting the net amount realised; and

(i) be signed by the debtor; and

(j) specify the date on which the debtor signed the proposal.

20 After subsection 185C(2)

Add:

(2A) A debt agreement proposal must not provide for the transfer of property (other than money) to a creditor.

(2B) A debt agreement proposal given to the Official Receiver must be accompanied by an explanatory statement in the approved form containing such information as the form requires.

(2C) The debtor's subsection (2B) statement may be set out in the same document as the debtor's debt agreement proposal.

(2D) If the person specified under paragraph (2)(c) is not the debtor, the debt agreement proposal given to the Official Receiver must be accompanied by a certificate signed by the person to the effect that:

(a) the person consents to being specified under that paragraph; and

(b) the person has given the debtor the information prescribed by the regulations; and

(c) having regard to:

(i) the circumstances in existence at the time when the debtor's statement of affairs was signed by the debtor; and

(ii) any other relevant matters;

the person 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; and

(d) the person has reasonable grounds to believe that all information required to be set out in the debtor's statement of affairs has been set out in that statement; and

(e) the person has reasonable grounds to believe that all information required to be set out in the debtor's subsection (2B) statement has been set out in that statement.

(2E) A debt agreement proposal must not be given jointly by 2 or more debtors.

(2F) If a debt agreement proposal is expressed to be subject to the occurrence of a specified event within a specified period after the debt agreement proposal is accepted, the specified period must not be longer than 7 days.

21 After subsection 185C(3)

Insert:

Remuneration of administrator

(3A) If a debt agreement proposal provides for the remuneration of the person specified under paragraph (2)(c), the debt agreement proposal must:

(a) provide that the total remuneration of the person specified under paragraph (2)(c) is an amount equal to a specified percentage (the ***overall remuneration percentage***) of the total amount payable by the debtor under the agreement in respect of provable debts; and

(b) provide that, if the debtor pays an amount (the ***individual debt repayment amount***) under the agreement in respect of those provable debts:

(i) the debtor must also pay to the person specified under paragraph (2)(c) an amount (the ***individual remuneration amount***) ascertained in accordance with the agreement; and

(ii) the individual remuneration amount must not exceed the overall remuneration percentage of the individual debt repayment amount; and

(iii) the person specified under paragraph (2)(c) must apply the individual remuneration amount towards the discharge of the person's entitlement to remuneration under the agreement.

22 After subsection 185C(4)

Insert:

(4A) Subparagraph (4)(a)(i) does not apply in relation to a bankruptcy that has been annulled under section 153B.

23 Subsection 185D(2)

After "debtor", insert "or an affected creditor".

24 At the end of section 185D

Add:

(3) If the approved form for a statement of affairs indicates that particular information in the statement will not be made available to the public, the Official Receiver must ensure that the

information is not made available under this section to a person other than the debtor (or an agent of the debtor).

(4) The Official Receiver may refuse to allow a person access under this section to particular information in a debtor's statement of affairs on the ground that access to that information would jeopardise, or be likely to jeopardise, the safety of any person.

(5) The debtor's statement of affairs may be set out in the same document as the debtor's subsection 185C(2B) statement.

(6) This section does not limit subsection 185C(2B).

25 Subsection 185E(1)

Repeal the subsection, substitute:

(1) If the person specified under paragraph 185C(2)(c) is the debtor, the Official Receiver must, before accepting the debt agreement proposal for processing, give the debtor the information prescribed by the regulations.

26 Subsection 185E(2)

Repeal the subsection, substitute:

(2) If a debtor gives the Official Receiver a debt agreement proposal, the Official Receiver may accept the proposal for processing if:

(a) the Official Receiver is satisfied that subsections 185C(2), (2A), (2B), (2E) and (4) have been complied with; and

(b) if the person specified under paragraph 185C(2)(c) is not the debtor—the Official Receiver is satisfied that subsection 185C(2D) has been complied with; and

(c) if the debt agreement proposal is expressed to be subject to the occurrence of a specified event within a specified period after the debt agreement proposal is accepted—the Official Receiver is satisfied that subsection 185C(2F) has been complied with; and

(d) if the proposal provides for the remuneration of the person specified under paragraph 185C(2)(c)—the Official Receiver is satisfied that subsection 185C(3A) has been complied with; and

(e) the Official Receiver is satisfied that the statement of affairs accompanying the proposal is in order.

27 After subsection 185E(2)

Insert:

(2AA) The Official Receiver must not accept a debt agreement proposal for processing unless the proposal was given to the Official Receiver within 14 days after the day on which the debtor signed the proposal.

28 Subsection 185E(2A)

Repeal the subsection, substitute:

(2A) If the person specified under paragraph 185C(2)(c) is not:

(a) a registered debt agreement administrator; or

(b) a registered trustee;

the Official Receiver must not accept the debt agreement proposal unless the Official Receiver is satisfied that the person passes the basic eligibility test.

29 After subsection 185E(2A)

Insert:

(2B) If the person specified under paragraph 185C(2)(c) is not the debtor, the Official Receiver must not accept the debt agreement proposal for processing unless:

(a) the person is a registered debt agreement administrator; or

(b) the person is a registered trustee; or

(c) both:

(i) the person is the administrator of not more than 5 debt agreements; and

(ii) no declaration is in force in relation to the person under section 186M.

(2C) If:

(a) the person specified under paragraph 185C(2)(c) in relation to a debt agreement proposal (the ***first debt agreement proposal***) is not:

(i) a registered debt agreement administrator; or

(ii) a registered trustee; and

(b) the person is specified under that paragraph in relation to one or more other debt agreement proposals;

the Official Receiver must not accept the first debt agreement proposal for processing if the person would become the administrator of more than 5 debt agreements if it were assumed that:

(c) the first debt agreement proposal is accepted; and

(d) those other debt agreement proposals are accepted.

30 At the end of subsection 185E(5)

Add “in accordance with section 185EA”.

31 Subsection 185E(6)

Repeal the subsection.

32 After section 185E

Insert:

185EA Processing of debt agreement proposal

Processing of proposals by the Official Receiver

(1) If the Official Receiver is required by subsection 185E(5) to process a debt agreement proposal, the Official Receiver must write to each of the affected creditors who is known to the Official Receiver, asking each affected creditor to indicate whether the proposal should be accepted.

Writing to creditors to deal with a proposal

(2) When writing to each affected creditor under subsection (1) about a debt agreement proposal, the Official Receiver must:

(a) provide the creditor with a copy of:

(i) the debt agreement proposal; and

(ii) the debtor’s subsection 185C(2B) statement; and

(b) ask the creditor to give a written statement setting out whether or not the debt agreement proposal should be accepted; and

(c) inform the creditor of the person to whom the statement should be given and of the need to give the statement before the applicable deadline.

(3) The paragraph (2)(b) statement must be in the approved form.

185EB Inspection of creditor's statement

If an affected creditor gives a paragraph 185EA(2)(b) statement:

(a) the debtor; or

(b) any other affected creditor;

may, without fee and either personally or by an agent:

(c) inspect the statement; and

(d) obtain a copy of, or make extracts from, the statement.

185EC Acceptance of a debt agreement proposal

Acceptance in writing

(1) A debt agreement proposal is accepted if:

(a) the Official Receiver writes to affected creditors of a debtor under section 185EA; and

(b) a majority in value of the creditors who reply before the applicable deadline state that the proposal should be accepted.

Timing of acceptance

(2) A debt agreement proposal that is accepted under subsection (1) is taken to be accepted at the applicable deadline.

Value of a creditor

(3) In assessing, for the purposes of paragraph (1)(b), the value of a creditor who is a related entity of the debtor, any debt that was assigned to the creditor is taken to have a value equal to the value of the consideration that the creditor gave for the assignment.

(4) For the purposes of paragraph (1)(b), the value of a creditor is to be assessed as at the time when the acceptance of the debt agreement proposal for processing was recorded on the National Personal Insolvency Index.

(5) For the purposes of paragraph (1)(b), a secured creditor is taken to be a creditor only to the extent (if any) by which the amount of the debt owing to the creditor exceeds the value of the creditor's security.

185ED Cancellation of acceptance of debt agreement proposal for processing

Scope

(1) This section applies if:
  (a) the Official Receiver has accepted a debt agreement proposal for processing; and
  (b) the applicable deadline has not arrived.

Cancellation

(2) The Official Receiver may cancel the acceptance of the debt agreement proposal for processing if:
  (a) the Official Receiver becomes aware that one or more affected creditors were not disclosed in the debtor's statement of affairs; or
  (b) the Official Receiver becomes aware that:
    (i) the debtor's statement of affairs; or
    (ii) the debtor's subsection 185C(2B) statement;

  was deficient because it omitted a material particular or because it was incorrect in a material particular; or
  (c) the Official Receiver becomes aware of a material change in the debtor's circumstances that:
    (i) was not foreshadowed in the debtor's subsection 185C(2B) statement or the debtor's statement of affairs; and
    (ii) in the opinion of the Official Receiver, is capable of affecting an affected creditor's decision whether or not to accept the proposal; or
  (d) the Official Receiver becomes aware of a matter that, if it had been known to the Official Receiver at the time of acceptance of the debt agreement proposal for processing, would have resulted in a refusal of acceptance on the grounds that subsection 185C(4) had not been complied with.

Notification of cancellation

(3) If the Official Receiver cancels the acceptance of a debt agreement proposal for processing, the Official Receiver must give written notice of the cancellation, and the reasons for it, to:

(a) the debtor; and
(b) affected creditors who are known to the Official Receiver.

Review

(4) If the Official Receiver decides to cancel the acceptance of a debt agreement proposal for processing, the debtor may apply to the Administrative Appeals Tribunal for review of the decision.

33 Paragraphs 185F(1)(d), (e) and (f)

Repeal the paragraphs, substitute:

(d) in a case where:
  (i) the applicable deadline arrives; and
  (ii) the proposal has not been accepted;
  the arrival of the applicable deadline;

(e) in a case where:
  (i) the proposal is accepted; and
  (ii) the proposal is not expressed to be subject to the occurrence of a specified event within a specified period after the proposal is accepted; and
  (iii) details of the debt agreement are entered on the National Personal Insolvency Index;
  the entry of those details on the National Personal Insolvency Index;

(f) in the case where:
  (i) the proposal is accepted; and
  (ii) the proposal is expressed to be subject to the occurrence of a specified event within a specified period after the proposal is accepted; and
  (iii) that event occurs within that period; and
  (iv) details of the debt agreement are entered on the National Personal Insolvency Index;
  the entry of those details on the National Personal Insolvency Index;

(g) in the case where:
  (i) the proposal is accepted; and
  (ii) the proposal is expressed to be subject to the occurrence of a specified event within a specified period after the proposal is accepted; and

(iii) that event does not occur within that period;

the end of that period;

(h) in a case where the Official Receiver cancels the acceptance of the proposal for processing—the cancellation of the acceptance;

(i) in a case where the proposal lapses—the lapse of the proposal.

34 At the end section 185F

Add:

(3) Subsection (1) does not prevent a creditor from applying for enforcement of, or enforcing, a remedy against the debtor's person or property in respect of a liability under a proceeds of crime law.

35 Paragraph 185G(a)

Repeal the paragraph.

36 Paragraph 185G(b)

Before "deadline", insert "applicable".

37 Section 185H

Repeal the section, substitute:

185H Making a debt agreement

(1) This section sets out the 2 situations in which a debt agreement is made.

Unconditional debt agreement proposals

(2) If:

(a) a debt agreement proposal is accepted; and

(b) the proposal is not expressed to be subject to the occurrence of a specified event within a specified period after the proposal is accepted;

then:

(c) the Official Receiver must enter details of the debt agreement concerned on the National Personal Insolvency Index; and

(d) the debt agreement is made in the terms of the proposal when those details are so entered.

Note: Section 185EC explains how a proposal is accepted.

Conditional debt agreement proposals

(3) If:

(a) a debt agreement proposal is accepted; and

(b) the proposal is expressed to be subject to the occurrence of a specified event within a specified period after the proposal is accepted; and

(c) the event occurs within that period;

then:

(d) the Official Receiver must enter details of the debt agreement concerned on the National Personal Insolvency Index; and

(e) the debt agreement is made in the terms of the proposal when those details are so entered.

Note: Section 185EC explains how a proposal is accepted.

38 Paragraph 185I(b)

Omit “debts immediately before the debt agreement was made”, substitute “provable debts”.

39 Section 185J

Repeal the section.

40 Paragraph 185K(1)(c)

Omit “debt that would have been provable had the debtor become bankrupt when details of the debt agreement were entered in the Index”, substitute “provable debt”.

41 At the end of section 185K

Add:

(3) While a debt agreement is in force and details of it are entered on the National Personal Insolvency Index:

(a) a sheriff must not take action, or further action, to execute, or sell property under, any process issued by a court to enforce payment of a provable debt owed by the debtor; and

(b) a person who is entitled under a law of the Commonwealth, or of a State or Territory, to retain or deduct money from money that is or will be owing or payable to the debtor must not retain or deduct money.

42 Section 185L

Repeal the section.

43 After Division 3 of Part IX

Insert:

Division 3A—Duties of administrators

185LA Duties of an administrator—general

The duties of an administrator of a debt agreement include:

(a) dealing with the debtor's property in the manner specified in the debt agreement; and

(b) giving information about the administration of the debt agreement to the debtor if the debtor makes a reasonable request for the information; and

(c) giving information about the administration of the debt agreement to a creditor who:

(i) is a party to the debt agreement; and

(ii) makes a reasonable request for the information.

185LB Administrator to notify creditors of a 3-month arrears default by a debtor

(1) If a 3-month arrears default by a debtor occurs at a particular time in relation to a debt agreement, the administrator of the debt agreement must notify, in writing, each creditor who is a party to the debt agreement of that occurrence within 10 working days of that occurrence.

(2) The administrator of a debt agreement is not required to give a notification under subsection (1) in respect of a 3-month arrears default (the ***first default***) if:

(a) one or more other 3-month arrears defaults by the debtor have occurred in relation to the debt agreement; and

(b) the 3-month period to which the first default relates overlaps with the 3-month period to which any of those other 3-month arrears defaults relate; and

(c) a notification under subsection (1) has already been given in respect of any of those other 3-month arrears defaults.

(3) For the purposes of this section, a ***3-month arrears default*** by a debtor occurs at a particular time (the ***test time***) in relation to a debt agreement if:

(a) at the beginning of the 3-month period ending immediately before the test time, one or more payments in respect of provable debts became due and payable by the debtor under the debt agreement; and

(b) throughout that 3-month period, the debtor was in arrears in respect of any or all of those payments.

185LC Administrator to notify Official Receiver of a designated 6-month arrears default by a debtor

(1) If a designated 6-month arrears default by a debtor occurs at particular time in relation to a debt agreement, the administrator of the debt agreement must notify, in writing, the Official Receiver of that occurrence within 10 working days of that occurrence.

(2) The administrator of a debt agreement is not required to give a notification under subsection (1) in relation to the debt agreement if the administrator has already given such a notification in relation to the debt agreement.

(3) For the purposes of this Part, a ***designated 6-month arrears default*** by a debtor occurs at a particular time (the ***test time***) in relation to a debt agreement if:

(a) both of the following apply:

(i) before the test time, one or more payments in respect of provable debts became due and payable by the debtor under the debt agreement;

(ii) at no time during the 6-month period ending immediately before the test time were any obligations in respect of those payments discharged; or

(b) both of the following apply:

(i) at the test time, the obligations created by the debt agreement have not been discharged;

(ii) the last of those obligations should have been discharged at a time 6 months before the test time.

185LD Administrator to maintain separate bank account

(1) A person who is:

(a) either:

(i) a registered debt agreement administrator; or

(ii) a registered trustee; and

(b) the administrator of one or more debt agreements;

must pay all money received by the person from debtors under those debt agreements to the credit of a single interest-bearing bank account that:

(c) bears:

(i) the person's own name; and

(ii) the words "—Debt Agreement Administration Trust Account"; and

(d) complies with such other requirements (if any) as are specified in the regulations.

(2) The person must only pay into the account money received by the person from debtors under debt agreements.

(3) The person is entitled, in his or her personal capacity, to each payment of interest on the account, less an amount equal to the bank fees or charges (if any) paid or payable on the account during the period to which the interest relates.

(4) Interest on money in the account is not subject to taxation under a law of the Commonwealth, a State or a Territory except as provided in Part 2 of the *Bankruptcy (Estate Charges) Act 1997*.

185LE Administrator to keep accounts etc.

(1) An administrator of a debt agreement must:

(a) keep such accounts, books and records as are necessary to give a full and correct account of the administration of the debt agreement; and

(b) if required to do so by the Inspector-General—make those accounts and records available for inspection by the Inspector-General; and

(c) if required to do so by the Inspector-General—answer any inquiries about the debt agreement; and

(d) cooperate with any inquiry or investigation made by the Inspector-General under paragraph 12(1)(bb).

(2) If an administrator of one or more debt agreements is to be remunerated under those debt agreements, the administrator must:

(a) maintain a separate record of:

(i) money received by the administrator from the debtors in relation to those debt agreements; and

(ii) payments made by the administrator in relation to those debt agreements; and

(iii) the balance of money held by the administrator in relation to those debt agreements; and

(b) if the administrator maintains an account under subsection 185LD(1)—at least once every 45 days, reconcile the balance held in the subsection 185LD(1) account with the corresponding record maintained under paragraph (a).

185LF Succession of administrator

Scope

(1) This section applies if:

(a) a person (the ***earlier administrator***) ceases to be the administrator of a debt agreement; and

(b) another person (the ***later administrator***) becomes the administrator of the debt agreement in place of the earlier administrator.

Duty

(2) The earlier administrator must:

(a) prepare an account of:

(i) money received by the earlier administrator from the debtor in relation to the debt agreement; and

(ii) payments made by the earlier administrator in relation to the debt agreement; and

(b) keep a copy of the account; and

(c) give the later administrator:

(i) a copy of the account; and

(ii) a copy of any other accounts the earlier administrator received from a person who was the administrator of the debt agreement before the earlier administrator.

185LG Duties of an administrator in relation to debt agreements—extended meaning

(1) For the purposes of this Act, a duty of an administrator under this Act is taken to be a duty of an administrator in relation to a debt agreement, even if the duty does not relate to a particular debt agreement.

(2) If a person signs a certificate under subsection 185C(2D) in relation to a debt agreement proposal:

(a) the person must ensure that the certificate is correct; and

(b) for the purposes of this Act, the requirement set out in paragraph (a) is taken to be a duty of an administrator in relation to a debt agreement.

(3) For the purposes of this Act, a requirement set out in subsection 185LF(2) or 185N(5) is taken to be a duty of an administrator in relation to a debt agreement.

44 After subsection 185M(1)

Insert:

(1A) The proposal must be in the approved form.

(1B) The proposal must be accompanied by an explanatory statement in the approved form containing such information as the form requires.

(1C) The subsection (1B) statement may be set out in the same document as the proposal.

45 At the end of subsection 185M(2)

Add “in accordance with section 185MA if the Official Receiver is satisfied that subsections (1A) and (1B) of this section have been complied with”.

46 Subsection 185M(2) (note)

Repeal the note.

47 Subsection 185M(3) (note)

Omit “185B’, substitute “185MC”.

48 At the end of Division 4 of Part IX

Add:

185MA Procedures for dealing with proposals to vary debt agreements

Processing of proposals by the Official Receiver

(1) If the Official Receiver is required by subsection 185M(2) to process a proposal to vary a debt agreement, the Official Receiver must write to each of the affected creditors who is known to the Official Receiver, asking each affected creditor to indicate whether the proposal should be accepted.

Writing to creditors to deal with a proposal

(2) When writing to each affected creditor under subsection (1) about a proposal to vary a debt agreement, the Official Receiver must:
  (a) provide the creditor with a copy of:
    (i) the proposal; and
    (ii) the relevant subsection 185M(1B) statement; and
  (b) ask the creditor to give a written statement setting out whether or not the proposal should be accepted; and
  (c) inform the creditor of the person to whom the statement should be given and of the need to give the statement before the applicable deadline.

(3) The paragraph (2)(b) statement must be in the approved form.

185MB Inspection of creditor’s statement

If an affected creditor gives a paragraph 185MA(2)(b) statement:
  (a) the debtor; or
  (b) any other affected creditor;

may, without fee and either personally or by an agent:

(c) inspect the statement; and

(d) obtain a copy of, or make extracts from, the statement.

185MC Acceptance of a proposal to vary a debt agreement

Acceptance in writing

(1) A proposal to vary a debt agreement is accepted if:

(a) the Official Receiver writes to affected creditors of a debtor under section 185MA; and

(b) a majority in value of the creditors who reply before the applicable deadline state that the proposal should be accepted.

Timing of acceptance

(2) A proposal that is accepted under subsection (1) is taken to be accepted at the applicable deadline.

Value of a creditor

(3) In assessing, for the purposes of paragraph (1)(b), the value of a creditor who is a related entity of the debtor, any debt that was assigned to the creditor is taken to have a value equal to the value of the consideration that the creditor gave for the assignment.

(4) For the purposes of paragraph (1)(b), the value of a creditor is to be assessed as at the time when the acceptance of the relevant debt agreement proposal for processing was recorded on the National Personal Insolvency Index.

(5) For the purposes of paragraph (1)(b), a secured creditor is taken to be a creditor only to the extent (if any) by which the amount of the debt owing to the creditor exceeds the value of the creditor's security.

185MD Withdrawal of proposal to vary a debt agreement

Scope

(1) This section applies if:

(a) a proposal to vary a debt agreement is given under section 185M; and
(b) the applicable deadline has not arrived; and
(c) the proposal has not been accepted.

Withdrawal of proposal

(2) If:
(a) the Official Receiver becomes aware that the relevant subsection 185M(1B) statement was deficient because it omitted a material particular or because it was incorrect in a material particular; or
(b) the Official Receiver becomes aware of a material change in circumstances that:
(i) was not foreshadowed in the relevant subsection 185M(1B) statement; and
(ii) in the opinion of the Official Receiver, is capable of affecting an affected creditor's decision whether or not to accept the proposal;

the Official Receiver may declare in writing that the proposal is withdrawn.

Notification of withdrawal

(3) If the Official Receiver makes a declaration under subsection (2), the Official Receiver must give written notice of the declaration, and the reasons for it, to:
(a) the debtor; and
(b) affected creditors who are known to the Official Receiver.

Review

(4) If the Official Receiver decides to make a declaration under subsection (2), the debtor or an affected creditor may apply to the Administrative Appeals Tribunal for review of the decision.

49 At the end of section 185N

Add:

Notification of end of debt agreement

(5) If a debt agreement ends under subsection (1), the person who was the administrator of the agreement immediately before it ended must, within 5 working days after the end of the agreement, notify the Official Receiver, in writing, of the end of the agreement.

(6) A notification under subsection (5) must be in the approved form.

50 After section 185N

Insert:

185NA Release of debtor from debts

Time and effect of release

(1) When a debt agreement ends under subsection 185N(1), the debtor is released from provable debts from which the debtor would have been released if the debtor had been discharged from bankruptcy immediately after the acceptance of the relevant debt agreement proposal for processing was recorded on the National Personal Insolvency Index.

Limits on release

(2) The release ceases to operate if the debt agreement is declared void by the Court.

(3) The release does not:
  (a) release anyone else from a debt that he or she owes jointly with the debtor; or
  (b) release a guarantor from the guarantee that the guarantor gave for the debtor's debt.

51 After subsection 185P(1)

Insert:

(1A) The proposal must be in the approved form.

(1B) A proposal must be accompanied by an explanatory statement in the approved form containing such information as the form requires.

(1C) The subsection (1B) statement may be set out in the same document as the proposal.

52 At the end of subsection 185P(2)

Add “in accordance with section 185PA if the Official Receiver is satisfied that subsections (1A) and (1B) of this section have been complied with”.

53 Subsection 185P(2) (note)

Repeal the note.

54 Subsection 185P(3) (note)

Omit “185B’, substitute “185PC”.

55 After section 185P

Insert:

185PA Procedures for dealing with proposals to terminate debt agreements

Processing of proposals by the Official Receiver

(1) If the Official Receiver is required by subsection 185P(2) to process a proposal to terminate a debt agreement, the Official Receiver must write to each of the affected creditors who is known to the Official Receiver, asking each affected creditor to indicate whether the proposal should be accepted.

Writing to creditors to deal with a proposal

(2) When writing to each affected creditor under subsection (1) about a proposal to terminate a debt agreement, the Official Receiver must:
- (a) provide the creditor with a copy of:
  - (i) the proposal; and
  - (ii) the relevant subsection 185P(1B) statement; and
- (b) ask the creditor to give a written statement setting out whether or not the proposal should be accepted; and
- (c) inform the creditor of the person to whom the statement should be given and of the need to give the statement before the applicable deadline.

(3) The paragraph (2)(b) statement must be in the approved form.

185PB Inspection of creditor's statement

If an affected creditor gives a paragraph 185PA(2)(b) statement:

(a) the debtor; or

(b) any other affected creditor;

may, without fee and either personally or by an agent:

(c) inspect the statement; and

(d) obtain a copy of, or make extracts from, the statement.

185PC Acceptance of a proposal to terminate a debt agreement

Acceptance in writing

(1) A proposal to terminate a debt agreement is accepted if:

(a) the Official Receiver writes to affected creditors of a debtor under section 185PA; and

(b) a majority in value of the creditors who reply before the applicable deadline state that the proposal should be accepted.

Timing of acceptance

(2) A proposal that is accepted under subsection (1) is taken to be accepted at the applicable deadline.

Value of a creditor

(3) In assessing, for the purposes of paragraph (1)(b), the value of a creditor who is a related entity of the debtor, any debt that was assigned to the creditor is taken to have a value equal to the value of the consideration that the creditor gave for the assignment.

(4) For the purposes of paragraph (1)(b), the value of a creditor is to be assessed as at the time when the acceptance of the relevant debt agreement proposal for processing was recorded on the National Personal Insolvency Index.

(5) For the purposes of paragraph (1)(b), a secured creditor is taken to be a creditor only to the extent (if any) by which the amount of the

debt owing to the creditor exceeds the value of the creditor's security.

185PD Withdrawal of proposal to terminate a debt agreement

Scope

(1) This section applies if:
  (a) a proposal to terminate a debt agreement is given under section 185P; and
  (b) the applicable deadline has not arrived; and
  (c) the proposal has not been accepted.

Withdrawal of proposal

(2) If:
  (a) the Official Receiver becomes aware that the relevant subsection 185P(1B) statement was deficient because it omitted a material particular or because it was incorrect in a material particular; or
  (b) the Official Receiver becomes aware of a material change in circumstances that:
    (i) was not foreshadowed in the relevant subsection 185P(1B) statement; and
    (ii) in the opinion of the Official Receiver, is capable of affecting an affected creditor's decision whether or not to accept the proposal;

the Official Receiver may declare in writing that the proposal is withdrawn.

Notification of withdrawal

(3) If the Official Receiver makes a declaration under subsection (2), the Official Receiver must give written notice of the declaration, and the reasons for it, to:
  (a) the debtor; and
  (b) affected creditors who are known to the Official Receiver.

Review

(4) If the Official Receiver decides to make a declaration under subsection (2), the debtor or an affected creditor may apply to the Administrative Appeals Tribunal for review of the decision.

56 Section 185QA

Repeal the section, substitute:

185QA Terminating a debt agreement—designated 6-month arrears default

(1) If:

(a) the administrator of a debt agreement notifies the Official Receiver that a designated 6-month arrears default by the debtor has occurred; and

(b) the Official Receiver is satisfied that the designated 6-month arrears default has occurred;

the Official Receiver must:

(c) declare in writing that the agreement is terminated; and

(d) record the declaration on the National Personal Insolvency Index.

(2) The debt agreement is terminated when the declaration is recorded on the National Personal Insolvency Index.

57 Section 185S (note)

Repeal the note.

58 At the end of section 185U

Add:

Ancillary orders

(5) If the Court makes an order declaring all or part of a debt agreement void, the Court may make such other orders as the Court thinks fit.

(6) An order under subsection (5) may be an order directing a person to pay another person compensation of such amount as is specified in the order. This subsection does not limit subsection (5).

59 Section 185V (note)

Repeal the note.

60 Subsection 185W(2) (note)

Repeal the note.

61 After section 185X

Insert:

185XA Secured creditors

Nothing in this Division affects the right of a secured creditor to realise or otherwise deal with the creditor's security.

62 Section 185Y

Repeal the section, substitute:

185Y Money received by administrator to be held on trust

(1) If the administrator of a debt agreement receives money from the debtor under the agreement, the money is taken to have been received by the administrator on trust to be dealt with in the way specified in the debt agreement.

(2) Subsection (1) does not apply to a person if the person is both the debtor under, and the administrator of, the debt agreement.

63 Section 185Z

Repeal the section, substitute:

185Z Remuneration of administrator

(1) The administrator of a debt agreement may be remunerated as provided in the agreement (see subsections 185C(3) and (3A)).

(2) Subsection (1) does not apply to the Official Trustee.

Note: For the remuneration payable to the Official Trustee, see section 163.

64 Section 185ZB

Repeal the section, substitute:

185ZB Official Trustee to replace an administrator who dies etc.

(1) If the administrator of a debt agreement dies, the Official Trustee becomes the replacement administrator of that debt agreement.

(2) If:
  (a) a person who is the administrator of a debt agreement is registered under Division 8; and
  (b) the person ceases to be so registered;
then:
  (c) the person ceases to be the administrator of that debt agreement; and
  (d) the Official Trustee becomes the replacement administrator of that debt agreement.

(3) If:
  (a) a person who is the administrator of a debt agreement is a registered trustee; and
  (b) the person ceases to be a registered trustee;
then:
  (c) the person ceases to be the administrator of that debt agreement; and
  (d) the Official Trustee becomes the replacement administrator of that debt agreement.

(4) If:
  (a) a person is the administrator of a debt agreement; and
  (b) under section 186M, the person becomes ineligible to act as the administrator of the debt agreement;
then:
  (c) the person ceases to be the administrator of that debt agreement; and
  (d) the Official Trustee becomes the replacement administrator of that debt agreement.

(5) If, under section 185ZCB, the Court removes the administrator of a debt agreement from office, the Official Trustee becomes the replacement administrator of that debt agreement.

(6) If, under subsection (1), (2), (3), (4) or (5), the Official Trustee becomes the replacement administrator of a debt agreement, the Official Receiver must notify the parties to the debt agreement that:
  (a) the Official Trustee is the replacement administrator until further notice; and
  (b) (if applicable) the Official Receiver intends to appoint another person as the new administrator.

65 Subsection 185ZC(1)

Omit "who is appointed as the replacement administrator".

66 Subsection 185ZC(1)

Omit "in place of the Official Receiver", substitute "in place of the Official Trustee".

67 After section 185ZC

Insert:

185ZCA Court may order administrator to make good loss caused by breach of duty

(1) This section applies if, on application by:
  (a) the Inspector-General; or
  (b) a creditor who is or has been a party to a debt agreement;

the Court is satisfied that a person who is or has been an administrator of the debt agreement has committed a breach of duty in relation to the debt agreement.

(2) The Court may make any one or more of the following orders:
  (a) an order directing the person to make good any loss that a creditor has sustained because of the person's breach of duty;
  (b) if the person is a registered debt agreement administrator—an order directing the Inspector-General to cancel the person's registration as a debt agreement administrator;
  (c) any other order that the Court considers just and equitable in the circumstances.

185ZCB Control of administrators by the Court

If a debt agreement is in force, the Court may, on the application of:

(a) the Inspector-General; or

(b) the debtor; or

(c) a creditor;

inquire into the conduct of the administrator, and may do either or both of the following:

(d) remove the administrator from office;

(e) make such order as it thinks proper.

68 Section 185ZD

After “entitled to”, insert “so much of”.

69 At the end of section 185ZD

Add “as has not already been paid to the previous administrator, or any of the previous administrators”.

70 Section 186E

After “Division”, insert “and section 185ZCA”.

71 After section 186L

Insert:

186LA Inspector-General may obtain information about debt agreement administration trust accounts

Scope

(1) This section applies to a bank if:

(a) the Inspector-General believes on reasonable grounds that:

(i) a person who is or was an administrator of a debt agreement holds or held an account with the bank; and

(ii) the account was kept, or purportedly kept, in compliance with subsection 185LD(1); and

(b) the Inspector-General has asked the person:

(i) under subsection 186K(3) or 186L(3), to give the Inspector-General a written explanation why the person

should continue to be registered as a debt agreement administrator; or

(ii) under subsection 155H(1), to give the Inspector-General a written explanation why the person should continue to be registered as a trustee; and

(c) if subparagraph (b)(ii) applies—the Inspector-General asked for the explanation on the basis of paragraph 155H(1)(fa).

Requirement

(2) The Inspector-General may, by written notice given to the bank, require the bank to give to the Inspector-General, within the period and in the manner specified in the notice, such information about the account as is specified in the notice.

Offence

(3) A person commits an offence if:

(a) the person has been given a notice under subsection (2); and

(b) the person omits to do an act; and

(c) the omission contravenes a requirement in the notice.

Penalty for contravention of this subsection: 60 penalty units.

186LB Account-freezing notices—debt agreement administration trust accounts

Scope

(1) This section applies to a bank if:

(a) the Inspector-General believes on reasonable grounds that:

(i) a person who is or was an administrator of a debt agreement holds or held an account with the bank; and

(ii) the account was kept, or purportedly kept, in compliance with subsection 185LD(1); and

(b) at a particular time (the ***show cause time***), the Inspector-General asked the person:

(i) under subsection 186K(3) or 186L(3), to give the Inspector-General a written explanation why the person should continue to be registered as a debt agreement administrator; or

(ii) under subsection 155H(1), to give the Inspector-General a written explanation why the person should continue to be registered as a trustee; and

(c) if subparagraph (b)(ii) applies—the Inspector-General asked for the explanation on the basis of paragraph 155H(1)(fa).

Giving of freezing notice

(2) The Inspector-General may, by written notice (an ***account-freezing notice***) given to the bank within 42 days after the show cause time, direct the bank not to:

(a) make a withdrawal from the account; or

(b) permit the making of a withdrawal from the account;

except:

(c) in accordance with the written consent of the Inspector-General; or

(d) to recover from the account-holder an amount equal to an amount of tax (however described) that the bank has paid or is liable to pay in connection to the operation of the account; or

(e) to discharge a liability of the account-holder to pay a fee or charge in relation to the operation of the account; or

(f) in such circumstances (if any) as are specified in the regulations.

Duration of freezing notice

(3) An account-freezing notice given to a bank:

(a) comes into force when the notice is given to the bank; and

(b) remains in force for:

(i) 42 days after the show cause time; or

(ii) if a shorter period is specified in the notice—that shorter period.

Extension of 42-day period

(4) The Court may, on application by the Inspector-General, extend, or further extend, the 42-day period referred to in subsection (2) or subparagraph (3)(b)(i).

Revocation of freezing notice

(5) If an account-freezing notice is in force in relation to a bank, the Inspector-General may, by written notice given to the bank, revoke the account-freezing notice.

Copy of account-freezing notice to be given to account-holder etc.

(6) If the Inspector-General gives or revokes an account-freezing notice that relates to an account, the Inspector-General must give a copy of the account-freezing notice or the revocation notice, as the case may be, to the holder of the account.

(7) A failure to comply with subsection (6) does not affect the validity of the account-freezing notice or the revocation notice, as the case may be.

Consent of Inspector-General

(8) A consent under paragraph (2)(c) may be:
  (a) unconditional; or
  (b) subject to such conditions (if any) as are specified in the notice of consent.

(9) If the Inspector-General decides to refuse to give a consent under paragraph (2)(c), an application may be made to the Administrative Appeals Tribunal for review of the decision.

186LC Power of court to set aside account-freezing notices

(1) If the Court, on application by:
  (a) a bank to whom an account-freezing notice has been given; or
  (b) the account-holder whose account is affected by an account-freezing notice; or
  (c) any other interested person;

  is satisfied that the Inspector-General was not authorised to give the notice, the Court may make an order setting aside the notice.

(2) An account-freezing notice that is set aside is taken not to have been given.

186LD Judicial enforcement of account-freezing notices

(1) If the Court is satisfied that a bank has breached, or is proposing to breach, an account-freezing notice, the Court may, on application of the Inspector-General, make any or all of the following orders:
  (a) an order directing the bank to comply with that notice;
  (b) any other order that the Court thinks appropriate.

(2) The Court may discharge or vary an order granted under this section.

186LE Protection of bank

No criminal or civil proceedings lie against a bank because of anything done (or not done) by the bank in good faith:
  (a) in compliance with an account-freezing notice; or
  (b) in connection with, or incidental to, the bank's compliance with an account-freezing notice.

72 After subsection 186N(6)

Insert:

Cancellation by court order of registration as a debt agreement administrator

(6A) A person commits an offence if:
  (a) the person has been given a certificate of registration under subsection 186D(3); and
  (b) the person's registration as a debt agreement administrator is cancelled as a result of an order under section 185ZCA; and
  (c) the person does not return the certificate of registration to the Inspector-General as soon as practicable after the cancellation.

Penalty: 1 penalty unit.

(6B) Subsection (6A) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6A) (see subsection 13.3(3) of the *Criminal Code*).

73 Subsection 186N(7)

Omit “and (5)”, substitute “, (5) and (6A)”.

74 At the end of paragraph 254(1)(a)

Add “or”.

75 After paragraph 254(1)(a)

Insert:

(aa) the administrator of a debt agreement; or

76 At the end of paragraph 254(1)(b)

Add “or”.

77 Subsection 263C(2) (paragraph (c) of the definition of *trustee*)

Repeal the paragraph.

78 Subsection 263C(2) (subparagraphs (a)(ii) and (b)(ii) of the definition of *voting document*)

Omit “, IX”.

79 Paragraph 267(1)(e)

Repeal the paragraph, substitute:

(e) is given to the Official Receiver under:

(i) subsection 185C(2B); or

(ii) subsection 185M(1B); or

(iii) subsection 185P(1B); or

(ea) is given to the Official Receiver under section 185D with a debt agreement proposal; or

80 Application of amendments

The amendments made by this Schedule apply in relation to:

(a) a debt agreement proposal given to the Official Receiver on or after 1 July 2007; and

(b) a debt agreement made as the result of the acceptance of a debt agreement proposal given to the Official Receiver on or after 1 July 2007.

[*Minister's second reading speech made in—*
House of Representatives on 15 February 2007
Senate on 20 March 2007]

(17/07)