





# **Bankruptcy Amendment (Debt Agreement Reform) Act 2018**

**No. 118, 2018**

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

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)



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# Bankruptcy Amendment (Debt Agreement Reform) Act 2018

No. 118, 2018

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

[Assented to 27 September 2018]

The Parliament of Australia enacts:

## **1 Short title**

This Act is the *Bankruptcy Amendment (Debt Agreement Reform) Act 2018*.

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## 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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	27 September 2018
2. Schedule 1, Part 1, Division 1	The day after the end of the period of 9 months beginning on the day this Act receives the Royal Assent.	27 June 2019
3. Schedule 1, Part 1, Division 2	The day after the end of the period of 12 months beginning on the day this Act receives the Royal Assent.	27 September 2019
4. Schedule 1, Parts 2 to 6	The day after the end of the period of 9 months beginning on the day this Act receives the Royal Assent.	27 June 2019
5. Schedule 2, Part 1	The day after the end of the period of 9 months beginning on the day this Act receives the Royal Assent.	27 June 2019
6. Schedule 2, Part 2	Immediately after the commencement of the provisions covered by table item 5.	27 June 2019
7. Schedule 2, Parts 3 to 9	Immediately after the commencement of the provisions covered by table item 4.	27 June 2019
8. Schedule 3, Part 1	The day after the end of the period of 9 months beginning on the day this Act receives the Royal Assent.	27 June 2019
9. Schedule 3, item 15	Immediately after the commencement of the provisions covered by table item 4.	27 June 2019
10. Schedule 3, items 16 to 29	The day after the end of the period of 9 months beginning on the day this Act receives the Royal Assent.	27 June 2019

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
11. Schedules 4 and 5	Immediately after the commencement of the provisions covered by table item 4.	27 June 2019
12. Schedule 6	The day after the end of the period of 9 months beginning on the day this Act receives the Royal Assent.	27 June 2019

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

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

### **3 Schedules**

Legislation 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—Debt agreement proposals**

### **Part 1—Persons who may be authorised to deal with debtor's property**

#### **Division 1—Main amendments**

##### ***Bankruptcy Act 1966***

###### **1 Paragraph 185C(2)(c)**

Omit “being the Official Trustee, a registered trustee or another person”, substitute “being a person who is the Official Trustee, a registered trustee or a registered debt agreement administrator and who is not the debtor”.

###### **2 Subsection 185E(1)**

Repeal the subsection.

###### **3 Paragraph 185E(2)(a)**

After “(2B),”, insert “(2D), (2DA),”.

###### **3A Paragraph 185E(2)(b)**

Repeal the paragraph.

###### **3B Subsections 185E(2A), (2B) and (2C)**

Repeal the subsections.

###### **3C Subsection 185Y(1)**

Omit “(1)”.

###### **3D Subsection 185Y(2)**

Repeal the subsection.

###### **4 Application provision**

The amendments made by this Division apply in relation to debt agreement proposals given to the Official Receiver on or after the commencement of this item.

## **5 Transitional provisions—replacement administrator**

- (1) If, immediately before the end of the period of 3 months beginning on the day this item commences:
- (a) a person is the administrator of a debt agreement; and
  - (b) the person is none of the following:
    - (i) the Official Trustee;
    - (ii) a registered trustee;
    - (iii) a registered debt agreement administrator;
- then:
- (c) on the day after the end of that period, the person ceases to be the administrator of that debt agreement; and
  - (d) on the day after the end of that period, the Official Trustee is taken to become the replacement administrator of that debt agreement, under section 185ZB of the *Bankruptcy Act 1966*; and
  - (e) subsection 185ZB(6) of that Act applies to that replacement.

### *Compensation for acquisition of property*

- (2) If the operation of this item would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (3) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

## **Division 2—Other amendments**

### ***Bankruptcy Act 1966***

#### **6 Subsection 185ZB(4)**

Repeal the subsection.

#### **7 Subsection 185ZB(6)**

Omit “, (4)”.

**Schedule 1** Debt agreement proposals

**Part 1** Persons who may be authorised to deal with debtor's property

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**8 Paragraphs 186A(1)(h) and (3)(e)**

Before “section 186M”, insert “former”.

**9 Subdivision D of Division 8 of Part IX**

Repeal the Subdivision.

**10 Paragraph 186Q(c)**

Omit “186L(7);”, substitute “186L(7).”.

**11 Paragraph 186Q(d)**

Repeal the paragraph.

**12 Saving provision**

Subsections 185ZB(4) and (6) of the *Bankruptcy Act 1966*, as in force immediately before the commencement of this item, continue to apply on and after that commencement in relation to a person who, before that commencement and under section 186M of that Act, became ineligible to act as an administrator of debt agreements.

## **Part 2—Reimbursement of expenses**

### ***Bankruptcy Act 1966***

#### **13 After subsection 185C(3A)**

Insert:

##### *Reimbursement of expenses*

- (3B) A debt agreement proposal may also provide for the proposed administrator to be reimbursed expenses of a kind specified in the proposal that are incurred by the proposed administrator in administering any debt agreement resulting from the acceptance of the proposal.

#### **14 Section 185LA**

Before “The duties”, insert “(1)”.

#### **15 At the end of section 185LA**

Add:

- (2) An administrator of a debt agreement has a duty not to be reimbursed for expenses the administrator incurred in administering the debt agreement unless those expenses are of a kind specified in the relevant debt agreement proposal as mentioned in subsection 185C(3B).

#### **16 Application provisions**

- (1) The amendment of section 185C of the *Bankruptcy Act 1966* made by this Part applies in relation to debt agreement proposals given to the Official Receiver on or after the commencement of this item.
- (2) The amendments of section 185LA of the *Bankruptcy Act 1966* made by this Part apply in relation to debt agreements that come into force on or after the commencement of this item, where the debt agreement proposals were given on or after that commencement.

## **Part 3—Value of debtor's property**

### ***Bankruptcy Act 1966***

#### **17 Paragraph 185C(4)(c)**

After “more than”, insert “twice”.

#### **18 Application provision**

The amendment made by this Part applies in relation to the giving of debt agreement proposals to the Official Receiver on or after the commencement of this item.

## **Part 4—Payment to income ratio**

### ***Bankruptcy Act 1966***

#### **19 Subsection 10(1)**

After “other than”, insert “the power under subsection 185C(4B) and”.

#### **20 At the end of subsection 185C(4)**

Add:

; or (e) if subsection (2AB) does not apply to the debtor—the amount worked out using the following formula (expressed as a percentage) exceeds the percentage determined in an instrument under subsection (4B) (unless subsection (4C) applies to the debtor):

$$\frac{\text{Total of the payments that the debtor would be required to make under the agreement} + \text{Low income debtor amount (see subsection (5))}}{\text{The debtor's after tax income (see subsection (5)) in the year beginning at the proposal time}}$$

#### **21 After subsection 185C(4A)**

Insert:

- (4B) The Minister may, by legislative instrument, determine the following:
- (a) a percentage for the purposes of paragraph (4)(e) (which may exceed 100%);
  - (b) an amount for the purposes of the definition of ***low income debtor amount*** in subsection (5).
- (4C) This subsection applies to the debtor if:
- (a) the amount worked out using the formula under paragraph (4)(e) (expressed as a percentage) exceeds the percentage determined in an instrument under subsection (4B); and
  - (b) the proposed administrator gives to the debtor a certificate signed by the proposed administrator stating that, 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 proposed administrator is satisfied that the debtor is likely to be able to discharge the obligations created by the agreement as and when they fall due.

(4D) A person commits an offence of strict liability if:

(a) the person gives a certificate under paragraph (4C)(b); and

(b) before giving the certificate, the person did not:

(i) make reasonable inquiries about the debtor's financial situation; or

(ii) take reasonable steps to verify the debtor's financial situation.

Note: See also section 277B (about infringement notices).

Penalty: 60 penalty units.

## 21A Subsection 185C(5)

Insert:

*low income debtor amount* means the amount determined in an instrument under subsection (4B) for the purposes of this definition.

## 21B After subsection 185LG(1)

Insert:

(1A) Before a person signs a certificate under paragraph 185C(4C)(b) in relation to a debt agreement proposal, the person must:

(a) make reasonable inquiries about the debtor's financial situation; and

(b) take reasonable steps to verify the debtor's financial situation.

For the purposes of this Act, the requirements set out in paragraphs (a) and (b) are taken to be duties of an administrator in relation to a debt agreement.

**21C Subsection 185LG(2)**

After “subsection 185C(2D)”, insert “or paragraph 185C(4C)(b)”.

**21D Subsection 277B(2) (after table item 5)**

Insert:

6	subsection 185C(4D)	12 penalty units
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**22 Application provision**

The amendments made by this Part apply in relation to the giving of debt agreement proposals to the Official Receiver on or after the commencement of this item.

## **Part 5—Undue hardship to debtor**

### ***Bankruptcy Act 1966***

#### **23 After subsection 185E(2AA)**

Insert:

(2AB) The Official Receiver may refuse to accept a debt agreement proposal for processing if the Official Receiver reasonably believes that complying with the agreement would cause undue hardship to the debtor.

#### **24 Application provision**

The amendment made by this Part applies in relation to debt agreement proposals given to the Official Receiver on or after the commencement of this item.

## **Part 6—Other matters**

### ***Bankruptcy Act 1966***

#### **25 Section 185**

Insert:

*proposed administrator*, in relation to a debt agreement proposal,  
means the person specified under paragraph 185C(2)(c).

#### **26 Subsection 185C(2D)**

Omit “If the person specified under paragraph (2)(c) is not the debtor,  
the”, substitute “The”.

#### **27 Subsection 185C(2D)**

Omit “person to the effect that”, substitute “proposed administrator”.

#### **28 Paragraph 185C(2D)(a)**

Omit “the person consents to being specified under that paragraph”,  
substitute “stating that the proposed administrator consents to being  
specified under paragraph (2)(c)”.

#### **29 Paragraph 185C(2D)(b)**

Omit “the person”, substitute “stating that the proposed administrator”.

#### **30 Paragraph 185C(2D)(c)**

Before “having regard”, insert “if subsection (4C) does not apply to the  
debtor—stating that,”.

#### **31 Paragraph 185C(2D)(c)**

Omit “the person”, substitute “the proposed administrator”.

#### **32 Paragraphs 185C(2D)(d) and (e)**

Omit “the person”, substitute “stating that the proposed administrator”.

#### **33 At the end of subsection 185C(2D)**

Add:

- ; and (f) if a person (the *broker*) referred the debtor to the proposed administrator—setting out details of the relationship between the broker and the proposed administrator and details of any payments made, or to be made, to the broker by the proposed administrator in connection with that referral; and
- (g) if, at the time a person became an affected creditor, the person was a related entity of the proposed administrator—specifying the name of the affected creditor and the nature of the relationship between the affected creditor and the proposed administrator.

**33A After subsection 185C(2D)**

Insert:

- (2DA) If subsection (4C) applies to the debtor, the debt agreement proposal given to the Official Receiver must also be accompanied by the certificate under paragraph (4C)(b).

**34 Subsection 185C(3)**

Omit “person specified under paragraph (2)(c)”, substitute “proposed administrator”.

**35 Subsection 185C(3)**

Omit “that person”, substitute “the proposed administrator”.

**36 Subsection 185C(3A)**

Omit “person specified under paragraph (2)(c)” (wherever occurring), substitute “proposed administrator”.

**37 Subparagraph 185C(3A)(b)(iii)**

Omit “person’s”, substitute “proposed administrator’s”.

**38 At the end of paragraph 185EA(2)(a)**

Add:

- (iii) the certificate under subsection 185C(2D), and any certificate under paragraph 185C(4C)(b), that accompanied the debt agreement proposal; and

**39 At the end of section 185EA**

Add:

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- (4) Paragraphs (2)(b) and (c) do not apply in relation to an affected creditor who:
- (a) is the proposed administrator; or
  - (b) was, on becoming an affected creditor, a related entity of the proposed administrator.

#### **40 After subsection 185EC(1)**

Insert:

- (1A) For the purposes of paragraph (1)(b), disregard an affected creditor who:
- (a) is the proposed administrator; or
  - (b) was, on becoming an affected creditor, a related entity of the proposed administrator.

#### **41 At the end of section 185EC**

Add:

##### *Offence*

- (6) A person commits an offence if:
- (a) the person is the proposed administrator in relation to a debt agreement proposal; and
  - (b) the person gives, or agrees or offers to give, to an affected creditor any valuable consideration; and
  - (c) the person does so with the intention of securing the affected creditor's acceptance or non-acceptance of the proposal.

Penalty for contravention of this subsection: Imprisonment for 6 months.

#### **42 Application provision**

The amendments made by this Part apply in relation to debt agreement proposals given to the Official Receiver on or after the commencement of this item.

## Schedule 2—Debt agreements

### Part 1—Length of debt agreements

#### *Bankruptcy Act 1966*

##### **1 After subsection 185C(2)**

Insert:

(2AA) A debt agreement proposal must not provide for the debtor to make payments under the agreement, in respect of provable debts in relation to the agreement, after:

- (a) 3 years beginning on the day the agreement is made; or
- (b) if subsection (2AB) applies to the debtor—5 years beginning on the day the agreement is made.

Note: Section 185H deals with when a debt agreement is made.

(2AB) This subsection applies to the debtor if at the time the debtor gives the debt agreement proposal to the Official Receiver the debtor has an interest in real property in Australia that is a dwelling and is the debtor's principal place of residence, being an interest:

- (a) that is an interest under a long-term lease; or
- (b) that is any other legal or equitable estate or interest, except:
  - (i) an interest under a lease (other than a long-term lease);  
or
  - (ii) an interest under a licence; or
  - (iii) a life interest; or
  - (iv) an interest in an easement; or
  - (v) an interest held on trust for another person; or
  - (vi) an interest of a kind determined in an instrument under subsection (2AD) for the purposes of this subparagraph.

(2AC) If, in accordance with subsections (2AA) and (2AB), a debt agreement proposal provides for the debtor to make payments under the agreement, in respect of provable debts in relation to the agreement, after 3, but not after 5, years beginning on the day the agreement is made, the property identified under paragraph (2)(a) must not include any interest covered by subsection (2AB).

(2AD) The Minister may, by legislative instrument, determine a kind of interest for the purposes of subparagraph (2AB)(b)(vi).

## **2 Subsection 185C(5)**

Insert:

*lease* includes a sublease.

*long-term lease* means a lease granted by the Commonwealth, a State or a Territory for a term (including any extension or renewal) that is reasonably likely, at the time the lease is granted, to exceed 20 years.

## **3 Paragraph 185E(2)(a)**

After “185C(2),”, insert “(2AA), (2AC),”.

## **3A After subsection 185M(1C)**

Insert:

- (1D) The proposal must not seek to vary the agreement so that the agreement would provide for the debtor to make payments under the agreement, in respect of provable debts in relation to the agreement, after:
- (a) 3 years beginning on the day the agreement was made; or
  - (b) if subsection (1DA) or (1DB) applies—5 years beginning on the day the agreement was made.

Note: Section 185H deals with when a debt agreement is made.

(1DA) This subsection applies if subsection 185C(2AB) applied to the debtor at the time the relevant debt agreement proposal was given to the Official Receiver.

(1DB) This subsection applies if:

- (a) the proposal given to the Official Receiver is accompanied by a certificate signed by the administrator of the agreement stating that the administrator has reasonable grounds to believe:
  - (i) that the debtor has suffered a substantial change in circumstances after the agreement was made that was not foreseen at the time the agreement was made; and

## Schedule 2 Debt agreements

### Part 1 Length of debt agreements

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- (ii) that the debtor is not likely to be able to discharge the obligations created by the agreement as and when they fall due because of that change; and
- (b) the proposal does not increase the total of the payments that the debtor would be required to make under the agreement.

#### 4 Subsection 185M(2)

Omit “and (1B)”, substitute “, (1B) and (1D)”.

#### 5 Application provisions

- (1) The amendments of sections 185C and 185E of the *Bankruptcy Act 1966* made by this Part apply in relation to debt agreement proposals given to the Official Receiver on or after the commencement of this item.
- (2) The amendments of section 185M of the *Bankruptcy Act 1966* made by this Part apply in relation to debt agreements that come into force on or after the commencement of this item, where the debt agreement proposals were given on or after that commencement.

## **Part 2—Proposals to vary debt agreements**

### ***Bankruptcy Act 1966***

#### **6 At the end of section 185LA**

Add:

- (3) If an administrator of a debt agreement signs a certificate under paragraph 185M(1DB)(a) or subsection 185M(1F) in relation to a proposal to vary the agreement, the administrator has a duty to ensure that the certificate is correct.

#### **7 After subsection 185M(1DB)**

Insert:

(1E) If:

- (a) subsection 185C(2AB) did not apply to the debtor at the time (the *proposal time*) the relevant debt agreement proposal was given to the Official Receiver; and
- (b) a person did not give a certificate under paragraph 185C(4C)(b) in relation to the relevant debt agreement proposal;

the proposal under subsection (1) of this section must not seek to vary the agreement so that the amount worked out using the following formula (expressed as a percentage) exceeds the percentage in effect under an instrument under subsection 185C(4B) at the proposal time:

$$\frac{\text{Total of the payments that the debtor would be required to make under the agreement (as proposed to be varied)} + \text{Low income debtor amount (within the meaning of section 185C) at the proposal time}}{\text{The debtor's after tax income (within the meaning of section 185C) in the year beginning at the proposal time}}$$

- (1F) The proposal given to the Official Receiver must be accompanied by a certificate signed by the administrator of the agreement stating that, having regard to:

## Schedule 2 Debt agreements

### Part 2 Proposals to vary debt agreements

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- (a) the circumstances in existence at the time the administrator signs the certificate; and
  - (b) any other relevant matters;
- the administrator has reasonable grounds to believe that the debtor is likely to be able to discharge the obligations created by the agreement (as proposed to be varied) as and when they fall due.

#### **8 Subsection 185M(2)**

Omit “and (1D)”, substitute “, (1D), (1E) and (1F)”.

#### **9 After subsection 185M(2)**

Insert:

- (2A) However, the Official Receiver is not required by subsection (2) to process the proposal if:
- (a) the Official Receiver reasonably believes that complying with the agreement (as proposed to be varied) would cause undue hardship to the debtor; or
  - (b) the Official Receiver thinks that the creditors’ interests would be better served by not processing the proposal.
- (2B) If the Official Receiver decides not to process the proposal because of subsection (2A), the Official Receiver must give written notice of the decision, and the reasons for it, to:
- (a) the debtor; and
  - (b) affected creditors who are known to the Official Receiver.
- (2C) If the Official Receiver decides not to process the proposal because of subsection (2A), the debtor or an affected creditor may apply to the Administrative Appeals Tribunal for review of the decision.

#### **10 At the end of section 185MA**

Add:

- (4) Paragraphs (2)(b) and (c) do not apply in relation to an affected creditor who:
- (a) is the administrator of the debt agreement; or
  - (b) was, on becoming an affected creditor, a related entity of the administrator.

### **11 After subsection 185MC(1)**

Insert:

- (1A) For the purposes of paragraph (1)(b), disregard an affected creditor who:
- (a) is the administrator of the debt agreement; or
  - (b) was, on becoming an affected creditor, a related entity of the administrator.

### **12 At the end of section 185MC**

Add:

*Offence*

- (6) A person commits an offence if:
- (a) the person is the administrator of a debt agreement; and
  - (b) the person gives, or agrees or offers to give, to an affected creditor any valuable consideration; and
  - (c) the person does so with the intention of securing the affected creditor's acceptance or non-acceptance of the proposal to vary the agreement.

Penalty for contravention of this subsection: Imprisonment for 6 months.

### **13 Application provisions**

- (1) The amendment of section 185LA of the *Bankruptcy Act 1966* made by this Part applies in relation to proposals given to the Official Receiver under subsection 185M(1) of that Act on or after the commencement of this item.
- (2) Subsection 185M(1E) of the *Bankruptcy Act 1966*, as inserted by this Part, applies in relation to proposals given to the Official Receiver under subsection 185M(1) of that Act on or after the commencement of this item, where the debt agreement proposals were given under subsection 185C(1) of that Act on or after that commencement.
- (3) Subsections 185M(1F) and (2A) to (2C) of the *Bankruptcy Act 1966*, as inserted by this Part, apply in relation to proposals given to the Official Receiver under subsection 185M(1) of that Act on or after the commencement of this item.

**Schedule 2** Debt agreements

**Part 2** Proposals to vary debt agreements

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- (4) The amendment of section 185MA of the *Bankruptcy Act 1966* made by this Part applies in relation to proposals given to the Official Receiver under subsection 185M(1) of that Act on or after the commencement of this item, where the debt agreement proposals were given under subsection 185C(1) of that Act on or after that commencement.
- (5) Subsection 185MC(1A) of the *Bankruptcy Act 1966*, as inserted by this Part, applies in relation to proposals given to the Official Receiver under subsection 185M(1) of that Act on or after the commencement of this item, where the debt agreement proposals were given under subsection 185C(1) of that Act on or after that commencement.
- (6) Subsection 185MC(6) of the *Bankruptcy Act 1966*, as added by this Part, applies in relation to proposals given to the Official Receiver under subsection 185M(1) of that Act on or after the commencement of this item.

## **Part 3—Proposals to terminate debt agreements**

### ***Bankruptcy Act 1966***

#### **14 At the end of section 185PA**

Add:

- (4) Paragraphs (2)(b) and (c) do not apply in relation to an affected creditor who:
  - (a) is the administrator of the debt agreement; or
  - (b) was, on becoming an affected creditor, a related entity of the administrator.

#### **15 After subsection 185PC(1)**

Insert:

- (1A) For the purposes of paragraph (1)(b), disregard an affected creditor who:
  - (a) is the administrator of the debt agreement; or
  - (b) was, on becoming an affected creditor, a related entity of the administrator.

#### **16 At the end of section 185PC**

Add:

##### *Offence*

- (6) A person commits an offence if:
  - (a) the person is the administrator of a debt agreement; and
  - (b) the person gives, or agrees or offers to give, to an affected creditor any valuable consideration; and
  - (c) the person does so with the intention of securing the affected creditor's acceptance or non-acceptance of the proposal to terminate the agreement.

Penalty for contravention of this subsection: Imprisonment for 6 months.

## **17 Application provisions**

- (1) The amendment of section 185PA of the *Bankruptcy Act 1966* made by this Part applies in relation to proposals given to the Official Receiver under subsection 185P(1) of that Act on or after the commencement of this item, where the debt agreement proposals were given under subsection 185C(1) of that Act on or after that commencement.
- (2) Subsection 185PC(1A) of the *Bankruptcy Act 1966*, as inserted by this Part, applies in relation to proposals given to the Official Receiver under subsection 185P(1) of that Act on or after the commencement of this item, where the debt agreement proposals were given under subsection 185C(1) of that Act on or after that commencement.
- (3) Subsection 185PC(6) of the *Bankruptcy Act 1966*, as added by this Part, applies in relation to proposals given to the Official Receiver under subsection 185P(1) of that Act on or after the commencement of this item.

## **Part 4—Court orders to terminate debt agreements**

### ***Bankruptcy Act 1966***

#### **18 After paragraph 185Q(4)(b)**

Insert:

- (ba) that one of the following applies:
  - (i) the administrator of the agreement has contravened subsection 185EC(6) in relation to the relevant debt agreement proposal;
  - (ii) the administrator of the agreement has contravened subsection 185MC(6) in relation to the agreement, whether or not the proposal to vary the agreement was accepted;
  - (iii) the administrator of the agreement has contravened subsection 185PC(6) in relation to the agreement, where the proposal to terminate the agreement was not accepted; or

## **Part 5—Voiding debt agreements**

### ***Bankruptcy Act 1966***

#### **19 Subsection 185T(2)**

Omit “only if”, substitute “on one or more of the following grounds”.

#### **20 Paragraph 185T(2)(a)**

Omit “or” (last occurring).

#### **21 At the end of subsection 185T(2)**

Add:

- ; (c) an administrator of the debt agreement has committed a breach of duty in relation to the agreement;
- (d) if the administrator of the debt agreement is a registered debt agreement administrator—the administrator has breached a condition determined in an instrument under subsection 186F(4) or 186G(2B);
- (e) if the administrator of the debt agreement is a registered trustee—the administrator has breached a condition imposed under section 20-35 of Schedule 2, to the extent that the condition relates to the administration of debt agreements.

#### **22 Application provision**

The amendments made by this Part apply in relation to debt agreements that come into force on or after the commencement of this item.

## **Part 6—Debt agreement administrators to refer evidence of offences**

### ***Bankruptcy Act 1966***

#### **23 At the end of subsection 185LA(1)**

Add:

- ; and (d) considering whether the debtor has committed an offence against this Act; and
- (e) referring to the Inspector-General or to relevant law enforcement authorities any evidence of an offence by the debtor against this Act.

#### **24 Application provision**

The amendment made by this Part applies in relation to debt agreements that come into force on or after the commencement of this item, where the debt agreement proposals were given on or after that commencement.

## **Part 7—Reporting requirements for debtors in arrears**

### ***Bankruptcy Act 1966***

#### **25 Paragraph 185LB(3)(a)**

After “payments”, insert “(the *due payments*)”.

#### **26 Paragraph 185LB(3)(b)**

Omit “those payments”, substitute “the due payments”.

#### **27 At the end of subsection 185LB(3)**

Add:

; and (c) either:

- (i) the total amount that the debtor was so in arrears exceeds \$300, or 20% of the total of all of the due payments at the beginning of that 3-month period, whichever is higher; or
- (ii) if the total of all of the due payments at the beginning of that 3-month period was \$300 or less—no payment was made in that period to reduce any of the due payments.

#### **28 Application provision**

The amendments made by this Part apply in relation to debt agreements that come into force on or after the commencement of this item.

## **Part 8—Alignment of offences**

### ***Bankruptcy Act 1966***

#### **29 After subsection 185LD(2)**

Insert:

- (2A) The person must not pay any money out of the account otherwise than:
- (a) for purposes related to the administration of debt agreements; or
  - (b) in accordance with this Act; or
  - (c) in accordance with a direction of the Court.

#### **30 After section 185LD**

Insert:

##### **185LDA Offence relating to the trust account**

A person commits an offence of strict liability if:

- (a) the person is subject to a requirement under subsection 185LD(1), (2) or (2A); and
- (b) the person fails to comply with the requirement.

Penalty: 50 penalty units.

#### **31 After subsection 185LE(1)**

Insert:

- (1A) A person commits an offence of strict liability if:
- (a) the person is subject to a requirement under paragraph (1)(a) or (b); and
  - (b) the person fails to comply with the requirement.

Penalty: 5 penalty units.

#### **32 Subsection 277B(2) (after table item 6)**

Insert:

7	subsection 185LE(1A)	1 penalty unit
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### 33 Application provisions

- (1) Subsection 185LD(2A) of the *Bankruptcy Act 1966*, as inserted by this Part, applies in relation to:
  - (a) debt agreements that come into force on or after the commencement of this item; and
  - (b) debt agreements that were in force immediately before that commencement.
- (2) Section 185LDA of the *Bankruptcy Act 1966*, as inserted by this Part, applies in relation to:
  - (a) to the extent that section relates to subsection 185LD(1) or (2) of that Act—money received on or after the commencement of this item; and
  - (b) to the extent that section relates to subsection 185LD(2A) of that Act—money paid out of the account on or after the commencement of this item.
- (3) Subsection 185LE(1A) of the *Bankruptcy Act 1966*, as inserted by this Part, applies in relation to debt agreements that come into force on or after the commencement of this item.

## **Part 9—Time for submitting annual returns**

### ***Bankruptcy Act 1966***

#### **34 Subsection 185LEA(1)**

Omit “35 days”, substitute “25 business days”.

#### **35 Application provision**

The amendment made by this Part applies in relation to financial years ending after the commencement of this item.

## **Schedule 3—Registered debt agreement administrators**

### **Part 1—Applications for registration**

#### ***Bankruptcy Act 1966***

##### **1 Section 185**

Insert:

*adequate and appropriate fidelity insurance* has a meaning affected by section 185A.

*adequate and appropriate professional indemnity insurance* has a meaning affected by section 185A.

##### **2 At the end of Division 1 of Part IX**

Add:

##### **185A Adequate and appropriate professional indemnity and fidelity insurance**

The Inspector-General may, by legislative instrument, determine what constitutes adequate and appropriate professional indemnity insurance, and adequate and appropriate fidelity insurance, in relation to either or both of the following:

- (a) specified circumstances;
- (b) one or more specified classes of registered debt agreement administrators.

##### **2A Subsection 186A(2)**

Omit “Subparagraph (1)(a)(i)”, substitute “Paragraph (1)(a)”.

##### **3 Before subsection 186C(1)**

Insert:

- (1A) For the purposes of considering an application made under section 186B, the Inspector-General must interview the applicant as soon as practicable after receiving the application.

#### **4 Subsection 186C(1)**

Omit “After considering an application made under section 186B, the Inspector-General must, within 60 days of receiving the application”, substitute “Within 45 business days after interviewing the applicant, the Inspector-General must”.

#### **5 Paragraph 186C(2)(e)**

Omit “regulations.”, substitute “regulations; and”.

#### **6 After paragraph 186C(2)(e)**

Insert:

- (f) has produced evidence in writing to the Inspector-General that the applicant has taken out:
  - (i) adequate and appropriate professional indemnity insurance; and
  - (ii) adequate and appropriate fidelity insurance; against the liabilities that the applicant may incur working as a registered debt agreement administrator; and
- (g) is a fit and proper person.

#### **7 Subsection 186C(3)**

Repeal the subsection, substitute:

- (3) If:
  - (a) the applicant is an individual; and
  - (b) the application is by way of renewal;the Inspector-General must approve the application if the Inspector-General is satisfied that the applicant:
  - (c) has produced evidence in writing to the Inspector-General that the applicant maintains:
    - (i) adequate and appropriate professional indemnity insurance; and
    - (ii) adequate and appropriate fidelity insurance; against the liabilities that the applicant may incur working as a registered debt agreement administrator; and
  - (d) does not owe more than the prescribed amount of notified estate charges.

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

Note: For *notified estate charge*, see subsection (5A).

**8 Subsection 186C(4)**

Omit “that the applicant”, substitute “that”.

**9 Paragraph 186C(4)(c)**

Before “passes”, insert “the applicant”.

**10 Paragraph 186C(4)(d)**

Before “has”, insert “the applicant”.

**11 Paragraph 186C(4)(d)**

Omit “agreements.”, substitute “agreements; and”.

**12 After paragraph 186C(4)(d)**

Insert:

- (e) the applicant has produced evidence in writing to the Inspector-General that the applicant has taken out:
  - (i) adequate and appropriate professional indemnity insurance; and
  - (ii) adequate and appropriate fidelity insurance; against the liabilities that the applicant may incur working as a registered debt agreement administrator; and
- (f) the applicant is a fit and proper person; and
- (g) each director of the company is a fit and proper person.

**13 Subsection 186C(5)**

Repeal the subsection, substitute:

- (5) If:
  - (a) the applicant is a company; and
  - (b) the application is by way of renewal;the Inspector-General must approve the application if the Inspector-General is satisfied that:
  - (c) the applicant has produced evidence in writing to the Inspector-General that the applicant maintains:

- (i) adequate and appropriate professional indemnity insurance; and
- (ii) adequate and appropriate fidelity insurance; against the liabilities that the applicant may incur working as a registered debt agreement administrator; and
- (d) the applicant does not owe more than the prescribed amount of notified estate charges.

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

Note: For *notified estate charge*, see subsection (5A).

*When a notified estate charge is owed*

- (5A) A person owes a *notified estate charge* if:
- (a) the person owes either of the following:
    - (i) a charge under the *Bankruptcy (Estate Charges) Act 1997* (the *estate charge*);
    - (ii) a penalty under section 281 (late payment penalty) of this Act in respect of that charge; and
  - (b) the Inspector-General notified the person of the unpaid estate charge at least 1 month and 10 business days before the person's registration as a debt agreement administrator ceases to be in force.

## 14 Application provision

The amendments of section 186C of the *Bankruptcy Act 1966* made by this Part apply in relation to applications made under section 186B of that Act on or after the commencement of this item.

## Part 2—Conditions of registration

### *Bankruptcy Act 1966*

#### **15 Subsection 10(1)**

Omit “the power under subsection 185C(4B)”, substitute “the powers under subsections 185C(4B), 186F(4) and 186G(2B)”.

#### **16 At the end of section 186F**

Add:

- (3) The person’s registration as a debt agreement administrator is subject to the conditions determined in an instrument under subsection (4).
- (4) The Minister may, by legislative instrument, determine conditions for the purposes of subsection (3).

#### **17 After subsection 186G(2)**

Insert:

- (2A) The company’s registration as a debt agreement administrator is subject to the conditions determined in an instrument under subsection (2B).
- (2B) The Minister may, by legislative instrument, determine conditions for the purposes of subsection (2A).

#### **18 Subsection 186G(3)**

Omit “Subsection (2) does”, substitute “Subsections (2) and (2A) do”.

#### **19 After subsection 186H(1)**

Insert:

- (1A) Subsection (1) does not apply in relation to conditions determined in an instrument under subsection 186F(4) or 186G(2B).

#### **20 Application provision**

The amendments of sections 186F and 186G of the *Bankruptcy Act 1966* made by this Part apply in relation to:

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- (a) a person who becomes a registered debt agreement administrator on or after the commencement of this item; and
- (b) a person who is a registered debt agreement administrator immediately before that commencement.

## Part 3—Ongoing obligation to maintain insurance

### *Bankruptcy Act 1966*

#### 21 After Subdivision B of Division 8 of Part IX

Insert:

#### Subdivision BA—Insurance

##### 186HA Registered debt agreement administrator to maintain insurance

- (1) A person who is a registered debt agreement administrator must maintain:
  - (a) adequate and appropriate professional indemnity insurance; and
  - (b) adequate and appropriate fidelity insurance;against the liabilities that the person may incur working as a registered debt agreement administrator.
- (2) A person commits an offence if:
  - (a) the person is subject to a requirement under subsection (1); and
  - (b) the person intentionally or recklessly fails to comply with the requirement.
- (3) A person commits an offence of strict liability if:
  - (a) the person is subject to a requirement under subsection (1); and
  - (b) the person fails to comply with the requirement.

Penalty: 1,000 penalty units.

Penalty for contravention of this subsection: 60 penalty units.

## **22 Application provision**

Section 186HA of the *Bankruptcy Act 1966*, as inserted by this Part, applies in relation to persons who are registered under section 186D of that Act on or after the commencement of this item as a result of applications made under section 186B of that Act on or after that commencement.

## Part 4—Cancellation of registration

### *Bankruptcy Act 1966*

#### **23 At the end of subsection 186K(3)**

Add:

; or (e) the individual has ceased to have:

(i) adequate and appropriate professional indemnity insurance; or

(ii) adequate and appropriate fidelity insurance; against the liabilities that the individual may incur working as a registered debt agreement administrator; or

(f) the individual is not a fit and proper person.

#### **24 At the end of subsection 186L(3)**

Add:

; or (d) the company has ceased to have:

(i) adequate and appropriate professional indemnity insurance; or

(ii) adequate and appropriate fidelity insurance; against the liabilities that the company may incur working as a registered debt agreement administrator; or

(e) the company is not a fit and proper person; or

(f) a director of the company is not a fit and proper person.

#### **25 Application provision**

The amendments of sections 186K and 186L of the *Bankruptcy Act 1966* made by this Part apply in relation to persons who are registered under section 186D of that Act on or after the commencement of this item as a result of applications made under section 186B of that Act on or after that commencement.

## **Part 5—Trust accounts**

### ***Bankruptcy Act 1966***

#### **26 After subsection 186LA(1)**

Insert:

- (1A) This section also 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 reasonably suspects that, in connection with the account, the person has:
    - (i) contravened a provision of this Act; or
    - (ii) failed to properly carry out the duties of an administrator in relation to the debt agreement; or
    - (iii) contravened a condition of the person's registration as a registered debt agreement administrator.

#### **27 Application provision**

The amendment made by this Part applies in relation to debt agreements that come into force on or after the commencement of this item.

## Part 6—Functions of Inspector-General

### *Bankruptcy Act 1966*

#### **28 After paragraph 12(1)(bc)**

Insert:

- (bd) may make such inquiries and investigations as the Inspector-General thinks fit with respect to any conduct of a registered debt agreement administrator (including conduct engaged in before a debt agreement proposal, specifying the administrator under paragraph 185C(2)(c), is given to the Official Receiver), except conduct covered by paragraph (bb) or (bc); and

#### **29 Application provision**

The amendment made by this Part applies in relation to conduct engaged in on or after the commencement of this item, whether the registered debt agreement administrator was registered before, on or after that commencement.

## **Schedule 4—Registered trustees**

### ***Bankruptcy Act 1966***

#### **1 Subsection 10(1)**

Omit “and this power of delegation”, substitute “, the power under subsection 105-1(1) of Schedule 2 and this power of delegation”.

#### **2 At the end of section 20-35 of Schedule 2**

Add:

- (3) Without limiting subsection (1), conditions may be imposed relating to the administration of debt agreements by trustees.

#### **3 Subsection 105-1(6) of Schedule 2**

Repeal the subsection.

#### **4 Application provision**

The amendment of section 20-35 of Schedule 2 to the *Bankruptcy Act 1966* made by this Schedule applies in relation to:

- (a) a person who becomes a registered trustee on or after the commencement of this item; and
- (b) a person who is a registered trustee immediately before that commencement.

## Schedule 5—Unclaimed money

### *Bankruptcy Act 1966*

#### **1 Subsection 153A(5)**

Omit “254(3) and (4)”, substitute “254(3) to (9)”.

#### **2 Subsection 252A(5)**

Omit “254(3) and (4)”, substitute “254(3) to (9)”.

#### **3 Paragraph 254(2)(a)**

After “months”, insert “, in circumstances where the trustee has identified the person entitled to the dividends or other moneys but has been unable to locate the person after making all reasonable efforts to do so”.

#### **4 Subsections 254(3) and (4)**

Repeal the subsections, substitute:

##### *Application for entitlement determination*

- (3) A person who claims to be entitled to any moneys that have been paid to the Commonwealth under subsection (2) or (2A) may make an application, in the approved form, to the Official Receiver for a determination that the person is so entitled.

##### *Official Receiver satisfied person entitled to moneys*

- (4) If a person makes an application in accordance with subsection (3) and the Official Receiver is satisfied that the person is entitled to those moneys or a part of those moneys, the Official Receiver must:
- (a) make a written determination to that effect; and
  - (b) specify in the determination the amount to which the person is so entitled; and
  - (c) give the person notice of the determination.
- (5) The Commonwealth must pay to the person an amount equal to the amount referred to in paragraph (4)(b). That amount is a repayment

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for the purposes of section 77 of the *Public Governance, Performance and Accountability Act 2013*.

*Official Receiver not satisfied person entitled to moneys*

- (6) If a person makes an application in accordance with subsection (3) and the Official Receiver is not satisfied as mentioned in subsection (4), the Official Receiver must:
- (a) make a written determination to that effect; and
  - (b) give the person notice of the determination.

*Review by the Court*

- (7) The person may apply to the Court for review of a determination under subsection (4) or (6).
- (8) After reviewing the determination, the Court must:
- (a) affirm the determination; or
  - (b) vary the determination; or
  - (c) set aside the determination and substitute another determination.

*Official Receiver's determination not a legislative instrument*

- (9) A determination under subsection (4) or (6) is not a legislative instrument.

## **5 Application and saving provisions**

- (1) A person may make an application under subsection 254(3) of the *Bankruptcy Act 1966*, as substituted by this Schedule, in relation to:
- (a) moneys paid to the Commonwealth under subsection 254(2) or (2A) of that Act on or after the commencement of this item; or
  - (b) moneys paid to the Commonwealth under subsection 254(2) or (2A) of that Act before the commencement of this item, where the person had not made an application under subsection 254(3) of that Act before that commencement.
- (2) Subsections 254(3) and (4) of the *Bankruptcy Act 1966*, as in force immediately before the commencement of this item, continue to apply on and after that commencement in relation to moneys paid to the

**Schedule 5** Unclaimed money

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Commonwealth under subsection 254(2) or (2A) of that Act before that commencement, where a person had made an application under subsection 254(3) of that Act before that commencement.

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## **Schedule 6—Other amendments**

### ***Bankruptcy Act 1966***

#### **1 Section 60-21 of Schedule 2**

Repeal the section, substitute:

#### **60-21 Inducements to be appointed as trustee**

A person (the *first person*) commits an offence if:

- (a) the first person gives, or agrees or offers to give, to another person any valuable consideration; and
- (b) the first person does so with the intention of:
  - (i) securing the first person's appointment or nomination as a trustee of a regulated debtor's estate; or
  - (ii) securing or preventing the appointment or nomination of a third person as a trustee of a regulated debtor's estate.

Penalty: Imprisonment for 6 months.

#### **2 Application provision**

The amendment made by item 1 applies in relation to conduct engaged in on or after the commencement of that item.

### ***Bankruptcy (Estate Charges) Act 1997***

#### **3 Subsection 6(1B)**

Repeal the subsection.

#### **4 Saving provision**

Despite the repeal of subsection 6(1B) of the *Bankruptcy (Estate Charges) Act 1997* made by this Schedule, that subsection, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to the following:

- (a) debt agreements that were in force immediately before that commencement;

- (b) debt agreements that come into force on or after that commencement, where the debt agreement proposals were given before that commencement.
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*[Minister's second reading speech made in—  
House of Representatives on 14 February 2018  
Senate on 19 March 2018]*

(25/18)

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