

EXPLANATORY STATEMENT

BANKRUPTCY ACT 1966

GUIDELINES RELATING TO THE REGISTRATION AND CANCELLATION OF REGISTRATION OF A DEBT AGREEMENT ADMINISTRATOR

Introduction

The *Bankruptcy Amendment (Debt Agreement Reform) Act 2018* (the Debt Agreement Reform Act) effected a comprehensive reform of Australia's debt agreement system. Debt agreements are an increasingly popular alternative to bankruptcy. As a result, the commercial debt agreement administrator industry now performs a significant financial advising function, including in relation to people in financially vulnerable circumstances. The measures contained in the Debt Agreement Reform Act are intended to boost confidence in the professionalism of administrators, deter unscrupulous practices, enhance transparency between the administrator and stakeholders, and ensure that the debt agreement system is accessible and equitable.

Amendments in the Debt Agreement Reform Act make provision for:

- the types of practitioners authorised to be debt agreement administrators (including making registration as an administrator mandatory)
- registration requirements, deregistration and the obligations of debt agreement administrators
- formation, administration, variation and termination of debt agreements
- protections against debt agreements that cause financial hardship or have other defects, and
- powers of the Inspector-General in Bankruptcy (Inspector-General) with respect to debt agreements and debt agreement administrators.

The majority of the amendments contained in the Debt Agreement Reform Act commence on 27 June 2019.

Background

Section 186Q of the *Bankruptcy Act 1966* (the Act) provides that the Inspector-General may, by legislative instrument, formulate guidelines for the purposes of:

- (a) subsection 186C(6) of the Act, which deals with the registration of a company or an individual to act as a debt agreement administrator;
- (b) subsection 186K(7) of the Act, which deals with the cancellation of an individual's registration to act as a debt agreement administrator; and
- (c) subsection 186L(7) of the Act, which deals with the cancellation of a company's registration to act as a debt agreement administrator.

The guidelines made pursuant to section 186Q of the Act (the Guidelines Relating to the Registration and Cancellation of a Registered Debt Agreement Administrator and Ineligibility of an Unregistered Debt Agreement Administrator- the Repealed Guidelines) require amendment to incorporate the changes contained in the Debt Agreement Reform Act. Consistent with the Repealed Guidelines, the purpose of the new amended guidelines made pursuant to section 186Q (the Guidelines Relating to the Registration and Cancellation of Registration of a Debt Agreement Administrator- the Guidelines) is to set out the considerations that the Inspector-General will take into account in making decisions on the registration and cancellation of registration of a debt agreement administrator. In this way, the Guidelines ensure the continued transparency of the Inspector-General's decision making with respect to these matters.

Authority

These Guidelines have been made for the purposes of section 186Q of the Act.

Consultation

The Guidelines were subject to an external consultation process with stakeholders through the AFSAsandpit website. This is a website where the Australian Financial Security Authority (AFSA) can receive feedback on services and test new ideas with the public.

The Guidelines were on the AFSAsandpit from Thursday 18 April to Monday 6 May 2019. An email notification was sent out to stakeholders to inform them that the Guidelines were available for feedback. AFSA did not receive any feedback in relation to the Guidelines as a result of this process.

Further, consultation has taken place on all of the changes in the Debt Agreement Reform Act since those reforms were first proposed in 2011.

- In 2011 the Attorney-General's Department (AGD) publicly sought submissions on an Options Paper on reform of the debt agreement system. The Options Paper described several underlying issues and proposed different options for addressing these issues.
- In 2012 AGD publicly sought submissions on a Proposals Paper on reform of the debt agreement system. The Proposals Paper identified proposals to reform the debt agreement regime, and accounts for submissions made on the Options Paper.
- In 2015 AFSA undertook targeted consultation on reform measures contained in the Proposals Paper and sought stakeholder ideas on new policy proposals.
- In 2017, AGD and AFSA undertook targeted stakeholder consultation on debt agreement reform proposals.

- In 2018, the Senate Committee Standing Committee on Legal and Constitutional Affairs sought public submissions on the Bankruptcy Amendment (Debt Agreement Reform) Bill 2018.

Regulation Impact Statement

The Office of Best Practice Regulation assessed the Guidelines as machinery in nature because the amendments are required to support the reforms in the Debt Agreement Reform Act. As this proposal will not be considered by Cabinet, a Regulation Impact Statement does not need to be prepared (ID 25251).

Statement of Compatibility with Human Rights

The Guidelines are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility with Human Rights is set out in **Attachment A**.

Commencement

The Guidelines commence on 27 June 2019.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Guidelines Relating To the Registration and Cancellation of Registration of a Debt Agreement Administrator

These Guidelines are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Guidelines

These Guidelines provide information on the factors that will be considered by the Inspector-General in deciding whether to approve an application for registration as a debt agreement administrator and whether to cancel an existing registration on a voluntary or involuntary basis under the *Bankruptcy Act 1966* (the Act). They incorporate changes contained in the *Bankruptcy Amendment (Debt Agreement Reform) Act 2018* (the Debt Agreement Reform Act). The majority of the changes contained in the Debt Agreement Reform Act commence on 27 June 2019.

The Guidelines ensure the continued transparency of the Inspector-General's decision making with respect to these matters.

The Debt Agreement Reform Act effected a comprehensive reform of Australia's debt agreement system. Debt agreements are an increasingly popular alternative to bankruptcy. As a result, the commercial debt agreement administrator industry now performs a significant financial advising function, including in relation to people in financially vulnerable circumstances. The measures contained in the Debt Agreement Reform Act are intended to boost confidence in the professionalism of administrators, deter unscrupulous practices, enhance transparency between the administrator and stakeholders, and ensure that the debt agreement system is accessible and equitable.

Human rights implications

These Guidelines do not engage any of the applicable rights or freedoms.

Conclusion

These Guidelines are compatible with human rights as they do not raise any human rights issues.