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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Bankruptcy Legislation Amendment
(Debt Agreements) Bill 2007**

No. , 2007

(Attorney-General)

**A Bill for an Act to amend the *Bankruptcy Act 1966*,
and for other purposes**

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1 **A Bill for an Act to amend the *Bankruptcy Act 1966*,**
2 **and for other purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

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

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

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.	
2. Schedule 1	The day after this Act receives the Royal Assent.	
3. Schedule 2	1 July 2007.	1 July 2007

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

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

7 **3 Schedule(s)**

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9 repealed as set out in the applicable items in the Schedule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

1
2 **Schedule 1—Amendments commencing on**
3 **the day after Royal Assent**
4

5 ***Bankruptcy Act 1966***

6 **1 Subsection 5(1) (definition of *approved form*)**

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

8 **2 Subsection 12(1A)**

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

11 **3 Subsection 12(1A)**

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

14 **4 Subsections 12(1BA) and (1B)**

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

16 **5 After subsection 12(1C)**

17 Insert:

18 (1D) For the purposes of paragraph (1)(bb), any conduct engaged in by
19 the administrator of a debt agreement:

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

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

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

26 **6 At the end of subsection 12(2)**

27 Add:

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

- 1 (e) require the administrator, or former administrator, of a debt
2 agreement to answer an inquiry made of the administrator or
3 former administrator, as the case may be, in relation to the
4 administration of the debt agreement; and
5 (f) at any time investigate the books of the administrator, or
6 former administrator, of a debt agreement.

7 **7 After subsection 20B(7)**

8 Insert:

- 9 (7A) Any payment that the Official Trustee is authorised, required or
10 permitted to make under:
11 (a) a debt agreement; or
12 (b) a personal insolvency agreement;
13 is to be made out of money in the Common Fund.

14 **8 At the end of paragraph 155A(2)(e)**

15 Add:

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

18 **9 At the end of subsection 155A(2)**

19 Add:

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

25 **10 At the end of paragraph 155A(4)(d)**

26 Add:

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

29 **11 At the end of subsection 155A(4)**

30 Add:

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

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

3 **12 After paragraph 155H(1)(f)**

4 Insert:

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

8 **13 Subsection 185(1)**

9 Insert:

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

11 **14 Subsection 185(1)**

12 Insert:

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

- 15 (a) debt agreement proposals for which the company is to be the
16 administrator; and
17 (b) debt agreements for which the company is the administrator.

18 **15 Subsection 185(1)**

19 Insert:

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

22 **16 Subsection 185(1)**

23 Insert:

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

26 **17 Subsection 185(1)**

27 Insert:

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

1 **18 Division 7 of Part IX (heading)**

2 Repeal the heading, substitute:

3 **Division 7—General provisions relating to debt agreements**

4 **19 At the end of Part IX**

5 Add:

6 **Division 8—Registration of debt agreement administrators**
7 **etc.**

8 **Subdivision A—Introduction**

9 **186A Basic eligibility test**

10 *Individuals*

- 11 (1) For the purposes of this Division, an individual *passes the basic*
12 *eligibility test* at a particular time (the *test time*) unless:
- 13 (a) at any time during the 10-year period ending at the test time,
14 the individual was:
 - 15 (i) an insolvent under administration; or
 - 16 (ii) a party (as a debtor) to a debt agreement; or
 - 17 (b) at any time during the 10-year period ending at the test time,
18 the individual was convicted of an offence involving fraud or
19 dishonesty; or
 - 20 (c) at the test time, the individual is disqualified from managing
21 corporations under Part 2D.6 of the *Corporations Act 2001*;
22 or
 - 23 (d) at any time during the 10-year period ending at the test time,
24 the individual's registration as a liquidator was cancelled
25 under subsection 1292(2) or (3) of the *Corporations Act*
26 *2001*; or
 - 27 (e) at any time during the 10-year period ending at the test time,
28 the individual's registration as a trustee ceased under
29 section 155I for a reason specified in paragraph 155H(1)(a),
30 (aa), (b), (e), (f), (fa) or (g); or
 - 31 (f) at any time during the 10-year period ending at the test time,
32 the individual's registration as a debt agreement

- 1 administrator was cancelled under section 186K on the
2 ground that:
- 3 (i) the individual contravened a condition that applied in
4 relation to that registration; or
 - 5 (ii) the individual failed to properly carry out the duties of
6 an administrator in relation to a debt agreement; or
 - 7 (g) at any time during the 10-year period ending at the test time,
8 the individual's registration as a debt agreement
9 administrator was cancelled as a result of an order under
10 section 185ZCA; or
 - 11 (h) at any time during the 10-year period ending at the test time,
12 a declaration was made under section 186M in relation to the
13 individual; or
 - 14 (i) at any time during the 10-year period ending at the test time,
15 a determination in relation to the individual was made under
16 subregulation 9.06(3) of the *Bankruptcy Regulations 1996* as
17 in force before the commencement of this section.
- 18 (2) Subparagraph (1)(a)(i) does not apply in relation to a bankruptcy
19 that has been annulled under section 153B.

20 *Companies*

- 21 (3) For the purposes of this Division, a company *passes the basic*
22 *eligibility test* at a particular time (the *test time*) unless:
- 23 (a) at any time during the 10-year period ending at the test time,
24 the company was an externally-administered body corporate;
25 or
 - 26 (b) at any time during the 10-year period ending at the test time,
27 the company was convicted of an offence involving fraud or
28 dishonesty; or
 - 29 (c) at any time during the 10-year period ending at the test time,
30 the company's registration as a debt agreement administrator
31 was cancelled under section 186L on the ground that:
 - 32 (i) the company contravened a condition that applied in
33 relation to that registration; or
 - 34 (ii) the company failed to properly carry out the duties of an
35 administrator in relation to a debt agreement; or
 - 36 (d) at any time during the 10-year period ending at the test time,
37 the company's registration as a debt agreement administrator

- 1 was cancelled as a result of an order under section 185ZCA;
2 or
3 (e) at any time during the 10-year period ending at the test time,
4 a declaration was made under section 186M in relation to the
5 company; or
6 (f) at the test time, a director of the company does not pass the
7 basic eligibility test; or
8 (g) at any time during the 10-year period ending at the test time,
9 a determination in relation to the company was made under
10 subregulation 9.06(3) of the *Bankruptcy Regulations 1996* as
11 in force before the commencement of this section.

12 **Subdivision B—Registration of debt agreement administrators**

13 **186B Application for registration as a debt agreement administrator**

- 14 (1) An individual or company may apply to the Inspector-General to
15 be registered as a debt agreement administrator.
- 16 (2) The application must:
- 17 (a) be in the approved form; and
18 (b) be accompanied by such information and documents (if any)
19 as are specified in the regulations; and
20 (c) if the application is not by way of renewal—be accompanied
21 by the fee determined by the Minister by legislative
22 instrument; and
23 (d) if the application is by way of renewal—be made before the
24 expiry of the applicant’s existing registration as a debt
25 agreement administrator.

26 **186C Inspector-General must approve or refuse to approve 27 registration application**

- 28 (1) After considering an application made under section 186B, the
29 Inspector-General must, within 60 days of receiving the
30 application:
- 31 (a) approve the application; or
32 (b) refuse to approve the application.

1 *Approval of application made by an individual*

2 (2) If:

3 (a) the applicant is an individual; and

4 (b) the application is not by way of renewal;

5 the Inspector-General must approve the application if the
6 Inspector-General is satisfied that the applicant:

7 (c) passes the basic eligibility test; and

8 (d) has the ability (including the knowledge) to satisfactorily
9 perform the duties of an administrator in relation to debt
10 agreements; and

11 (e) has such qualifications and experience (if any) as are
12 prescribed by the regulations.

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

15 (3) If:

16 (a) the applicant is an individual; and

17 (b) the application is by way of renewal;

18 the Inspector-General must approve the application.

19 *Approval of application made by a company*

20 (4) If:

21 (a) the applicant is a company; and

22 (b) the application is not by way of renewal;

23 the Inspector-General must approve the application if the
24 Inspector-General is satisfied that the applicant:

25 (c) passes the basic eligibility test; and

26 (d) has the ability to satisfactorily perform the duties of an
27 administrator in relation to debt agreements.

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

30 (5) If:

31 (a) the applicant is a company; and

32 (b) the application is by way of renewal;

33 the Inspector-General must approve the application.

1 *Guidelines*

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

5 *Notice of decision*

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

9 *Review*

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

13 *Conditions of registration*

- 14 (9) If the Inspector-General approves an application under
15 section 186B, the Inspector-General may decide that, if the
16 applicant is registered as a debt agreement administrator under
17 section 186D, the applicant's registration as a debt agreement
18 administrator is subject to specified conditions.
- 19 (10) If the Inspector-General makes a decision under subsection (9), the
20 Inspector-General must give the applicant a written notice of the
21 decision and the reasons for it.
- 22 (11) If the Inspector-General makes a decision under subsection (9), the
23 applicant may apply to the Administrative Appeals Tribunal for
24 review of the decision.

- 25 (12) In subsection (11):

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

28 **186D Registration as a debt agreement administrator**

- 29 (1) This section applies if:
30 (a) the Inspector-General approves an application under
31 section 186C; and

- 1 (b) the applicant has paid the fee determined by the Minister by
2 legislative instrument.
- 3 (2) The Inspector-General must register the applicant as a debt
4 agreement administrator by entering on the National Personal
5 Insolvency Index the details relating to the applicant that are
6 prescribed by the regulations.
- 7 (3) After registering the applicant as a debt agreement administrator,
8 the Inspector-General must give the applicant a certificate of
9 registration.

10 **186E Duration of registration as a debt agreement administrator**

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

- 14 (a) if the registration is not by way of renewal—3 years
15 beginning when the person’s details are entered on the
16 National Personal Insolvency Index; or
17 (b) if the registration is by way of renewal—3 years beginning
18 immediately after the person’s existing registration as a debt
19 agreement administrator expires.

20 **186F Conditions of registration—general**

- 21 (1) This section applies to a person if the person is a registered debt
22 agreement administrator.
- 23 (2) The Inspector-General may, by written notice given to the person,
24 impose specified conditions on the person’s registration as a debt
25 agreement administrator.

26 **186G Condition of registration—companies**

- 27 (1) This section applies to a company if the company is a registered
28 debt agreement administrator.
- 29 (2) It is a condition of the company’s registration as a debt agreement
30 administrator that each individual who takes overall responsibility
31 for managing the company’s debt agreement activities must be:
32 (a) a registered debt agreement administrator; or
33 (b) a registered trustee.

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

2 **186H Application to change or remove registration conditions**

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

6 (2) The application must:

7 (a) be in the approved form; and

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

10 (3) After considering an application made under subsection (1), the
11 Inspector-General must:

12 (a) decide that the conditions on the applicant's registration as a
13 debt agreement administrator should not be changed or
14 removed; or

15 (b) decide that specified modifications should be made to the
16 conditions imposed on the applicant's registration as a debt
17 agreement administrator.

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

19 *Notice of decision*

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

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

29 *Review*

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

33 (7) In subsection (6):

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

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

5 **186J Surrender of registration as a debt agreement administrator**

- 6 (1) This section applies to a person if the person is a registered debt
7 agreement administrator.
- 8 (2) The person may, by written notice given to the Inspector-General,
9 request the Inspector-General to accept the surrender of the
10 person's registration as a debt agreement administrator.
- 11 (3) A request under subsection (2) must be in the approved form.
- 12 (4) The person ceases to be registered as a debt agreement
13 administrator when the Inspector-General accepts the request.
- 14 (5) If the Inspector-General accepts a request given under
15 subsection (2), the Inspector-General must remove the person's
16 registration details from the National Personal Insolvency Index.

17 **186K Cancellation of an individual's registration as a debt**
18 **agreement administrator**

19 *Scope*

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

22 *Individual no longer passes the basic eligibility test*

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

26 *Other grounds for cancellation of registration*

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

- 1 (a) the individual no longer has the ability (including the
2 knowledge) to satisfactorily perform the duties of an
3 administrator in relation to a debt agreement; or
4 (b) the individual has failed to properly carry out the duties of an
5 administrator in relation to a debt agreement; or
6 (c) the individual no longer has the qualifications or experience
7 prescribed by regulations made for the purposes of paragraph
8 186C(2)(e); or
9 (d) the individual has contravened a condition of the individual's
10 registration.

- 11 (4) If:
12 (a) the Inspector-General does not receive an explanation within
13 28 days of requesting it; or
14 (b) receives an explanation, but is not satisfied with it;
15 the Inspector-General may cancel the individual's registration as a
16 debt agreement administrator.

17 *Notice of cancellation*

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

22 *Removal of registration details*

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

27 *Guidelines*

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

32 *Review*

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

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

3 **186L Cancellation of a company's registration as a debt agreement**
4 **administrator**

5 *Scope*

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

8 *Company no longer passes the basic eligibility test*

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

12 *Other grounds for cancellation of registration*

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

- 17 (a) the company no longer has the ability to satisfactorily
18 perform the duties of an administrator in relation to a debt
19 agreement; or
20 (b) the company has failed to properly carry out the duties of an
21 administrator in relation to a debt agreement; or
22 (c) the company has contravened a condition of the company's
23 registration.

24 (4) If:

- 25 (a) the Inspector-General does not receive an explanation within
26 28 days of requesting it; or
27 (b) receives an explanation, but is not satisfied with it;
28 the Inspector-General may cancel the company's registration as a
29 debt agreement administrator.

30 *Notice of cancellation*

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

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

3 *Removal of registration details*

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

8 *Guidelines*

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

13 *Review*

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

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

20 **186M Inspector-General may declare a person ineligible to act as an**
21 **administrator**

- 22 (1) This section applies to a person if:
23 (a) the person is or was the administrator of a debt agreement;
24 and
25 (b) the person is not:
26 (i) a registered debt agreement administrator; or
27 (ii) a registered trustee.
- 28 (2) The Inspector-General may ask the person to give the
29 Inspector-General a written explanation why the person should
30 continue to be eligible to act as an administrator of debt
31 agreements, if the Inspector-General has reasonable grounds to

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

3 (3) If:

4 (a) the Inspector-General does not receive an explanation within
5 28 days of requesting it; or

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

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

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

12 *Guidelines*

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

16 *Review*

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

20 **Subdivision E—Miscellaneous**

21 **186N Return of certificate of registration**

22 *Surrender of registration as a debt agreement administrator*

23 (1) A person commits an offence if:

24 (a) the person has been given a certificate of registration under
25 subsection 186D(3); and

26 (b) the person gives a notice under subsection 186J(2)
27 surrendering the person's registration as a debt agreement
28 administrator; and

29 (c) the person does not return the certificate of registration to the
30 Inspector-General as soon as practicable after the
31 Inspector-General accepts the notice.

32 Penalty: 1 penalty unit.

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

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

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

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

16 Penalty: 1 penalty unit.

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

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

21 *Cancellation of a company's registration as a debt agreement*
22 *administrator*

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

32 Penalty: 1 penalty unit.

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

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

3 *Strict liability*

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

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

6 **186P Cessation of registration as a debt agreement administrator—**
7 **no refund of fees**

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

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

13 **186Q Guidelines relating to Inspector-General's powers**

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

16 (a) subsection 186C(6);

17 (b) subsection 186K(7);

18 (c) subsection 186L(7);

19 (d) subsection 186M(5).

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

22 **20 Paragraph 316(1)(a)**

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

25 **21 Transitional—approval of form**

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

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

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

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

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

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

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

11 **23 Transitional—sections 186C, 186K and 186L of the**
12 ***Bankruptcy Act 1966***

13 Before 1 July 2007, paragraphs 186C(2)(d) and (4)(d), 186K(3)(a) and
14 186L(3)(a) of the *Bankruptcy Act 1966* have effect as if the
15 amendments made by Schedule 2 to this Act, to the extent to which they
16 relate to a duty of an administrator in relation to a debt agreement, had
17 commenced at the same time as this item commences.

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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.

1 **5 Division 1 of Part IX (heading)**

2 Repeal the heading, substitute:

3 **Division 1—Introduction**

4 **6 Subsection 185(1)**

5 Omit “(1)”.

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

7 **7 Subsection 185(1)**

8 Insert:

9 *account-freezing notice* means a notice under subsection
10 186LB(2).

11 **8 Subsection 185(1)**

12 Insert:

13 *applicable deadline:*

- 14 (a) in relation to a debt agreement proposal, means:
- 15 (i) if Official Receiver accepted the proposal for processing
16 in December—the end of the 42nd day after the
17 acceptance; or
- 18 (ii) otherwise—the end of the 35th day after the Official
19 Receiver accepted the proposal for processing; or
- 20 (b) in relation to a proposal to vary a debt agreement, means:
- 21 (i) if the proposal was given to the Official Receiver in
22 December—the end of the 42nd day after the proposal
23 was given; or
- 24 (ii) otherwise—the end of the 35th day after the proposal
25 was given to the Official Receiver; or
- 26 (c) in relation to a proposal to terminate a debt agreement,
27 means:
- 28 (i) if the proposal was given to the Official Receiver in
29 December—the end of the 21st day after the proposal
30 was given; or
- 31 (ii) otherwise—the end of the 14th day after the proposal
32 was given to the Official Receiver.

1 **9 Subsection 185(1)**

2 Insert:

3 *bank* means an ADI or any other bank.

4 **10 Subsection 185(1) (definition of *debtor*)**

5 Repeal the definition.

6 **11 Subsection 185(1)**

7 Insert:

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

10 **12 Subsection 185(1) (paragraph (b) of the definition of**
11 ***frozen debt*)**

12 Repeal the paragraph, substitute:

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

15 **13 Subsection 185(1) (definition of *provable debt*)**

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

18 **14 Subsection 185(1)**

19 Insert:

20 *working day* means a day that is not:

21 (a) a Saturday or a Sunday; or

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

23 **15 Subsections 185(2) and (3)**

24 Repeal the subsections.

25 **16 Sections 185A and 185B**

26 Repeal the sections.

27 **17 Subsection 185C(1)**

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

1 **18 Before paragraph 185C(2)(a)**

2 Insert:

3 (aa) be in the approved form; and

4 **19 At the end of subsection 185C(2)**

5 Add:

6 ; and (d) provide that:

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

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

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

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

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

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

32 (i) be signed by the debtor; and

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

34 **20 After subsection 185C(2)**

35 Add:

36 (2A) A debt agreement proposal must not provide for the transfer of
37 property (other than money) to a creditor.

- 1 (2B) A debt agreement proposal given to the Official Receiver must be
2 accompanied by an explanatory statement in the approved form
3 containing such information as the form requires.
- 4 (2C) The debtor's subsection (2B) statement may be set out in the same
5 document as the debtor's debt agreement proposal.
- 6 (2D) If the person specified under paragraph (2)(c) is not the debtor, the
7 debt agreement proposal given to the Official Receiver must be
8 accompanied by a certificate signed by the person to the effect that:
9 (a) the person consents to being specified under that paragraph;
10 and
11 (b) the person has given the debtor the information prescribed by
12 the regulations; and
13 (c) having regard to:
14 (i) the circumstances in existence at the time when the
15 debtor's statement of affairs was signed by the debtor;
16 and
17 (ii) any other relevant matters;
18 the person has reasonable grounds to believe that the debtor
19 is likely to be able to discharge the obligations created by the
20 agreement as and when they fall due; and
21 (d) the person has reasonable grounds to believe that all
22 information required to be set out in the debtor's statement of
23 affairs has been set out in that statement; and
24 (e) the person has reasonable grounds to believe that all
25 information required to be set out in the debtor's
26 subsection (2B) statement has been set out in that statement.
- 27 (2E) A debt agreement proposal must not be given jointly by 2 or more
28 debtors.
- 29 (2F) If a debt agreement proposal is expressed to be subject to the
30 occurrence of a specified event within a specified period after the
31 debt agreement proposal is accepted, the specified period must not
32 be longer than 7 days.

33 **21 After subsection 185C(3)**

34 Insert:

1 *Remuneration of administrator*

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

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

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

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

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

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

24 **22 After subsection 185C(4)**

25 Insert:

26 (4A) Subparagraph (4)(a)(i) does not apply in relation to a bankruptcy
27 that has been annulled under section 153B.

28 **23 Subsection 185D(2)**

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

30 **24 At the end of section 185D**

31 Add:

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

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

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

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

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

10 **25 Subsection 185E(1)**

11 Repeal the subsection, substitute:

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

16 **26 Subsection 185E(2)**

17 Repeal the subsection, substitute:

18 (2) If a debtor gives the Official Receiver a debt agreement proposal,
19 the Official Receiver may accept the proposal for processing if:
20 (a) the Official Receiver is satisfied that subsections 185C(2),
21 (2A), (2B), (2E) and (4) have been complied with; and
22 (b) if the person specified under paragraph 185C(2)(c) is not the
23 debtor—the Official Receiver is satisfied that subsection
24 185C(2D) has been complied with; and
25 (c) if the debt agreement proposal is expressed to be subject to
26 the occurrence of a specified event within a specified period
27 after the debt agreement proposal is accepted—the Official
28 Receiver is satisfied that subsection 185C(2F) has been
29 complied with; and
30 (d) if the proposal provides for the remuneration of the person
31 specified under paragraph 185C(2)(c)—the Official Receiver
32 is satisfied that subsection 185C(3A) has been complied
33 with; and
34 (e) the Official Receiver is satisfied that the statement of affairs
35 accompanying the proposal is in order.

1 **27 After subsection 185E(2)**

2 Insert:

3 (2AA) The Official Receiver must not accept a debt agreement proposal
4 for processing unless the proposal was given to the Official
5 Receiver within 14 days after the day on which the debtor signed
6 the proposal.

7 **28 Subsection 185E(2A)**

8 Repeal the subsection, substitute:

9 (2A) If the person specified under paragraph 185C(2)(c) is not:

10 (a) a registered debt agreement administrator; or

11 (b) a registered trustee;

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

15 **29 After subsection 185E(2A)**

16 Insert:

17 (2B) If the person specified under paragraph 185C(2)(c) is not the
18 debtor, the Official Receiver must not accept the debt agreement
19 proposal for processing unless:

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

21 (b) the person is a registered trustee; or

22 (c) both:

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

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

27 (2C) If:

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

31 (i) a registered debt agreement administrator; or

32 (ii) a registered trustee; and

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

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

- 5 (c) the first debt agreement proposal is accepted; and
6 (d) those other debt agreement proposals are accepted.

7 **30 At the end of subsection 185E(5)**

8 Add “in accordance with section 185EA”.

9 **31 Subsection 185E(6)**

10 Repeal the subsection.

11 **32 After section 185E**

12 Insert:

13 **185EA Processing of debt agreement proposal**

14 *Processing of proposals by the Official Receiver*

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

20 *Writing to creditors to deal with a proposal*

- 21 (2) When writing to each affected creditor under subsection (1) about a
22 debt agreement proposal, the Official Receiver must:
- 23 (a) provide the creditor with a copy of:
- 24 (i) the debt agreement proposal; and
25 (ii) the debtor’s subsection 185C(2B) statement; and
- 26 (b) ask the creditor to give a written statement setting out
27 whether or not the debt agreement proposal should be
28 accepted; and
- 29 (c) inform the creditor of the person to whom the statement
30 should be given and of the need to give the statement before
31 the applicable deadline.
- 32 (3) The paragraph (2)(b) statement must be in the approved form.
-

1 **185EB Inspection of creditor's statement**

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

- 3 (a) the debtor; or
4 (b) any other affected creditor;
5 may, without fee and either personally or by an agent:
6 (c) inspect the statement; and
7 (d) obtain a copy of, or make extracts from, the statement.

8 **185EC Acceptance of a debt agreement proposal**

9 *Acceptance in writing*

- 10 (1) A debt agreement proposal is accepted if:
11 (a) the Official Receiver writes to affected creditors of a debtor
12 under section 185EA; and
13 (b) a majority in value of the creditors who reply before the
14 applicable deadline state that the proposal should be
15 accepted.

16 *Timing of acceptance*

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

19 *Value of a creditor*

- 20 (3) In assessing, for the purposes of paragraph (1)(b), the value of a
21 creditor who is a related entity of the debtor, any debt that was
22 assigned to the creditor is taken to have a value equal to the value
23 of the consideration that the creditor gave for the assignment.
24 (4) For the purposes of paragraph (1)(b), the value of a creditor is to be
25 assessed as at the time when the acceptance of the debt agreement
26 proposal for processing was recorded on the National Personal
27 Insolvency Index.
28 (5) For the purposes of paragraph (1)(b), a secured creditor is taken to
29 be a creditor only to the extent (if any) by which the amount of the
30 debt owing to the creditor exceeds the value of the creditor's
31 security.

1 **185ED Cancellation of acceptance of debt agreement proposal for**
2 **processing**

3 *Scope*

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

8 *Cancellation*

- 9 (2) The Official Receiver may cancel the acceptance of the debt
10 agreement proposal for processing if:
11 (a) the Official Receiver becomes aware that one or more
12 affected creditors were not disclosed in the debtor's
13 statement of affairs; or
14 (b) the Official Receiver becomes aware that:
15 (i) the debtor's statement of affairs; or
16 (ii) the debtor's subsection 185C(2B) statement;
17 was deficient because it omitted a material particular or
18 because it was incorrect in a material particular; or
19 (c) the Official Receiver becomes aware of a material change in
20 the debtor's circumstances that:
21 (i) was not foreshadowed in the debtor's subsection
22 185C(2B) statement or the debtor's statement of affairs;
23 and
24 (ii) in the opinion of the Official Receiver, is capable of
25 affecting an affected creditor's decision whether or not
26 to accept the proposal; or
27 (d) the Official Receiver becomes aware of a matter that, if it had
28 been known to the Official Receiver at the time of acceptance
29 of the debt agreement proposal for processing, would have
30 resulted in a refusal of acceptance on the grounds that
31 subsection 185C(4) had not been complied with.

32 *Notification of cancellation*

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

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

3 *Review*

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

7 **33 Paragraphs 185F(1)(d), (e) and (f)**

8 Repeal the paragraphs, substitute:

- 9 (d) in a case where:
10 (i) the applicable deadline arrives; and
11 (ii) the proposal has not been accepted;
12 the arrival of the applicable deadline;
- 13 (e) in a case where:
14 (i) the proposal is accepted; and
15 (ii) the proposal is not expressed to be subject to the
16 occurrence of a specified event within a specified period
17 after the proposal is accepted; and
18 (iii) details of the debt agreement are entered on the National
19 Personal Insolvency Index;
20 the entry of those details on the National Personal Insolvency
21 Index;
- 22 (f) in the case where:
23 (i) the proposal is accepted; and
24 (ii) the proposal is expressed to be subject to the occurrence
25 of a specified event within a specified period after the
26 proposal is accepted; and
27 (iii) that event occurs within that period; and
28 (iv) details of the debt agreement are entered on the National
29 Personal Insolvency Index;
30 the entry of those details on the National Personal Insolvency
31 Index;
- 32 (g) in the case where:
33 (i) the proposal is accepted; and
34 (ii) the proposal is expressed to be subject to the occurrence
35 of a specified event within a specified period after the
36 proposal is accepted; and

- 1 (iii) that event does not occur within that period;
2 the end of that period;
3 (h) in a case where the Official Receiver cancels the acceptance
4 of the proposal for processing—the cancellation of the
5 acceptance;
6 (i) in a case where the proposal lapses—the lapse of the
7 proposal.

8 **34 At the end section 185F**

9 Add:

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

13 **35 Paragraph 185G(a)**

14 Repeal the paragraph.

15 **36 Paragraph 185G(b)**

16 Before “deadline”, insert “applicable”.

17 **37 Section 185H**

18 Repeal the section, substitute:

19 **185H Making a debt agreement**

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

22 *Unconditional debt agreement proposals*

- 23 (2) If:

- 24 (a) a debt agreement proposal is accepted; and
25 (b) the proposal is not expressed to be subject to the occurrence
26 of a specified event within a specified period after the
27 proposal is accepted;

28 then:

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

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

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

4 *Conditional debt agreement proposals*

5 (3) If:

6 (a) a debt agreement proposal is accepted; and

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

10 (c) the event occurs within that period;

11 then:

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

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

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

17 **38 Paragraph 185I(b)**

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

20 **39 Section 185J**

21 Repeal the section.

22 **40 Paragraph 185K(1)(c)**

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

26 **41 At the end of section 185K**

27 Add:

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

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

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

5 **42 Section 185L**

6 Repeal the section.

7 **43 After Division 3 of Part IX**

8 Insert:

9 **Division 3A—Duties of administrators**

10 **185LA Duties of an administrator—general**

11 The duties of an administrator of a debt agreement include:

- 12 (a) dealing with the debtor’s property in the manner specified in
13 the debt agreement; and
14 (b) giving information about the administration of the debt
15 agreement to the debtor if the debtor makes a reasonable
16 request for the information; and
17 (c) giving information about the administration of the debt
18 agreement to a creditor who:
19 (i) is a party to the debt agreement; and
20 (ii) makes a reasonable request for the information.

21 **185LB Administrator to notify creditors of a 3-month arrears
22 default by a debtor**

- 23 (1) If a 3-month arrears default by a debtor occurs at a particular time
24 in relation to a debt agreement, the administrator of the debt
25 agreement must notify, in writing, each creditor who is a party to
26 the debt agreement of that occurrence within 10 working days of
27 that occurrence.
- 28 (2) The administrator of a debt agreement is not required to give a
29 notification under subsection (1) in respect of a 3-month arrears
30 default (the *first default*) if:
31 (a) one or more other 3-month arrears defaults by the debtor
32 have occurred in relation to the debt agreement; and

- 1 (b) the 3-month period to which the first default relates overlaps
2 with the 3-month period to which any of those other 3-month
3 arrears defaults relate; and
4 (c) a notification under subsection (1) has already been given in
5 respect of any of those other 3-month arrears defaults.
- 6 (3) For the purposes of this section, a **3-month arrears default** by a
7 debtor occurs at a particular time (the *test time*) in relation to a debt
8 agreement if:
9 (a) at the beginning of the 3-month period ending immediately
10 before the test time, one or more payments in respect of
11 provable debts became due and payable by the debtor under
12 the debt agreement; and
13 (b) throughout that 3-month period, the debtor was in arrears in
14 respect of any or all of those payments.

15 **185LC Administrator to notify Official Receiver of a designated**
16 **6-month arrears default by a debtor**

- 17 (1) If a designated 6-month arrears default by a debtor occurs at
18 particular time in relation to a debt agreement, the administrator of
19 the debt agreement must notify, in writing, the Official Receiver of
20 that occurrence within 10 working days of that occurrence.
- 21 (2) The administrator of a debt agreement is not required to give a
22 notification under subsection (1) in relation to the debt agreement
23 if the administrator has already given such a notification in relation
24 to the debt agreement.
- 25 (3) For the purposes of this Part, a **designated 6-month arrears default**
26 by a debtor occurs at a particular time (the *test time*) in relation to a
27 debt agreement if:
28 (a) both of the following apply:
29 (i) before the test time, one or more payments in respect of
30 provable debts became due and payable by the debtor
31 under the debt agreement;
32 (ii) at no time during the 6-month period ending
33 immediately before the test time were any obligations in
34 respect of those payments discharged; or
35 (b) both of the following apply:

- 1 (i) at the test time, the obligations created by the debt
- 2 agreement have not been discharged;
- 3 (ii) the last of those obligations should have been
- 4 discharged at a time 6 months before the test time.

5 **185LD Administrator to maintain separate bank account**

- 6 (1) A person who is:
 - 7 (a) either:
 - 8 (i) a registered debt agreement administrator; or
 - 9 (ii) a registered trustee; and
 - 10 (b) the administrator of one or more debt agreements;must pay all money received by the person from debtors under
11 those debt agreements to the credit of a single interest-bearing bank
12 account that:
 - 13 (c) bears:
 - 14 (i) the person's own name; and
 - 15 (ii) the words “—Debt Agreement Administration Trust
 - 16 Account”; and
 - 17
 - 18 (d) complies with such other requirements (if any) as are
 - 19 specified in the regulations.
- 20 (2) The person must only pay into the account money received by the
- 21 person from debtors under debt agreements.
- 22 (3) The person is entitled, in his or her personal capacity, to each
- 23 payment of interest on the account, less an amount equal to the
- 24 bank fees or charges (if any) paid or payable on the account during
- 25 the period to which the interest relates.
- 26 (4) Interest on money in the account is not subject to taxation under a
- 27 law of the Commonwealth, a State or a Territory except as
- 28 provided in Part 2 of the *Bankruptcy (Estate Charges) Act 1997*.

29 **185LE Administrator to keep accounts etc.**

- 30 (1) An administrator of a debt agreement must:
 - 31 (a) keep such accounts, books and records as are necessary to
 - 32 give a full and correct account of the administration of the
 - 33 debt agreement; and

- 1 (b) if required to do so by the Inspector-General—make those
2 accounts and records available for inspection by the
3 Inspector-General; and
4 (c) if required to do so by the Inspector-General—answer any
5 inquiries about the debt agreement; and
6 (d) cooperate with any inquiry or investigation made by the
7 Inspector-General under paragraph 12(1)(bb).
- 8 (2) If an administrator of one or more debt agreements is to be
9 remunerated under those debt agreements, the administrator must:
10 (a) maintain a separate record of:
11 (i) money received by the administrator from the debtors in
12 relation to those debt agreements; and
13 (ii) payments made by the administrator in relation to those
14 debt agreements; and
15 (iii) the balance of money held by the administrator in
16 relation to those debt agreements; and
17 (b) if the administrator maintains an account under subsection
18 185LD(1)—at least once every 45 days, reconcile the balance
19 held in the subsection 185LD(1) account with the
20 corresponding record maintained under paragraph (a).

21 **185LF Succession of administrator**

22 *Scope*

- 23 (1) This section applies if:
24 (a) a person (the *earlier administrator*) ceases to be the
25 administrator of a debt agreement; and
26 (b) another person (the *later administrator*) becomes the
27 administrator of the debt agreement in place of the earlier
28 administrator.

29 *Duty*

- 30 (2) The earlier administrator must:
31 (a) prepare an account of:
32 (i) money received by the earlier administrator from the
33 debtor in relation to the debt agreement; and
34 (ii) payments made by the earlier administrator in relation
35 to the debt agreement; and

- 1 (b) keep a copy of the account; and
2 (c) give the later administrator:
3 (i) a copy of the account; and
4 (ii) a copy of any other accounts the earlier administrator
5 received from a person who was the administrator of the
6 debt agreement before the earlier administrator.

7 **185LG Duties of an administrator in relation to debt agreements—**
8 **extended meaning**

- 9 (1) For the purposes of this Act, a duty of an administrator under this
10 Act is taken to be a duty of an administrator in relation to a debt
11 agreement, even if the duty does not relate to a particular debt
12 agreement.
- 13 (2) If a person signs a certificate under subsection 185C(2D) in
14 relation to a debt agreement proposal:
15 (a) the person must ensure that the certificate is correct; and
16 (b) for the purposes of this Act, the requirement set out in
17 paragraph (a) is taken to be a duty of an administrator in
18 relation to a debt agreement.
- 19 (3) For the purposes of this Act, a requirement set out in subsection
20 185LF(2) or 185N(5) is taken to be a duty of an administrator in
21 relation to a debt agreement.

22 **44 After subsection 185M(1)**

23 Insert:

- 24 (1A) The proposal must be in the approved form.
- 25 (1B) The proposal must be accompanied by an explanatory statement in
26 the approved form containing such information as the form
27 requires.
- 28 (1C) The subsection (1B) statement may be set out in the same
29 document as the proposal.

30 **45 At the end of subsection 185M(2)**

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

1 **46 Subsection 185M(2) (note)**

2 Repeal the note.

3 **47 Subsection 185M(3) (note)**

4 Omit “185B”, substitute “185MC”.

5 **48 At the end of Division 4 of Part IX**

6 Add:

7 **185MA Procedures for dealing with proposals to vary debt**
8 **agreements**

9 *Processing of proposals by the Official Receiver*

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

15 *Writing to creditors to deal with a proposal*

- 16 (2) When writing to each affected creditor under subsection (1) about a
17 proposal to vary a debt agreement, the Official Receiver must:
- 18 (a) provide the creditor with a copy of:
 - 19 (i) the proposal; and
 - 20 (ii) the relevant subsection 185M(1B) statement; and
 - 21 (b) ask the creditor to give a written statement setting out
22 whether or not the proposal should be accepted; and
 - 23 (c) inform the creditor of the person to whom the statement
24 should be given and of the need to give the statement before
25 the applicable deadline.
- 26 (3) The paragraph (2)(b) statement must be in the approved form.

27 **185MB Inspection of creditor’s statement**

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

- 29 (a) the debtor; or
- 30 (b) any other affected creditor;

- 1 may, without fee and either personally or by an agent:
2 (c) inspect the statement; and
3 (d) obtain a copy of, or make extracts from, the statement.

4 **185MC Acceptance of a proposal to vary a debt agreement**

5 *Acceptance in writing*

- 6 (1) A proposal to vary a debt agreement is accepted if:
7 (a) the Official Receiver writes to affected creditors of a debtor
8 under section 185MA; and
9 (b) a majority in value of the creditors who reply before the
10 applicable deadline state that the proposal should be
11 accepted.

12 *Timing of acceptance*

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

15 *Value of a creditor*

- 16 (3) In assessing, for the purposes of paragraph (1)(b), the value of a
17 creditor who is a related entity of the debtor, any debt that was
18 assigned to the creditor is taken to have a value equal to the value
19 of the consideration that the creditor gave for the assignment.
- 20 (4) For the purposes of paragraph (1)(b), the value of a creditor is to be
21 assessed as at the time when the acceptance of the relevant debt
22 agreement proposal for processing was recorded on the National
23 Personal Insolvency Index.
- 24 (5) For the purposes of paragraph (1)(b), a secured creditor is taken to
25 be a creditor only to the extent (if any) by which the amount of the
26 debt owing to the creditor exceeds the value of the creditor's
27 security.

28 **185MD Withdrawal of proposal to vary a debt agreement**

29 *Scope*

- 30 (1) This section applies if:
-

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

5 *Withdrawal of proposal*

- 6 (2) If:
7 (a) the Official Receiver becomes aware that the relevant
8 subsection 185M(1B) statement was deficient because it
9 omitted a material particular or because it was incorrect in a
10 material particular; or
11 (b) the Official Receiver becomes aware of a material change in
12 circumstances that:
13 (i) was not foreshadowed in the relevant subsection
14 185M(1B) statement; and
15 (ii) in the opinion of the Official Receiver, is capable of
16 affecting an affected creditor's decision whether or not
17 to accept the proposal;
18 the Official Receiver may declare in writing that the proposal is
19 withdrawn.

20 *Notification of withdrawal*

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

26 *Review*

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

30 **49 At the end of section 185N**

31 Add:

1 *Notification of end of debt agreement*

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

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

7 **50 After section 185N**

8 Insert:

9 **185NA Release of debtor from debts**

10 *Time and effect of release*

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

17 *Limits on release*

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

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

25 **51 After subsection 185P(1)**

26 Insert:

27 (1A) The proposal must be in the approved form.

28 (1B) A proposal must be accompanied by an explanatory statement in
29 the approved form containing such information as the form
30 requires.

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

3 **52 At the end of subsection 185P(2)**

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

7 **53 Subsection 185P(2) (note)**

8 Repeal the note.

9 **54 Subsection 185P(3) (note)**

10 Omit “185B”, substitute “185PC”.

11 **55 After section 185P**

12 Insert:

13 **185PA Procedures for dealing with proposals to terminate debt**
14 **agreements**

15 *Processing of proposals by the Official Receiver*

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

21 *Writing to creditors to deal with a proposal*

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

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

2 **185PB Inspection of creditor's statement**

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

- 4 (a) the debtor; or
5 (b) any other affected creditor;
6 may, without fee and either personally or by an agent:
7 (c) inspect the statement; and
8 (d) obtain a copy of, or make extracts from, the statement.

9 **185PC Acceptance of a proposal to terminate a debt agreement**

10 *Acceptance in writing*

- 11 (1) A proposal to terminate a debt agreement is accepted if:
12 (a) the Official Receiver writes to affected creditors of a debtor
13 under section 185PA; and
14 (b) a majority in value of the creditors who reply before the
15 applicable deadline state that the proposal should be
16 accepted.

17 *Timing of acceptance*

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

20 *Value of a creditor*

- 21 (3) In assessing, for the purposes of paragraph (1)(b), the value of a
22 creditor who is a related entity of the debtor, any debt that was
23 assigned to the creditor is taken to have a value equal to the value
24 of the consideration that the creditor gave for the assignment.
- 25 (4) For the purposes of paragraph (1)(b), the value of a creditor is to be
26 assessed as at the time when the acceptance of the relevant debt
27 agreement proposal for processing was recorded on the National
28 Personal Insolvency Index.
- 29 (5) For the purposes of paragraph (1)(b), a secured creditor is taken to
30 be a creditor only to the extent (if any) by which the amount of the

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

3 **185PD Withdrawal of proposal to terminate a debt agreement**

4 *Scope*

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

10 *Withdrawal of proposal*

- 11 (2) If:
12 (a) the Official Receiver becomes aware that the relevant
13 subsection 185P(1B) statement was deficient because it
14 omitted a material particular or because it was incorrect in a
15 material particular; or
16 (b) the Official Receiver becomes aware of a material change in
17 circumstances that:
18 (i) was not foreshadowed in the relevant subsection
19 185P(1B) statement; and
20 (ii) in the opinion of the Official Receiver, is capable of
21 affecting an affected creditor's decision whether or not
22 to accept the proposal;
23 the Official Receiver may declare in writing that the proposal is
24 withdrawn.

25 *Notification of withdrawal*

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

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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).

1 **59 Section 185V (note)**

2 Repeal the note.

3 **60 Subsection 185W(2) (note)**

4 Repeal the note.

5 **61 After section 185X**

6 Insert:

7 **185XA Secured creditors**

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

10 **62 Section 185Y**

11 Repeal the section, substitute:

12 **185Y Money received by administrator to be held on trust**

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

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

19 **63 Section 185Z**

20 Repeal the section, substitute:

21 **185Z Remuneration of administrator**

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

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

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

26 **64 Section 185ZB**

27 Repeal the section, substitute:

1 **185ZB Official Trustee to replace an administrator who dies etc.**

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

4 (2) If:

5 (a) a person who is the administrator of a debt agreement is
6 registered under Division 8; and

7 (b) the person ceases to be so registered;

8 then:

9 (c) the person ceases to be the administrator of that debt
10 agreement; and

11 (d) the Official Trustee becomes the replacement administrator
12 of that debt agreement.

13 (3) If:

14 (a) a person who is the administrator of a debt agreement is a
15 registered trustee; and

16 (b) the person ceases to be a registered trustee;

17 then:

18 (c) the person ceases to be the administrator of that debt
19 agreement; and

20 (d) the Official Trustee becomes the replacement administrator
21 of that debt agreement.

22 (4) If:

23 (a) a person is the administrator of a debt agreement; and

24 (b) under section 186M, the person becomes ineligible to act as
25 the administrator of the debt agreement;

26 then:

27 (c) the person ceases to be the administrator of that debt
28 agreement; and

29 (d) the Official Trustee becomes the replacement administrator
30 of that debt agreement.

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

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

8 **65 Subsection 185ZC(1)**

9 Omit “who is appointed as the replacement administrator”.

10 **66 Subsection 185ZC(1)**

11 Omit “in place of the Official Receiver”, substitute “in place of the
12 Official Trustee”.

13 **67 After section 185ZC**

14 Insert:

15 **185ZCA Court may order administrator to make good loss caused**
16 **by breach of duty**

- 17 (1) This section applies if, on application by:
18 (a) the Inspector-General; or
19 (b) a creditor who is or has been a party to a debt agreement;
20 the Court is satisfied that a person who is or has been an
21 administrator of the debt agreement has committed a breach of
22 duty in relation to the debt agreement.
- 23 (2) The Court may make any one or more of the following orders:
24 (a) an order directing the person to make good any loss that a
25 creditor has sustained because of the person’s breach of duty;
26 (b) if the person is a registered debt agreement administrator—an
27 order directing the Inspector-General to cancel the person’s
28 registration as a debt agreement administrator;
29 (c) any other order that the Court considers just and equitable in
30 the circumstances.

1 **185ZCB Control of administrators by the Court**

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

- 4 (a) the Inspector-General; or
5 (b) the debtor; or
6 (c) a creditor;

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

- 9 (d) remove the administrator from office;
10 (e) make such order as it thinks proper.

11 **68 Section 185ZD**

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

13 **69 At the end of section 185ZD**

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

16 **70 Section 186E**

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

18 **71 After section 186L**

19 Insert:

20 **186LA Inspector-General may obtain information about debt**
21 **agreement administration trust accounts**

22 *Scope*

23 (1) This section applies to a bank if:

- 24 (a) the Inspector-General believes on reasonable grounds that:
25 (i) a person who is or was an administrator of a debt
26 agreement holds or held an account with the bank; and

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

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

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

- 1 should continue to be registered as a debt agreement
2 administrator; or
3 (ii) under subsection 155H(1), to give the Inspector-General
4 a written explanation why the person should continue to
5 be registered as a trustee; and
6 (c) if subparagraph (b)(ii) applies—the Inspector-General asked
7 for the explanation on the basis of paragraph 155H(1)(fa).

8 *Requirement*

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

13 *Offence*

- 14 (3) A person commits an offence if:
15 (a) the person has been given a notice under subsection (2); and
16 (b) the person omits to do an act; and
17 (c) the omission contravenes a requirement in the notice.

18 Penalty for contravention of this subsection: 60 penalty units.

19 **186LB Account-freezing notices—debt agreement administration**
20 **trust accounts**

21 *Scope*

- 22 (1) This section applies to a bank if:
23 (a) the Inspector-General believes on reasonable grounds that:
24 (i) a person who is or was an administrator of a debt
25 agreement holds or held an account with the bank; and
26 (ii) the account was kept, or purportedly kept, in
27 compliance with subsection 185LD(1); and
28 (b) at a particular time (the *show cause time*), the
29 Inspector-General asked the person:
30 (i) under subsection 186K(3) or 186L(3), to give the
31 Inspector-General a written explanation why the person
32 should continue to be registered as a debt agreement
33 administrator; or

- 1 (ii) under subsection 155H(1), to give the Inspector-General
2 a written explanation why the person should continue to
3 be registered as a trustee; and
4 (c) if subparagraph (b)(ii) applies—the Inspector-General asked
5 for the explanation on the basis of paragraph 155H(1)(fa).

6 *Giving of freezing notice*

- 7 (2) The Inspector-General may, by written notice (an **account-freezing**
8 **notice**) given to the bank within 42 days after the show cause time,
9 direct the bank not to:
10 (a) make a withdrawal from the account; or
11 (b) permit the making of a withdrawal from the account;
12 except:
13 (c) in accordance with the written consent of the
14 Inspector-General; or
15 (d) to recover from the account-holder an amount equal to an
16 amount of tax (however described) that the bank has paid or
17 is liable to pay in connection to the operation of the account;
18 or
19 (e) to discharge a liability of the account-holder to pay a fee or
20 charge in relation to the operation of the account; or
21 (f) in such circumstances (if any) as are specified in the
22 regulations.

23 *Duration of freezing notice*

- 24 (3) An account-freezing notice given to a bank:
25 (a) comes into force when the notice is given to the bank; and
26 (b) remains in force for:
27 (i) 42 days after the show cause time; or
28 (ii) if a shorter period is specified in the notice—that shorter
29 period.

30 *Extension of 42-day period*

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

1 *Revocation of freezing notice*

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

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

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

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

13 *Consent of Inspector-General*

14 (8) A consent under paragraph (2)(c) may be:

- 15 (a) unconditional; or
16 (b) subject to such conditions (if any) as are specified in the
17 notice of consent.

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

21 **186LC Power of court to set aside account-freezing notices**

22 (1) If the Court, on application by:

- 23 (a) a bank to whom an account-freezing notice has been given;
24 or
25 (b) the account-holder whose account is affected by an
26 account-freezing notice; or
27 (c) any other interested person;

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

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

1 **186LD Judicial enforcement of account-freezing notices**

- 2 (1) If the Court is satisfied that a bank has breached, or is proposing to
3 breach, an account-freezing notice, the Court may, on application
4 of the Inspector-General, make any or all of the following orders:
5 (a) an order directing the bank to comply with that notice;
6 (b) any other order that the Court thinks appropriate.
- 7 (2) The Court may discharge or vary an order granted under this
8 section.

9 **186LE Protection of bank**

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

15 **72 After subsection 186N(6)**

16 Insert:

17 *Cancellation by court order of registration as a debt agreement*
18 *administrator*

- 19 (6A) A person commits an offence if:
20 (a) the person has been given a certificate of registration under
21 subsection 186D(3); and
22 (b) the person's registration as a debt agreement administrator is
23 cancelled as a result of an order under section 185ZCA; and
24 (c) the person does not return the certificate of registration to the
25 Inspector-General as soon as practicable after the
26 cancellation.

27 Penalty: 1 penalty unit.

- 28 (6B) Subsection (6A) does not apply if the person has a reasonable
29 excuse.

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

32 **73 Subsection 186N(7)**

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

2 **74 At the end of paragraph 254(1)(a)**

3 Add “or”.

4 **75 After paragraph 254(1)(a)**

5 Insert:

6 (aa) the administrator of a debt agreement; or

7 **76 At the end of paragraph 254(1)(b)**

8 Add “or”.

9 **77 Subsection 263C(2) (paragraph (c) of the definition of**
10 ***trustee*)**

11 Repeal the paragraph.

12 **78 Subsection 263C(2) (subparagraphs (a)(ii) and (b)(ii) of the**
13 **definition of *voting document*)**

14 Omit “, IX”.

15 **79 Paragraph 267(1)(e)**

16 Repeal the paragraph, substitute:

17 (e) is given to the Official Receiver under:

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

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

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

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

23 **80 Application of amendments**

24 The amendments made by this Schedule apply in relation to:

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

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