

# EXPOSURE DRAFT

2016-2017-2018

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT
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## **Bankruptcy Amendment (Debt Agreement Reform) Bill 2018**

**No.     , 2018**

*(Attorney-General)*

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

**EXPOSURE DRAFT**



# EXPOSURE DRAFT

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# EXPOSURE DRAFT

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

4 The Parliament of Australia enacts:

5 **1 Short title**

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

8 **2 Commencement**

- 9 (1) Each provision of this Act specified in column 1 of the table  
10 commences, or is taken to have commenced, in accordance with  
11 column 2 of the table. Any other statement in column 2 has effect  
12 according to its terms.  
13

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1, Part 1, Division 1	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	
3. Schedule 1, Part 1, Division 2	The day after the end of the period of 12 months beginning on the day this Act receives the Royal Assent.	
4. Schedule 1, Parts 2 to 6	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	
5. Schedule 2, Part 1	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	
6. Schedule 2,	Immediately after the commencement of the	

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**Commencement information**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
Part 2	provisions covered by table item 5.	
7. Schedule 2, Parts 3 to 9	Immediately after the commencement of the provisions covered by table item 4.	
8. Schedule 3, Part 1	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	
9. Schedule 3, item 15	Immediately after the commencement of the provisions covered by table item 4.	
10. Schedule 3, items 16 to 29	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	
11. Schedules 4 and 5	Immediately after the commencement of the provisions covered by table item 4.	

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

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

### 3 Schedules

8 Legislation 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.



# EXPOSURE DRAFT

Debt agreement proposals **Schedule 1**  
Persons who may be authorised to deal with debtor's property **Part 1**

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1 **Schedule 1—Debt agreement proposals**

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

4 **Division 1—Main amendments**

5 *Bankruptcy Act 1966*

6 **1 Paragraph 185C(2)(c)**

7 Omit “another person”, substitute “a registered debt agreement  
8 administrator”.

9 **2 At the end of subsection 185C(2)**

10 Add:

11 Note: For the debtor to be specified under paragraph (c), the debtor must be  
12 a registered trustee or registered debt agreement administrator.

13 **3 Subsections 185E(1), (2A), (2B) and (2C)**

14 Repeal the subsections.

15 **4 Application provision**

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

19 **5 Transitional provisions—replacement administrator**

20 (1) If, immediately before the end of the period of 6 months beginning on  
21 the day this item commences:

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

23 (b) the person is none of the following:

24 (i) the Official Trustee;

25 (ii) a registered trustee;

26 (iii) a registered debt agreement administrator;

27 then:

# EXPOSURE DRAFT

## Schedule 1 Debt agreement proposals

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

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- 1 (c) on the day after the end of that period, the person ceases to be  
2 the administrator of that debt agreement; and  
3 (d) on the day after the end of that period, the Official Trustee is  
4 taken to become the replacement administrator of that debt  
5 agreement, under section 185ZB of the *Bankruptcy Act 1966*;  
6 and  
7 (e) subsection 185ZB(6) of that Act applies to that replacement.

#### 8 *Compensation for acquisition of property*

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

### 18 **Division 2—Other amendments**

#### 19 *Bankruptcy Act 1966*

##### 20 **6 Subsection 185ZB(4)**

21 Repeal the subsection.

##### 22 **7 Subsection 185ZB(6)**

23 Omit “, (4)”.

##### 24 **8 Paragraphs 186A(1)(h) and (3)(e)**

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

##### 26 **9 Subdivision D of Division 8 of Part IX**

27 Repeal the Subdivision.

##### 28 **10 Paragraph 186Q(c)**

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

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# EXPOSURE DRAFT

Debt agreement proposals **Schedule 1**  
Persons who may be authorised to deal with debtor's property **Part 1**

---

1 **11 Paragraph 186Q(d)**

2 Repeal the paragraph.

3 **12 Saving provision**

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

# EXPOSURE DRAFT

Schedule 1 Debt agreement proposals

Part 2 Reimbursement of expenses

---

1 **Part 2—Reimbursement of expenses**

2 ***Bankruptcy Act 1966***

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

4 Insert:

5 *Reimbursement of expenses*

6 (3B) A debt agreement proposal may also provide for the proposed  
7 administrator to be reimbursed expenses of a kind specified in the  
8 proposal that are incurred by the proposed administrator in  
9 administering any debt agreement resulting from the acceptance of  
10 the proposal.

11 **14 Section 185LA**

12 Before “The duties”, insert “(1)”.

13 **15 At the end of section 185LA**

14 Add:

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

20 **16 Application provisions**

21 (1) The amendment of section 185C of the *Bankruptcy Act 1966* made by  
22 this Part applies in relation to debt agreement proposals given to the  
23 Official Receiver on or after the commencement of this item.

24 (2) The amendments of section 185LA of the *Bankruptcy Act 1966* made  
25 by this Part apply in relation to debt agreements that come into force on  
26 or after the commencement of this item, where the debt agreement  
27 proposals were given on or after that commencement.

# EXPOSURE DRAFT

Debt agreement proposals **Schedule 1**  
Value of debtor's property **Part 3**

---

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

2 *Bankruptcy Act 1966*

3 **17 Paragraph 185C(4)(c)**

4 After “more than”, insert “twice”.

5 **18 Application provision**

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

# EXPOSURE DRAFT

Schedule 1 Debt agreement proposals

Part 4 Payment to income ratio

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1 **Part 4—Payment to income ratio**

2 *Bankruptcy Act 1966*

3 **19 Subsection 10(1)**

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

5 **20 At the end of subsection 185C(4)**

6 Add:

7 ; or (e) the amount worked out using the following formula  
8 (expressed as a percentage) exceeds the percentage  
9 determined in an instrument under subsection (4B):

10 
$$\frac{\text{Total of the payments that the debtor would be required to make under the agreement}}{\text{The debtor's after tax income (see subsection (5)) in the year beginning at the proposal time}}$$

11 **21 After subsection 185C(4A)**

12 Insert:

13 (4B) The Minister may, by legislative instrument, determine a  
14 percentage for the purposes of paragraph (4)(e) (which may exceed  
15 100%).

16 **22 Application provision**

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

# EXPOSURE DRAFT

Debt agreement proposals **Schedule 1**  
Undue hardship to debtor **Part 5**

---

1 **Part 5—Undue hardship to debtor**

2 *Bankruptcy Act 1966*

3 **23 After subsection 185E(2AA)**

4 Insert:

5 (2AB) The Official Receiver may refuse to accept a debt agreement  
6 proposal for processing if the Official Receiver reasonably believes  
7 that complying with the agreement would cause undue hardship to  
8 the debtor.

9 **24 Application provision**

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

# EXPOSURE DRAFT

Schedule 1 Debt agreement proposals

Part 6 Other matters

---

1 **Part 6—Other matters**

2 ***Bankruptcy Act 1966***

3 **25 Section 185**

4 Insert:

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

7 **26 Subsection 185C(2D)**

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

10 **27 Subsection 185C(2D)**

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

12 **28 Paragraph 185C(2D)(a)**

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

16 **29 Paragraph 185C(2D)(b)**

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

18 **30 Paragraph 185C(2D)(c)**

19 Before “having regard”, insert “stating that,”.

20 **31 Paragraph 185C(2D)(c)**

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

22 **32 Paragraphs 185C(2D)(d) and (e)**

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

24 **33 At the end of subsection 185C(2D)**

25 Add:

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# EXPOSURE DRAFT

Debt agreement proposals **Schedule 1**  
Other matters **Part 6**

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

## 11                  **34 Subsection 185C(3)**

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

## 14                  **35 Subsection 185C(3)**

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

## 16                  **36 Subsection 185C(3A)**

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

## 19                  **37 Subparagraph 185C(3A)(b)(iii)**

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

## 21                  **38 At the end of paragraph 185EA(2)(a)**

22                  Add:

- 23                                 (iii) any certificate under subsection 185C(2D) that  
24                                 accompanied the debt agreement proposal; and

## 25                  **39 At the end of section 185EA**

26                  Add:

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

# EXPOSURE DRAFT

## Schedule 1 Debt agreement proposals

### Part 6 Other matters

---

1 (5) Paragraph (4)(b) does not apply if the proposed administrator is the  
2 debtor.

#### 3 **40 After subsection 185EC(1)**

4 Insert:

5 (1A) For the purposes of paragraph (1)(b), disregard an affected creditor  
6 who:

- 7 (a) is the proposed administrator; or  
8 (b) was, on becoming an affected creditor, a related entity of the  
9 proposed administrator.

10 (1B) Paragraph (1A)(b) does not apply if the proposed administrator is  
11 the debtor.

#### 12 **41 At the end of section 185EC**

13 Add:

14 *Offence*

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

22 Penalty for contravention of this subsection: Imprisonment for 3  
23 months.

#### 24 **42 Application provision**

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

# EXPOSURE DRAFT

Debt agreements **Schedule 2**  
Length of debt agreements **Part 1**

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1 **Schedule 2—Debt agreements**

2 **Part 1—Length of debt agreements**

3 *Bankruptcy Act 1966*

4 **1 After subsection 185C(2)**

5 Insert:

6 (2AA) A debt agreement proposal must not provide for the debtor to make  
7 payments under the agreement, in respect of provable debts in  
8 relation to the agreement, after 3 years beginning on the day the  
9 agreement is made.

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

11 **2 Paragraph 185E(2)(a)**

12 After “185C(2),”, insert “(2AA),”.

13 **3 After subsection 185M(1C)**

14 Insert:

15 (1D) The proposal must not seek to vary the agreement so that the  
16 agreement would provide for the debtor to make payments under  
17 the agreement, in respect of provable debts in relation to the  
18 agreement, after 3 years beginning on the day the agreement was  
19 made.

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

21 **4 Subsection 185M(2)**

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

23 **5 Application provisions**

24 (1) The amendments of sections 185C and 185E of the *Bankruptcy Act*  
25 *1966* made by this Part apply in relation to debt agreement proposals  
26 given to the Official Receiver on or after the commencement of this  
27 item.

# EXPOSURE DRAFT

## Schedule 2 Debt agreements

### Part 1 Length of debt agreements

---

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

# EXPOSURE DRAFT

Debt agreements **Schedule 2**  
Proposals to vary debt agreements **Part 2**

---

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

2 ***Bankruptcy Act 1966***

3 **6 At the end of section 185LA**

4 Add:

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

9 **7 After subsection 185M(1D)**

10 Insert:

- 11 (1E) The proposal must not seek to vary the agreement so that the  
12 amount worked out using the following formula (expressed as a  
13 percentage) exceeds the percentage in effect under an instrument  
14 under subsection 185C(4B) at the time (the *proposal time*) the  
15 relevant debt agreement proposal was given to the Official  
16 Receiver:

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

17

- 18 (1F) If the administrator of the agreement is not the debtor, the proposal  
19 given to the Official Receiver must be accompanied by a certificate  
20 signed by the administrator stating that, having regard to:  
21 (a) the circumstances in existence at the time the administrator  
22 signs the certificate; and  
23 (b) any other relevant matters;  
24 the administrator has reasonable grounds to believe that the debtor  
25 is likely to be able to discharge the obligations created by the  
26 agreement (as proposed to be varied) as and when they fall due.

# EXPOSURE DRAFT

## Schedule 2 Debt agreements

### Part 2 Proposals to vary debt agreements

---

1 **8 Subsection 185M(2)**

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

3 **9 After subsection 185M(2)**

4 Insert:

5 (2A) However, the Official Receiver is not required by subsection (2) to  
6 process the proposal if the Official Receiver reasonably believes  
7 that complying with the agreement (as proposed to be varied)  
8 would cause undue hardship to the debtor.

9 (2B) If the Official Receiver decides not to process the proposal because  
10 of subsection (2A), the Official Receiver must give written notice  
11 of the decision, and the reasons for it, to:

12 (a) the debtor; and

13 (b) affected creditors who are known to the Official Receiver.

14 (2C) If the Official Receiver decides not to process the proposal because  
15 of subsection (2A), the debtor or an affected creditor may apply to  
16 the Administrative Appeals Tribunal for review of the decision.

17 **10 At the end of section 185MA**

18 Add:

19 (4) Paragraphs (2)(b) and (c) do not apply in relation to an affected  
20 creditor who:

21 (a) is the administrator of the debt agreement; or

22 (b) was, on becoming an affected creditor, a related entity of the  
23 administrator.

24 (5) Paragraph (4)(b) does not apply if the administrator is the debtor.

25 **11 After subsection 185MC(1)**

26 Insert:

27 (1A) For the purposes of paragraph (1)(b), disregard an affected creditor  
28 who:

29 (a) is the administrator of the debt agreement; or

30 (b) was, on becoming an affected creditor, a related entity of the  
31 administrator.

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# EXPOSURE DRAFT

Debt agreements **Schedule 2**  
Proposals to vary debt agreements **Part 2**

---

1 (1B) Paragraph (1A)(b) does not apply if the administrator is the debtor.

## 2 **12 At the end of section 185MC**

3 Add:

4 *Offence*

5 (6) A person commits an offence if:

- 6 (a) the person is the administrator of a debt agreement; and  
7 (b) the person gives, or agrees or offers to give, to an affected  
8 creditor any valuable consideration; and  
9 (c) the person does so with a view to securing the affected  
10 creditor's acceptance or non-acceptance of the proposal to  
11 vary the agreement.

12 Penalty for contravention of this subsection: Imprisonment for 3  
13 months.

## 14 **13 Application provisions**

15 (1) The amendment of section 185LA of the *Bankruptcy Act 1966* made by  
16 this Part applies in relation to proposals given to the Official Receiver  
17 under subsection 185M(1) of that Act on or after the commencement of  
18 this item.

19 (2) Subsection 185M(1E) of the *Bankruptcy Act 1966*, as inserted by this  
20 Part, applies in relation to proposals given to the Official Receiver  
21 under subsection 185M(1) of that Act on or after the commencement of  
22 this item, where the debt agreement proposals were given under  
23 subsection 185C(1) of that Act on or after that commencement.

24 (3) Subsections 185M(1F) and (2A) to (2C) of the *Bankruptcy Act 1966*, as  
25 inserted by this Part, apply in relation to proposals given to the Official  
26 Receiver under subsection 185M(1) of that Act on or after the  
27 commencement of this item.

28 (4) The amendment of section 185MA of the *Bankruptcy Act 1966* made by  
29 this Part applies in relation to proposals given to the Official Receiver  
30 under subsection 185M(1) of that Act on or after the commencement of  
31 this item, where the debt agreement proposals were given under  
32 subsection 185C(1) of that Act on or after that commencement.

# EXPOSURE DRAFT

## Schedule 2 Debt agreements

### Part 2 Proposals to vary debt agreements

---

- 1 (5) Subsections 185MC(1A) and (1B) of the *Bankruptcy Act 1966*, as  
2 inserted by this Part, apply in relation to proposals given to the Official  
3 Receiver under subsection 185M(1) of that Act on or after the  
4 commencement of this item, where the debt agreement proposals were  
5 given under subsection 185C(1) of that Act on or after that  
6 commencement.
- 7 (6) Subsection 185MC(6) of the *Bankruptcy Act 1966*, as added by this  
8 Part, applies in relation to proposals given to the Official Receiver  
9 under subsection 185M(1) of that Act on or after the commencement of  
10 this item.



# EXPOSURE DRAFT

Debt agreements **Schedule 2**  
Proposals to terminate debt agreements **Part 3**

---

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

2 *Bankruptcy Act 1966*

3 **14 At the end of section 185PA**

4 Add:

5 (4) Paragraphs (2)(b) and (c) do not apply in relation to an affected  
6 creditor who:

7 (a) is the administrator of the debt agreement; or

8 (b) was, on becoming an affected creditor, a related entity of the  
9 administrator.

10 (5) Paragraph (4)(b) does not apply if the administrator is the debtor.

11 **15 After subsection 185PC(1)**

12 Insert:

13 (1A) For the purposes of paragraph (1)(b), disregard an affected creditor  
14 who:

15 (a) is the administrator of the debt agreement; or

16 (b) was, on becoming an affected creditor, a related entity of the  
17 administrator.

18 (1B) Paragraph (1A)(b) does not apply if the administrator is the debtor.

19 **16 At the end of section 185PC**

20 Add:

21 *Offence*

22 (6) A person commits an offence if:

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

24 (b) the person gives, or agrees or offers to give, to an affected  
25 creditor any valuable consideration; and

26 (c) the person does so with a view to securing the affected  
27 creditor's acceptance or non-acceptance of the proposal to  
28 terminate the agreement.

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# EXPOSURE DRAFT

## Schedule 2 Debt agreements

### Part 3 Proposals to terminate debt agreements

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1 Penalty for contravention of this subsection: Imprisonment for 3  
2 months.

#### 3 **17 Application provisions**

- 4 (1) The amendment of section 185PA of the *Bankruptcy Act 1966* made by  
5 this Part applies in relation to proposals given to the Official Receiver  
6 under subsection 185P(1) of that Act on or after the commencement of  
7 this item, where the debt agreement proposals were given under  
8 subsection 185C(1) of that Act on or after that commencement.
- 9 (2) Subsections 185PC(1A) and (1B) of the *Bankruptcy Act 1966*, as  
10 inserted by this Part, apply in relation to proposals given to the Official  
11 Receiver under subsection 185P(1) of that Act on or after the  
12 commencement of this item, where the debt agreement proposals were  
13 given under subsection 185C(1) of that Act on or after that  
14 commencement.
- 15 (3) Subsection 185PC(6) of the *Bankruptcy Act 1966*, as added by this Part,  
16 applies in relation to proposals given to the Official Receiver under  
17 subsection 185P(1) of that Act on or after the commencement of this  
18 item.

# EXPOSURE DRAFT

Debt agreements **Schedule 2**  
Court orders to terminate debt agreements **Part 4**

---

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

2 *Bankruptcy Act 1966*

3 **18 After paragraph 185Q(4)(b)**

4 Insert:

5 (ba) that one of the following applies:

- 6 (i) the administrator of the agreement has contravened  
7 subsection 185EC(6) in relation to the relevant debt  
8 agreement proposal;
- 9 (ii) the administrator of the agreement has contravened  
10 subsection 185MC(6) in relation to the agreement,  
11 whether or not the proposal to vary the agreement was  
12 accepted;
- 13 (iii) the administrator of the agreement has contravened  
14 subsection 185PC(6) in relation to the agreement, where  
15 the proposal to terminate the agreement was not  
16 accepted; or

# EXPOSURE DRAFT

Schedule 2 Debt agreements

Part 5 Voiding debt agreements

---

1 **Part 5—Voiding debt agreements**

2 *Bankruptcy Act 1966*

3 **19 Subsection 185T(2)**

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

5 **20 Paragraph 185T(2)(a)**

6 Omit “or” (last occurring).

7 **21 At the end of subsection 185T(2)**

8 Add:

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

19 **22 Application provision**

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

# EXPOSURE DRAFT

Debt agreements **Schedule 2**  
Debt agreement administrators to refer evidence of offences **Part 6**

---

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

3 ***Bankruptcy Act 1966***

4 **23 At the end of subsection 185LA(1)**

5 Add:

6 ; and (d) considering whether the debtor has committed an offence  
7 against this Act; and

8 (e) referring to the Inspector-General or to relevant law  
9 enforcement authorities any evidence of an offence by the  
10 debtor against this Act.

11 **24 Application provision**

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

# EXPOSURE DRAFT

Schedule 2 Debt agreements

Part 7 Reporting requirements for debtors in arrears

---

1 **Part 7—Reporting requirements for debtors in**  
2 **arrears**

3 ***Bankruptcy Act 1966***

4 **25 Paragraph 185LB(3)(a)**

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

6 **26 Paragraph 185LB(3)(b)**

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

8 **27 At the end of subsection 185LB(3)**

9 Add:

10 ; and (c) either:

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

18 **28 Application provision**

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

# EXPOSURE DRAFT

Debt agreements **Schedule 2**  
Alignment of offences **Part 8**

---

1 **Part 8—Alignment of offences**

2 ***Bankruptcy Act 1966***

3 **29 After subsection 185LD(2)**

4 Insert:

5 (2A) The person must not pay any money out of the account otherwise  
6 than:

- 7 (a) for purposes related to the administration of debt agreements;  
8 or  
9 (b) in accordance with this Act; or  
10 (c) in accordance with a direction of the Court.

11 **30 After section 185LD**

12 Insert:

13 **185LDA Offence relating to the trust account**

14 A person commits an offence of strict liability if:

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

18 Penalty: 50 penalty units.

19 **31 After subsection 185LE(1)**

20 Insert:

21 (1A) A person commits an offence of strict liability if:

- 22 (a) the person is subject to a requirement under paragraph (1)(a)  
23 or (b); and  
24 (b) the person fails to comply with the requirement.

25 Penalty: 5 penalty units.

26 **32 Subsection 277B(2) (after table item 5)**

27 Insert:

---

# EXPOSURE DRAFT

Schedule 2 Debt agreements

Part 8 Alignment of offences

---

6 subsection 185LE(1A) 1 penalty unit

1 **33 Application provisions**

2 (1) Subsection 185LD(2A) of the *Bankruptcy Act 1966*, as inserted by this

3 Part, applies in relation to:

4 (a) debt agreements that come into force on or after the  
5 commencement of this item; and

6 (b) debt agreements that were in force immediately before that  
7 commencement.

8 (2) Section 185LDA of the *Bankruptcy Act 1966*, as inserted by this Part,  
9 applies in relation to:

10 (a) to the extent that section relates to subsection 185LD(1) or  
11 (2) of that Act—money received on or after the  
12 commencement of this item; and

13 (b) to the extent that section relates to subsection 185LD(2A) of  
14 that Act—money paid out of the account on or after the  
15 commencement of this item.

16 (3) Subsection 185LE(1A) of the *Bankruptcy Act 1966*, as inserted by this  
17 Part, applies in relation to debt agreements that come into force on or  
18 after the commencement of this item.



# EXPOSURE DRAFT

Debt agreements **Schedule 2**  
Time for submitting annual returns **Part 9**

---

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

2 *Bankruptcy Act 1966*

3 **34 Subsection 185LEA(1)**

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

5 **35 Application provision**

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

# EXPOSURE DRAFT

Schedule 3 Registered debt agreement administrators

Part 1 Applications for registration

---

1 **Schedule 3—Registered debt agreement**  
2 **administrators**

3 **Part 1—Applications for registration**

4 ***Bankruptcy Act 1966***

5 **1 Section 185**

6 Insert:

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

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

11 **2 At the end of Division 1 of Part IX**

12 Add:

13 **185A Adequate and appropriate professional indemnity and fidelity**  
14 **insurance**

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

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

22 **3 Before subsection 186C(1)**

23 Insert:

24 (1A) For the purposes of considering an application made under  
25 section 186B, the Inspector-General must interview the applicant  
26 as soon as practicable after receiving the application.

# EXPOSURE DRAFT

Registered debt agreement administrators **Schedule 3**  
Applications for registration **Part 1**

---

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

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

6 **5 Paragraph 186C(2)(e)**

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

8 **6 After paragraph 186C(2)(e)**

9 Insert:

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

18 **7 Subsection 186C(3)**

19 Repeal the subsection, substitute:

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

# EXPOSURE DRAFT

## Schedule 3 Registered debt agreement administrators

### Part 1 Applications for registration

---

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

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

#### 4       **8 Subsection 186C(4)**

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

#### 6       **9 Paragraph 186C(4)(c)**

7                   Before “passes”, insert “the applicant”.

#### 8       **10 Paragraph 186C(4)(d)**

9                   Before “has”, insert “the applicant”.

#### 10       **11 Paragraph 186C(4)(d)**

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

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

13                  Insert:

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

#### 23       **13 Subsection 186C(5)**

24                  Repeal the subsection, substitute:

- 25                  (5) If:  
26                   (a) the applicant is a company; and  
27                   (b) the application is by way of renewal;  
28                  the Inspector-General must approve the application if the  
29                  Inspector-General is satisfied that:

# EXPOSURE DRAFT

Registered debt agreement administrators **Schedule 3**  
Applications for registration **Part 1**

---

- 1 (c) the applicant has produced evidence in writing to the  
2 Inspector-General that the applicant maintains:  
3 (i) adequate and appropriate professional indemnity  
4 insurance; and  
5 (ii) adequate and appropriate fidelity insurance;  
6 against the liabilities that the applicant may incur working as  
7 a registered debt agreement administrator; and  
8 (d) the applicant does not owe more than the prescribed amount  
9 of notified estate charges.

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

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

13 *When a notified estate charge is owed*

- 14 (5A) A person owes a *notified estate charge* if:  
15 (a) the person owes either of the following:  
16 (i) a charge under the *Bankruptcy (Estate Charges) Act*  
17 *1997* (the *estate charge*);  
18 (ii) a penalty under section 281 (late payment penalty) of  
19 this Act in respect of that charge; and  
20 (b) the Inspector-General notified the person of the unpaid estate  
21 charge at least 1 month and 10 business days before the  
22 person's registration as a debt agreement administrator ceases  
23 to be in force.

## 24 **14 Application provision**

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

# EXPOSURE DRAFT

Schedule 3 Registered debt agreement administrators

Part 2 Conditions of registration

---

1 **Part 2—Conditions of registration**

2 ***Bankruptcy Act 1966***

3 **15 Subsection 10(1)**

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

6 **16 At the end of section 186F**

7 Add:

8 (3) The person’s registration as a debt agreement administrator is  
9 subject to the conditions determined in an instrument under  
10 subsection (4).

11 (4) The Minister may, by legislative instrument, determine conditions  
12 for the purposes of subsection (3).

13 **17 After subsection 186G(2)**

14 Insert:

15 (2A) The company’s registration as a debt agreement administrator is  
16 subject to the conditions determined in an instrument under  
17 subsection (2B).

18 (2B) The Minister may, by legislative instrument, determine conditions  
19 for the purposes of subsection (2A).

20 **18 Subsection 186G(3)**

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

22 **19 After subsection 186H(1)**

23 Insert:

24 (1A) Subsection (1) does not apply in relation to conditions determined  
25 in an instrument under subsection 186F(4) or 186G(2B).

# EXPOSURE DRAFT

Registered debt agreement administrators **Schedule 3**  
Conditions of registration **Part 2**

---

1 **20 Application provision**

2 The amendments of sections 186F and 186G of the *Bankruptcy Act*  
3 *1966* made by this Part apply in relation to:

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

# EXPOSURE DRAFT

Schedule 3 Registered debt agreement administrators

Part 3 Ongoing obligation to maintain insurance

---

1 **Part 3—Ongoing obligation to maintain insurance**

2 *Bankruptcy Act 1966*

3 **21 After Subdivision B of Division 8 of Part IX**

4 Insert:

5 **Subdivision BA—Insurance**

6 **186HA Registered debt agreement administrator to maintain**  
7 **insurance**

8 (1) A person who is a registered debt agreement administrator must  
9 maintain:

10 (a) adequate and appropriate professional indemnity insurance;  
11 and

12 (b) adequate and appropriate fidelity insurance;  
13 against the liabilities that the person may incur working as a  
14 registered debt agreement administrator.

15 (2) A person commits an offence if:

16 (a) the person is subject to a requirement under subsection (1);  
17 and

18 (b) the person intentionally or recklessly fails to comply with the  
19 requirement.

20 Penalty: 1,000 penalty units.

21 (3) A person commits an offence of strict liability if:

22 (a) the person is subject to a requirement under subsection (1);  
23 and

24 (b) the person fails to comply with the requirement.

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



# EXPOSURE DRAFT

Registered debt agreement administrators **Schedule 3**  
Ongoing obligation to maintain insurance **Part 3**

---

1 **22 Application provision**

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

# EXPOSURE DRAFT

Schedule 3 Registered debt agreement administrators

Part 4 Cancellation of registration

---

1 **Part 4—Cancellation of registration**

2 ***Bankruptcy Act 1966***

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

4 Add:

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

6 (i) adequate and appropriate professional indemnity  
7 insurance; or

8 (ii) adequate and appropriate fidelity insurance;

9 against the liabilities that the individual may incur working as  
10 a registered debt agreement administrator; or

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

12 **24 At the end of subsection 186L(3)**

13 Add:

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

15 (i) adequate and appropriate professional indemnity  
16 insurance; or

17 (ii) adequate and appropriate fidelity insurance;

18 against the liabilities that the company may incur working as  
19 a registered debt agreement administrator; or

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

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

22 **25 Application provision**

23 The amendments of sections 186K and 186L of the *Bankruptcy Act*  
24 *1966* made by this Part apply in relation to persons who are registered  
25 under section 186D of that Act on or after the commencement of this  
26 item as a result of applications made under section 186B of that Act on  
27 or after that commencement.

# EXPOSURE DRAFT

Registered debt agreement administrators **Schedule 3**  
Trust accounts **Part 5**

---

1 **Part 5—Trust accounts**

2 *Bankruptcy Act 1966*

3 **26 After subsection 186LA(1)**

4 Insert:

5 (1A) This section also applies to a bank if:

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

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

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

11 (b) the Inspector-General reasonably suspects that, in connection  
12 with the account, the person has:

13 (i) contravened a provision of this Act; or

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

16 (iii) contravened a condition of the person's registration as a  
17 registered debt agreement administrator.

18 **27 Application provision**

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

# EXPOSURE DRAFT

Schedule 3 Registered debt agreement administrators

Part 6 Functions of Inspector-General

---

1 **Part 6—Functions of Inspector-General**

2 *Bankruptcy Act 1966*

3 **28 After paragraph 12(1)(bc)**

4 Insert:

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

12 **29 Application provision**

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

1 **Schedule 4—Registered trustees**  
2

3 *Bankruptcy Act 1966*

4 **1 Subsection 10(1)**

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

7 **2 At the end of section 20-35 of Schedule 2**

8 Add:

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

11 **3 Subsection 105-1(6) of Schedule 2**

12 Repeal the subsection.

13 **4 Application provision**

14 The amendment of section 20-35 of Schedule 2 to the *Bankruptcy Act*  
15 *1966* made by this Schedule applies in relation to:

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

# EXPOSURE DRAFT

## Schedule 5 Unclaimed money

---

1 **Schedule 5—Unclaimed money**  
2

3 ***Bankruptcy Act 1966***

4 **1 Subsection 153A(5)**

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

6 **2 Subsection 252A(5)**

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

8 **3 Paragraph 254(2)(a)**

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

13 **4 Subsections 254(3) and (4)**

14 Repeal the subsections, substitute:

15 *Application for entitlement determination*

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

20 *Official Receiver satisfied person entitled to moneys*

21 (4) If a person makes an application in accordance with subsection (3)  
22 and the Official Receiver is satisfied that the person is entitled to  
23 those moneys or a part of those moneys, the Official Receiver  
24 must:  
25 (a) make a written determination to that effect; and  
26 (b) specify in the determination the amount to which the person  
27 is so entitled; and  
28 (c) give the person notice of the determination.

---

# EXPOSURE DRAFT

Unclaimed money **Schedule 5**

---

1 (5) The Commonwealth must pay to the person an amount equal to the  
2 amount referred to in paragraph (4)(b). That amount is a repayment  
3 for the purposes of section 77 of the *Public Governance,*  
4 *Performance and Accountability Act 2013.*

5 *Official Receiver not satisfied person entitled to moneys*

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

11 *Review by the Court*

12 (7) The person may apply to the Court for review of a determination  
13 under subsection (4) or (6).

14 (8) After reviewing the determination, the Court must:  
15 (a) affirm the determination; or  
16 (b) vary the determination; or  
17 (c) set aside the determination and substitute another  
18 determination.

19 *Official Receiver's determination not a legislative instrument*

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

## 22 **5 Application and saving provisions**

23 (1) A person may make an application under subsection 254(3) of the  
24 *Bankruptcy Act 1966*, as substituted by this Schedule, in relation to:  
25 (a) moneys paid to the Commonwealth under subsection 254(2)  
26 or (2A) of that Act on or after the commencement of this  
27 item; or  
28 (b) moneys paid to the Commonwealth under subsection 254(2)  
29 or (2A) of that Act before the commencement of this item,  
30 where the person had not made an application under  
31 subsection 254(3) of that Act before that commencement.

# EXPOSURE DRAFT

## Schedule 5 Unclaimed money

---

- 1 (2) Subsections 254(3) and (4) of the *Bankruptcy Act 1966*, as in force  
2 immediately before the commencement of this item, continue to apply  
3 on and after that commencement in relation to moneys paid to the  
4 Commonwealth under subsection 254(2) or (2A) of that Act before that  
5 commencement, where a person had made an application under  
6 subsection 254(3) of that Act before that commencement.