



**Australian Government**

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**Australian Financial  
Security Authority**

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

## **Table of amendments**

**Table setting out the provisions of the Bankruptcy Amendment (Debt Agreement Reform) Act (the Debt Agreement Reform Act) 2018<sup>i</sup> that are to commence on 27 June 2019<sup>ii</sup>**

<b>Debt Agreement Reform Act provision</b>	<b>Comment</b>	<b>Applies to</b>
<b>Persons who may be authorised to deal with the debtor's property</b>		
185C(2)(c)	The Debt Agreement Reform Act amends s185C(2)(c) so that  (1) only the Official Trustee (OT), a registered trustee or a registered debt agreement administrator may administer a debt agreement, and  (2) a debtor is unable to administer their own agreement. <sup>iii</sup>	Debt agreement proposals (DAPs) given to the Official Receiver on or after 27 June 2019.
<b>Reimbursement of expenses</b>		
185C(3B)	A debt agreement proposal (DAP) may provide for the reimbursement of specified administrator expenses.	DAPs given on or after 27 June 2019.
185LA(2)	An administrator has a duty to only be reimbursed for those expenses specified in the DAP.	DAPs given on or after 27 June 2019.
<b>Value of debtor's property</b>		
185C(4)(c)	The Debt Agreement Reform Act amends s185C(4)(c) by doubling the asset threshold.	DAPs given on or after 27 June 2019.
<b>Undue hardship to the debtor</b>		
185E(2AB)	The Official Receiver can refuse to accept a DAP on the grounds of undue hardship. It is expected that this discretion would only be exercised in exceptional circumstances.	DAPs given on or after 27 June 2019.
<b>The s185CD certificate</b>		
185C(2D)(f)	In circumstances where a broker referred the debtor to the proposed administrator, the s185C(2D) certificate that accompanies the DAP and is now to be provided to the Official Receiver (see below) must include (1) details of the relationship between the broker and the proposed administrator; and (2) details of any payments made or to be made in connection with that referral.	DAPs given on or after 27 June 2019.

Debt Agreement Reform Act provision	Comment	Applies to
185C(2D)(g)	In circumstances where an affected creditor was a related entity of the proposed administrator, the s185C(2D) certificate must include the name of that creditor and the nature of their relationship with the proposed administrator.	DAPs given on or after 27 June 2019.
185EA(2)(a)(iii)	The s185C(2D) certificate must now be provided to affected creditors for voting purposes.	DAPs given on or after 27 June 2019.
Length of debt agreements		
185C(2AA)	A DAP must not provide for the debtor to make payments under the agreement (a) after 3 years starting on the day the agreement is made; or (b) if s185C(2AB) applies to the debtor, 5 years starting on the day the agreement is made. A debt agreement is made when the details of the DAP are entered on the National Personal Insolvency Index (NPII) (s185H).	DAPs given on or after 27 June 2019.
185C(2AB)	<p>This provision applies to a debtor who, at the time the DAP is given to the Official Receiver, has an interest in real property in Australia (as defined) that is the debtor's principal place of residence (the house property exemption).</p> <p>The effect of this provision is that these debtors are able to enter into an agreement of up to 5 years (see above). The Minister can determine other applicable property interests (s185C(2AD)). Where this provisions applies, the relevant DAP cannot seek to deal with the property interest (s185C(2AC)).</p>	DAPs given on or after 27 June 2019.
Variations of debt agreements		
185M(1D)(a)	A variation proposal must not seek to vary the debt agreement so that it would provide for the debtor to make payments under the agreement after 3 years starting on the day the agreement was made, or 5 years if ss185M(1DA) or (1DB) applies (see below).	Debt agreements that come into force on or after 27 June 2019 where the DAP was given on or after 27 June 2019

Debt Agreement Reform Act provision	Comment	Applies to
185M(1DB)	<p>This provision applies if</p> <p>(a) the administrator gives the OR a certificate stating that he or she has reasonable grounds to believe that</p> <p style="padding-left: 40px;">(i) the debtor has suffered a substantial change in circumstances after the agreement was made that was not foreseen at the time the agreement was made; and</p> <p style="padding-left: 40px;">(ii) the debtor is not likely to be able to discharge the obligations created by the agreement as and when they fall due because of that change; and</p> <p>(b) the proposal does not increase the total of the payments that the debtor would be required to make under the agreement (the substantial change in circumstances exception)</p>	Debt agreements that come into force on or after 27 June 2019 where the DAP was given on or after 27 June 2019
185M(1D)(b)	<p>Where the house property exemption (s185C(2AA)) or the substantial change in circumstances exemption (s185M(1DB)) applies, the variation proposal must not seek to vary the debt agreement so that it would provide for the debtor to make payments under the agreement after 5 years starting on the day the agreement was made.</p> <p>A debt agreement is made when the details of the DAP are entered on the NPII (s185H).</p>	Debt agreements that come into force on or after 27 June 2019 where the DAP was given on or after 27 June 2019
185M(1F)	<p>A variation proposal given to the OR must be accompanied by a certificate signed by the administrator of the agreement stating that, having regard to:</p> <p style="padding-left: 40px;">(a) the circumstances in existence at the time the administrator signs the certificate; and</p> <p style="padding-left: 40px;">(b) any other relevant matters;</p> <p>the administrator has reasonable grounds to believe that the debtor is likely to be able to discharge the obligations created by the agreement (as proposed to be varied) as and when they fall due.</p>	Variation proposals given on or after 27 June 2019
185M(2A)(a); (2B) and (2C)	<p>Consistent with the equivalent new provision in relation to DAPs (s185E(2AA)), the OR is not required to process a variation proposal if the OR reasonably believes that complying with the agreement (as proposed to be varied) would cause undue hardship to the debtor. The OR must provide written notice of and reasons for the decision to the debtor and affected creditors. The decision is reviewable in the AAT (on application of the debtor or an affected creditor).</p>	Variation proposals given on or after 27 June 2019

Debt Agreement Reform Act provision	Comment	Applies to
185M(2A)(b); (2B) and (2C)	Consistent with current s185E(3), the OR is not required to process a variation proposal if the OR thinks that creditor's interests would be better served by not processing the proposal. The OR must provide written notice of and reasons for the decision to the debtor and affected creditors. The decision is reviewable in the AAT (on application of the debtor or an affected creditor).	Variation proposals given on or after 27 June 2019
<b>Voting rules (including new voting offences) for:</b>		
(1) DAPs		
185EA(4)(a)	The Official Receiver should not request a vote from a proposed administrator who is an affected creditor.	DAPs given on or after 27 June 2019.
185EA(4)(b)	The Official Receiver should not request a vote from a related entity to the proposed administrator.	DAPs given on or after 27 June 2019.
185EC(1A)	Consistent with the changes introduced by ss185EA(4)(a) and (b), the Official Receiver must disregard a vote from an affected creditor who is the proposed administrator or a related entity of the proposed administrator.	DAPs given on or after 27 June 2019.
185EC(6)	This new provision makes it an offence for a proposed administrator to give, or agree or offer to give, to an affected creditor an incentive for voting in a certain way on a DAP. The penalty for the offence is 6 months imprisonment.	DAPs given on or after 27 June 2019.
(2) variation proposals		
185MA(4) and 185MC(1A)	Consistent with the new voting rules applicable to DAPs, the OR should not request a vote on a variation proposal from an affected creditor who (a) is the administrator of the agreement; or (b) on becoming an affected creditor, is a related entity to the administrator. The OR must disregard a vote from either of these parties.	Variation proposals given on or after 27 June 2019 where the DAP was given on or after 27 June 2019.
185MC(6)	It is an offence for an administrator to give, or agree or offer to give, to an affected creditor an incentive for voting in a certain way on a variation proposal. The penalty for the offence is 6 months imprisonment.	Variation proposals given on or after 27 June 2019.

Debt Agreement Reform Act provision	Comment	Applies to
<b>(3) termination proposals</b>		
185PA(4) 185PC(1A)	The OR should not request a vote on a termination proposal from an affected creditor who (a) is the administrator of the agreement; or (b) on becoming an affected creditor, is a related entity to the administrator. The OR must disregard a vote from either of these parties.	Termination proposals given on or after 27 June 2019 where the DAP was given on or after 27 June 2019.
185PC(6)	It is an offence for an administrator to give, or agree or offer to give, to an affected creditor an incentive for voting in a certain way on a termination proposal. The penalty for the offence is 6 months imprisonment.	Termination proposals given on or after 27 June 2019.
<b>Court orders to terminate debt agreements</b>		
185Q(4)(ba)	Contravention of the new offences under ss185EC(6), 185MC(6) and 185PC(6) will provide additional grounds upon which the court can terminate a debt agreement (on application of the debtor, a creditor or the OR).	DAP, variation and termination proposals given on or after 27 June 2019.
<b>Voiding debt agreements</b>		
185T(2)(c) and (e)	A breach of duty on behalf of an administrator and a breach of a condition imposed under section 20-35 of Schedule 2 of the Bankruptcy Act (for registered trustees) will provide additional grounds for an application for an order declaring that all or part of a debt agreement is void. Such application may be made by the debtor (or the debtor's representative if the debtor has died) a creditor or the OR.	Debt agreements that come into force on or after 27 June 2019.
<b>Administrators to refer evidence of offences</b>		
185LA(1)(d) and (e)	An administrator now has a duty to consider whether the debtor has committed an offence against the Bankruptcy Act and to refer any evidence of an offence to the Inspector-General or to relevant law enforcement authorities.	Debt agreements that come into force on after 27 June 2019, where the DAPs were given on or after 27 June 2019.

Debt Agreement Reform Act provision	Comment	Applies to
<b>Reporting requirements for debtors in arrears</b>		
185LB(3)(c)(i) and (ii)	<p>This amendment increases the threshold by which an administrator is obliged to report a 3 month arrears default. New s185LB(3)(c)(i) provides that administrators are only required to report to creditors under 185LB(1) if the value of the arrears exceeds either 20 per cent of the payment due for the period, or \$300, whichever is higher. New s185LB(3)(c)(ii) provides that the administrator must report the 3-month arrears default if no payment was made in the period to reduce any of the due payments.</p>	<p>Debt agreements that come into force on or after 27 June 2019.</p>
<b>Alignment of offences</b>		
185LD(2A)	<p>Consistent with the equivalent provision relevant to trustees (s65-25 of Schedule 2 of the Bankruptcy Act), this amendment prohibits debt agreement administrators from paying any money out of the debt agreement bank account other than for the purposes of administration of the debt agreement, in accordance with the Bankruptcy Act, or by direction of the Court.</p>	<p>Debt agreements that come into force on or after 27 June 2019 and debts agreements that were in force immediately before 27 June 2019.</p>
185LDA	<p>This new provision makes it an offence of strict liability of 50 penalty units for an administrator to fail to comply with established ss185LD(1) and (2) (requiring administrators to maintain a separate bank account for debt agreements and to pay only money received by debt agreement debtors into that account) and new s185LD(2A). This new offence is consistent with the equivalent provisions relevant to trustees (ss65-5 and 65-15 of Schedule 2).</p>	<p>For breach of ss185LD(1) and (2), money received on or after 27 June 2019.</p> <p>For breach of new 185LD(2A), money paid out of the account on or after 27 June 2019.</p>
185LE(1A)	<p>Consistent with the equivalent offence relevant to trustees (s70-10 of Schedule 2 of the Bankruptcy Act), this new provision makes it an offence of strict liability for an administrator to fail to comply with ss185LE(1)(a) and (b). Those provisions require the administrator to keep sufficient records as are necessary to give a full and correct depiction of the administration of each debt agreement (s185LE(1)(a)) and to make these records available to the Inspector-General if such a request is made (s185LE(1)(b)).</p>	<p>Debt agreements that come into force on or after 27 June 2019.</p>

Debt Agreement Reform Act provision	Comment	Applies to
277B(2), item 7	Current s277B(2) contains a table which sets out those offences which are able to be dealt with via an infringement notice as an alternative to prosecution. New item 7 provides that a breach of new s185LE(1A) can, where appropriate, be addressed by way of infringement notice with an amount payable to the value of 1 penalty unit. This amendment is consistent with the current arrangements for trustees which provide that the equivalent offence (ss70-10 and 70-25 of Schedule 2) can also be addressed by way of infringement notice with a value of 1 penalty unit.	Debt agreements that come into force on or after 27 June 2019.
<b>Time for submitting annual returns</b>		
185LEA(1)	In order to provide consistency with the equivalent requirement for trustees (s70-5(3)(b) of Schedule 2 of the Bankruptcy Act) s185LEA(1) is amended so that the applicable deadline for annual return submission is 25 business days after the financial year.	Financial years ending after 27 June 2019.
<b>Registered debt agreement administrators</b>		
<b>Applications for registration</b>		
<b>Adequate and appropriate professional indemnity and fidelity insurance</b>		
186C(2)(f)	<p>The Inspector General must refuse to approve applications for registration as a debt agreement administrator where there is no evidence in writing that the applicant has taken out adequate and appropriate professional indemnity and fidelity insurance<sup>iv</sup>.</p> <p>These new requirements are consistent with those imposed on trustees at s20-20(4)(b) of Schedule 2 of the Bankruptcy Act.</p>	For each of these amendments to s186C, applications made under s186B on or after 27 June 2019.
186C(3)(c)(i) and (ii)	<p>The Inspector-General must refuse to approve an individual's application for registration renewal unless adequate and appropriate professional indemnity and fidelity insurance is maintained by the applicant.</p> <p>These new requirements are consistent with those imposed on trustees at s20-75 of Schedule 2.</p>	

Debt Agreement Reform Act provision	Comment	Applies to
186C(4)(i) and (ii)	Prospective company debt agreement administrators are required to obtain adequate and appropriate professional indemnity and fidelity insurance in order to have their applications for registration approved by the Inspector-General, similar to the requirements set out for trustees in s20-20(4)(b) of Schedule 2 of the Bankruptcy Act.	
186C(5)(c)(i)( and (ii)	<p>The Inspector-General must refuse to approve applications for registration renewal by a company unless adequate and appropriate professional indemnity and fidelity insurance is maintained by the applicant company</p> <p>These new requirements are consistent with those imposed on trustees at s20-75 of Schedule 2.</p>	
<b>Fit and proper person</b>		
186C(2)(g)	Pursuant to s186C(2)(g), the Inspector-General must refuse to approve an application from an individual for registration as a debt agreement administrator where the applicant is not a fit and proper person.	For each of these amendments to s186C, applications made under s186B of the Bankruptcy Act on or after 27 June 2019.
186C(4)(f) and (g)	Similarly, these provisions require the company applicant to be a fit and proper person, and for each director in the company to be a fit and proper person, in order for the Inspector-General to approve an application for registration as a debt agreement administrator.	
<b>Applicant interview</b> <b>Timeframe for considering applications</b>		
186C(1A)  186C(1)	<p>The Inspector-General must interview applicants for registration as debt agreement administrators as soon as practicable after receiving the application. This amendment aligns with a similar obligation for the assessment of trustee registrations under regulation 8.30 of the Bankruptcy Regulations.</p> <p>The Inspector General's deadline for making a decision in relation to an application for registration is 45 business days after the date of interviewing the applicant. This amendment aligns the requirement for processing a debt agreement administrator's application with that of a trustee's application for registration under s20-20(3) of Schedule 2 of the Bankruptcy Act.</p>	Applications made under s186B on or after 27 June 2019.

Debt Agreement Reform Act provision	Comment	Applies to
<b>Prescribed amount of notified estate charges</b>		
186C(3)(d)  186C(5)(d)	<p>The Inspector-General must refuse to approve an individual's application for registration renewal unless the applicant does not owe more than the prescribed amount of notified estate charges.</p> <p>This provision creates a similar requirement for a company debt agreement administrator renewal of registration.</p>	Applications made under s186B on or after 27 June 2019.
186C(5A)	<p>A person owes a notified estate charge if:</p> <ul style="list-style-type: none"> <li>the person owes either a charge under <i>the Bankruptcy (Estate Charges) Act 1997</i>, or a penalty under section 281 (late payment penalty) under the Bankruptcy Act, and the Inspector-General has notified the person of the unpaid estate charge at least one month and 10 business days before the person's registration as a debt agreement administrator ceases to be in force.</li> </ul> <p>These amendments align with equivalent provisions for registration renewal for trustees under s20-75 of Schedule 2 of the Bankruptcy Act.</p>	
<b>On-going obligation to maintain insurance</b>		
186HA(1)  186HA(2)  186HA(3)	<p>Registered debt agreement administrators must maintain adequate and appropriate professional indemnity and fidelity insurance.</p> <p>Failure to comply with new s186HA(1) amounts to an offence. In the case of intentional or reckless failure, a penalty of 1,000 penalty units will apply.</p> <p>If the failure is not intentional or reckless, it is considered a strict liability offence with a penalty of 60 penalty units.</p>	Persons who are registered under s186D of the Act on or after 27 June 2019 as a result of applications made under s186B on or after 27 June 2019.
<b>Cancellation of registration</b>		
186K(3)(e) and (f) 186L(3)(d)(i) and (ii) 186L(3)(e)	New ss186K(3)(e) and (f) and 186L(3)(d) and (e) empower the Inspector General to request a written explanation if the debt agreement administrator ceases to have adequate and appropriate professional indemnity or fidelity insurance, or the administrator is not a fit and proper person.	Persons who are registered under s186D of the Act on or after 27 June 2019 as a result of applications made under s186B on or after 27 June 2019.

Debt Agreement Reform Act provision	Comment	Applies to
186L(3)(f)	<p>Similarly, new s186L(3)(f) enables the Inspector-General to request a written explanation if the debt agreement administrator is a company and a director of the company is not a fit and proper person.</p> <p>These amendments will enable the Inspector-General to cancel a debt agreement administrator's registration under subsections 186K(4) or 186L(4) if:</p> <ul style="list-style-type: none"> <li>• the debt agreement administrator does not respond to the written request</li> <li>• the Inspector-General is not satisfied with the debt agreement administrator's explanation that the administrator does in fact hold the required insurance, or</li> <li>• the Inspector-General is not satisfied with the debt agreement administrator's explanation for behaving in a manner that indicates they are not a fit and proper person.</li> </ul>	
Trust accounts		
186LA(1A)	<p>This new subsection enables the Inspector-General to obtain information concerning a debt agreement administrator or registered trustee's debt agreement trust account from a bank without first issuing a show cause notice. The Inspector-General will be able to require this information from the bank under existing s186LA(2) if it reasonably suspects, in connection with the account, that the debt agreement administrator has contravened a provision of the Bankruptcy Act, failed to properly carry out their duties, or contravened a condition of their registration.</p>	<p>Debt agreements that come into force on or after 27 June 2019.</p>
Functions of Inspector-General		
12(1)(bd)	<p>The Inspector-General's investigation and inquiry powers now extend to any conduct of a debt agreement administrator including conduct during the period starting from when the debt agreement administrator and debtor first engage. If the agreement is not ultimately made, this will not prevent the Inspector-General from investigating or inquiring into the conduct.</p>	<p>Conduct engaged in on or after 27 June 2019, whether the registered debt agreement administrator was registered before on or after 27 June 2019.</p>

<sup>i</sup> This table does not present all or a full description of the amendments contained in *the Bankruptcy Amendment (Debt Agreement Reform) Act 2018* (the Debt Agreement Reform Act), but highlights the main features of the most significant changes.

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ii The majority of the amendments in the Debt Agreement Reform Act will commence on 27 June 2019. However neither the payment to income ratio (a new debt agreement eligibility requirement) nor the industry-wide debt agreement administrator conditions will commence on that date. Those changes depend on legislative instruments which are yet to be settled by government. AFSA will advise stakeholders in advance of those amendments becoming operative. Accordingly, as it only deals with amendments commencing on 27 June 2019, this table does not include amendments that are dependent for their application on either of these legislative instruments being made.

iii From 27 September 2019, the Official Trustee will replace an administrator of an agreement who has not obtained registration (and who is not a registered trustee or the Official Trustee).

iv New s185A provides that the Inspector-General may determine by legislative instrument what constitutes adequate and appropriate professional indemnity and fidelity insurance. That instrument has not been made.