

Debt Restructuring legislation proposed for SMEs

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By Andrew Hack, Solicitor, and Stephen Mullette, Principal, of Matthews Folbigg Lawyers, in our Insolvency, Restructuring and Debt Recovery Group.

The Treasury has today [announced its Draft Bill](#) designed to create a new, affordable restructuring mechanism for distressed small to medium businesses. The legislation seeks to resolve problems SMEs face in affording the costs of expensive Voluntary Administration processes. The Australian Government's "Debt Restructuring" solution is a new process similar to a Part IX debt agreement available to insolvent individuals under bankruptcy legislation, as well as Chapter 11 arrangements available to companies in the US.

The Debt Restructuring process allows company directors to retain control of the company while putting a proposal to creditors for consideration, provided they meet the "eligibility criteria", to be prescribed in regulations. Notably, the company's total liabilities must be limited to a certain size in order to meet the eligibility criteria (as with Part IX debt agreements).

Whilst it is not a new proposal ([ARITA has been advocating for such a mechanism since 2014](#)), it has been picked up by the Government amidst the COVID-19 economic crisis in the hope of limiting fallout as a result of collapsing businesses once the faucet of stimulus is turned off and other temporary relief measures come to end, which is currently scheduled for the end of the year. As such, the new legislation will be effective from 1 January 2021.

The Draft Bill can be access here:

<https://treasury.gov.au/sites/default/files/2020-10/c2020-118203-exposedraftbill.pdf>

The Draft Explanatory Materials can be access here:

<https://treasury.gov.au/sites/default/files/2020-10/c2020-118203-exposedraftem.pdf>

Going forward, Matthews Folbigg Lawyers will be providing further updates on the details and analysis of the draft legislation on Debt Restructuring, including the effects on companies, their directors and insolvency practitioners.

However, if you would like more information or advice in relation to debt restructuring, insolvency and restructuring, contact Andrew Hack at andrewh@matthewsfolbigg.com.au or a



Principal of the Matthews Folbigg Insolvency, Restructuring & Debt Recovery Group:

Jeffrey Brown on (02) 9806 7446 or jeffreyb@matthewsfolbigg.com.au

Stephen Mullette on (02) 9806 7459 or stephenm@matthewsfolbigg.com.au.