

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S DEPARTMENT

Group 3

Question No. 39

Senator Macdonald asked the following question at the hearing on 24 February 2014:

CHAIR: The government regulated debt agreements have enormous coverage in advertising on television. What they promise they can do is absolutely great—if it happens. Is there any regulation of how those people who organise the debt agreements are paid—

Ms Ingram: Yes.

CHAIR: And where do they get their money from for this massive advertising?

Ms Ingram: They administer the payments to creditors and they are allowed to impose a fee related to the realisations they get from the debtor. We also oversee the advertising of debt agreement administrators, although

ASIC has the power to operate in that area. We will refer to ASIC any conduct we think is misleading—also to the ACCC.

CHAIR: You have power over their advertising?

Ms Ingram: We do not have power directly over their advertising, but we use powers of persuasion. If we do not get a result, we will refer them formally to ASIC and/or the ACCC.

CHAIR: Some of the early advertising was quite outrageously suggesting it was—

Ms Ingram: government guaranteed, yes.

CHAIR: A lot of them are on the movies at three o'clock in the morning, which I tape—and I can then fast forward through them when I actually watch the movies. Is there a percentage of what they pay out? Are the fees regulated by your agency?

Ms Ingram: There is some regulation of the fees, although we cannot tell them what fees they can charge.

CHAIR: What is the regulation then?

Ms Ingram: I will have to take that on notice to give you the exact details.

CHAIR: Do they charge a percentage?

Ms Ingram: I will refer you to our general counsel. They are not allowed to take the fees up front. There used to be a practice where they would basically collect the fee up front and then take their time about how they administered.

CHAIR: The creditor actually pays?

Ms Ingram: It is the creditor who pays in any administration—because they end up getting less money. But the creditors vote on any debt agreement, so they have to be happy with the fees that are charged. It is not the debtors who decide what the fee is; it is the creditors. The creditors can vote against the debt agreement if they are not happy with the level of fees charged.

CHAIR: If they vote against, the company—the entrepreneur—who is organising the debt agreement does not get paid at all?

Ms Ingram: No, the debt is still outstanding. They risk bankruptcy.

CHAIR: I assume there is a whole new class of entrepreneur who runs these debt agreements. Is that correct?
Ms Ingram: There are debt agreement administrators who have to be registered with us. It is, if you like, a profession.

CHAIR: Mr McCosker, can you quickly enlighten us?

Mr McCosker: We do not have the details with us on the specific requirements. It is enshrined in legislation. We can take that on notice for you

The answer to the honourable senator's question is as follows:

AFSA has no specific powers to regulate the fees of debt agreement administrators. Creditors vote on whether or not to accept a debt agreement proposal and the proposal must set out the fees which comprise the administrator's remuneration. Creditors will take into consideration the level of those fees and may reject the proposal if they consider the fees excessive.

The Bankruptcy Act ('the Act') requires that a Debt Agreement Proposal and Explanatory Statement be presented in an approved form. The purpose of the Explanatory Statement is to give creditors all the necessary information they require to make an informed decision when they vote on the proposal.

Fees may include administration fees and set up fees.

Administration fees relate to the duties undertaken to administer the debtor's agreement, including the distribution of dividends to creditors, notifying creditors of default, dealing with variations and ensuring the debtor complies with their agreement. Administration fees must, by force of section 185C of the Act, be nominated by the administrator as a percentage of the total amount payable by the debtor under the debt agreement. Then, once the debt agreement commences the administrator is entitled to take as remuneration only the specified percentage of each payment made by the debtor, so that there is no preference above other creditors.

Set-up fees are owed by the debtor to the firm and may be paid irrespective of whether or not the debt agreement is accepted for processing by AFSA or voted on by creditors. Neither the Act nor the Bankruptcy Regulations put any limits on the amount that can be charged in relation to set-up fees. Set-up fees may relate to the time taken by an administrator in giving information concerning options to the debtor and in satisfying their understanding of the debtor's income, expenses and level of unmanageable debt. This may include contacting and dealing with creditors, obtaining exact details and evidence of income, assets and debts. Debtors must disclose the amount of set-up fees in their Explanatory Statement which is then signed by both the debtor and the administrator.