



July 2024

Minimal Asset Procedure discussion paper

Background

On 2 March 2023, the Attorney-General, the Hon Mark Dreyfus KC MP, convened a national Roundtable (Roundtable)¹ with key stakeholders across all sectors of the personal insolvency system to better understand the pressure points and potential key areas for reform.

The Roundtable brought together 23 organisations from a wide range of sectors with an interest in personal insolvency, including credit, finance, accounting, legal sectors and consumer groups. The Roundtable provided an opportunity for practitioners and groups representing both creditor and debtor interests to engage directly with Government to provide an opportunity for dialogue between key stakeholders on personal insolvency priorities and emerging issues and to increase effective collaboration between Government and key stakeholders in the development of personal insolvency law reform.

Following the Roundtable, the Attorney-General's Department (the department) publicly consulted in September 2023 on 4 short-term priorities to meaningfully improve the Australian personal insolvency system. The Government is working to progress amendments to the *Bankruptcy Act 1966* (Cth) (Bankruptcy Act) based on responses to this.

The department is now consulting on other issues raised through the Roundtable, to complement these proposed reforms.

Options for shorter discharge period

At the Roundtable, a shorter discharge from bankruptcy was identified as a long-term reform priority. Participants considered whether the default discharge period for bankruptcy should remain at 3 years, or be reduced to 1 year.

Participants also raised an alternative solution for 'no asset' bankruptcies, modelled on New Zealand's No Asset Procedure. Stakeholders briefly discussed how such a program would allow debtors with no way to repay their debts (i.e. low income and low asset debtors) to be discharged more quickly. Stakeholders

¹ [Ministerial Roundtable on Personal Insolvency: summary.](#)

identified that there is a cohort of debtors in Australia that enter into bankruptcy with minimal to no assets and where creditors do not generally receive a dividend from such bankrupt estates.

On 28 September 2022, the Parliamentary Joint Committee on Corporations and Financial Services began an inquiry into corporate insolvency in Australia. During this inquiry, reference was made to the New Zealand No Asset Procedure as a point of difference from the Australian personal insolvency system.

International models

As noted above, the New Zealand model has been raised as an option for Australia to consider. The New Zealand model provides an alternative personal insolvency option that allows a person with debts of between \$1,000 NZD (New Zealand's bankruptcy threshold) and \$50,000 NZD and who holds no realisable assets to be cleared of their debts. The No Asset Procedure is less restrictive than bankruptcy and usually lasts for one year. A person is only able to enter into a No Asset Procedure once.

There are other international models which are intended to achieve similar purposes. These include the Debt Relief Order in England and Wales, the Minimal Asset Process in Scotland and the Debt Relief Notice in Ireland. The department provides comparisons of these processes in the overview below.

Objectives of a Minimal Asset Procedure in an Australian context

Whilst bankruptcy is intended to provide a fresh start, it can have potentially life-long consequences. The department is focusing on measures that seek to ensure that bankruptcy is regarded as an option of last resort, while ensuring that creditors' and debtors' interests are appropriately balanced in cases where there is no reasonable likelihood of a return to creditors. The consideration of a Minimal Asset Procedure in Australia seeks to further this rationale.

The Bankruptcy Act regulates Australia's personal insolvency system. It creates a framework to allow a debtor in severe financial stress to be discharged from unmanageable debts while allowing for the realisation of a debtor's available assets for distribution to affected creditors. However, there exists a certain portion of bankruptcies which do not provide returns to creditors as there are no available assets for realisation.

The department notes that the current consumer environment consists of an increased cost of living with access to non-traditional forms of credit such as buy-now-pay-later options. This has led to an increasing number of debtors who are in financial distress. The increased cost of living and access to non-traditional credit (such as buy-now-pay-later options) has led to an increasing number of debtors who are in financial distress. Existing insolvency options may not be well suited for this cohort, meaning that aspects of bankruptcy are less effective at achieving a fresh start for debtors. Additionally, certain bankruptcies are uncommercial for private Registered Trustees and it is these bankruptcies that may be costly and lengthy for the Commonwealth (through the Official Trustee) to administer.

An objective of the Bankruptcy Act is that bankruptcy be regarded as an option of last resort and should allow a debtor a fresh start, whilst also attempting to balance the interests of creditors who are seeking a return on their credit. In some cases, however, a debtor is unable to repay any debts, and has no realisable assets in a bankruptcy which may otherwise be divisible amongst creditors. In such cases, bankruptcy is often a disproportionate option to the debtor's circumstances. While other insolvency options may exist, these

require an ability to repay some debts. A Minimal Asset Procedure would allow a debtor to achieve a fresh start, while also having minimal impact on creditors who would likely not have received any return had a debtor become bankrupt.

A Minimal Asset Procedure may also have the effect of reducing the administrative burden on the Australian Financial Security Authority (AFSA), as eligible debtors are in the personal insolvency system for less time, as is appropriate for their circumstances.

Elements of the Minimal Asset Procedure

The department has considered Australia's existing personal insolvency system in addition to numerous overseas models. The department considers the following to be potential elements of a Minimal Asset Procedure in Australia:

- there be a maximum debt threshold of \$50,000 to enter the Minimal Asset Procedure;
- the Minimal Asset Procedure would last for 12 months, with a period of 4 years post-discharge to be listed on the National Personal Insolvency Index;
- a maximum threshold for income would be determined for eligibility for entry into a Minimal Asset Procedure;
- a maximum threshold of \$10,000 in assets with exceptions for tools of trade and a vehicle to be eligible for entry into a Minimal Asset Procedure;
- a debtor may only enter into a Minimal Asset Procedure once during their lifetime; and
- a Minimal Asset Procedure should be less onerous than a bankruptcy.

Why we are consulting

The department is consulting to understand the feasibility, benefits and possible consequences of a Minimal Asset Procedure in the Australian insolvency context.

The Minimal Asset Procedure in Australia may allow debtors a fresh start sooner where they have no realisable assets, and where bankruptcy would result in no returns to creditors. The department recognises that complex policy issues exist, including:

- how the Minimal Asset Procedure would fit in the Australian personal insolvency system, and
- how to ensure the Minimal Asset Procedure is used appropriately.

The department has consulted with AFSA and the Department of the Treasury and recognises that implementing a Minimal Asset Procedure in the current personal insolvency framework may lead to additional costs and administrative processes.

The department is also seeking views as to where the Minimal Asset Procedure would fit within the Australian insolvency landscape. There are currently 4 personal insolvency options in Australia:

- temporary debt protection,
- debt agreements,
- personal insolvency agreements, and
- bankruptcy.

Who we want to hear from

While the consultation is open to all members of the public, the department would particularly like to hear from:

- small business and consumer advocates,
- insolvency practitioners,
- creditor groups,
- debt collector bodies, and
- peak industry organisations.

The discussion paper includes questions to guide feedback. However, stakeholders are welcome to provide further information and suggestions relevant to each topic presented in this paper.

Submissions can be made through Citizen Space. Please note that the department will not publish your submission if you asked for it to remain confidential, or if the department considers (for any reason) that it should not be made public. The department may redact parts of published submissions, as appropriate. Read the department's [privacy policy](#) to find out more.

If you have any questions about the consultation process, please email bankruptcy@ag.gov.au.

Section 1: Scope of Minimal Asset Procedure

Discussion questions

1. **Question 1:** Are you supportive of the Minimal Asset Procedure within Australia?
2. **Question 2:** Other jurisdictions have enacted a Minimal Asset Procedure to assist debtors who have no reasonable way to repay their debts. Where these debtors become bankrupt, it would result in non-commercial estates which do not return dividends to creditors. Do you believe a cohort exists for a Minimal Asset Procedure in Australia? Please expand on your response.
3. **Question 3:** The department recommends a maximum debt threshold of \$50,000 for the Minimal Asset Procedure. Do you agree with this threshold? Please expand on your response. The department has included a table of other jurisdictions' thresholds below to assist.
4. **Question 4:** The department proposes an asset threshold of \$10,000 with exceptions for tools of trade and a vehicle. Do you agree with this asset threshold? Please expand on your response.
5. **Question 5:** What should a person's maximum income be prior to accessing the Minimal Asset Procedure?
6. **Question 6:** How should a person's ability to repay be assessed for eligibility to access the Minimal Asset Procedure?
7. **Question 7:** Should any debts be excluded from the Minimal Asset Procedure in Australia? Table 1 below compares other jurisdictions which exclude certain debts from being cleared, where they would otherwise be cleared by a bankruptcy.
8. **Question 8:** What exceptions/exemptions do you believe should be applied for debtors when assessing someone's suitability for the Minimal Asset Procedure? For example, when assessing a debtor's income where someone is receiving welfare payments, should the debtor be exempt from the income test?
9. **Question 9:** To what extent would the Minimal Asset Procedure displace alternatives to bankruptcy currently available in the Australian personal insolvency system? Please explain.
10. **Question 10:** If the Minimal Asset Procedure was enacted in Australia, where would this best fit within the current personal insolvency options?
11. **Question 11:** Do you believe if there are any economic circumstances that signal a need for the Minimal Asset Procedure? Please expand on your response.

Overview

Thresholds

In order to properly realise the benefits of the Minimal Asset Procedure, and ensure it is appropriately contained, there must be a number of thresholds built into the procedure to determine eligibility, this includes:

- maximum debt thresholds, and
- asset thresholds.

In considering a maximum debt threshold, balancing the interests of debtors and creditors is essential. The maximum threshold should ensure that a debtor with a higher amount of debt should access a different

insolvency option. A central objective of the Minimal Asset Procedure is to allow debtors with lower debt amounts to be discharged more quickly than if they had gone through bankruptcy.

Additionally, creditors' interests should be balanced by ensuring that a creditor is no worse off than if a debtor went through a Minimal Asset Procedure rather than bankruptcy. In order to ensure that this is the case, the debtor must have a demonstrated inability to repay a debt, and no realisable assets.

Not having realisable assets is different to not having any assets whatsoever. The department proposes to provide a maximum asset threshold for eligibility to enter into a Minimal Asset Procedure. The maximum asset threshold will ensure that the procedure is targeted at the correct cohort of debtors, that is, those in debt who have minimal to no assets which would be realisable in a bankruptcy. This threshold must also be balanced with allowing debtors to maintain some assets necessary for them to make a living, such as tools of trade and a vehicle. This principle is already recognised in Australia's bankruptcy system.

The department has provided a comparison of these thresholds in various jurisdictions overseas below as of May 2024. Additionally, the department provides statistics obtained from AFSA regarding low debt and the rate of low asset bankruptcies in the 2021-2022 financial year.

Table 1: Comparison of thresholds in other jurisdictions²

| Overseas Jurisdiction | New Zealand – No Asset Procedure (NAP) | United Kingdom (England and Wales) – Debt Relief Order (DRO) | United Kingdom Scotland – Minimal Asset Process | Ireland – Debt Relief Notice (DRN) |
|-----------------------|--|---|---|---|
| Debt | Between \$1,000-\$50,000 NZD (\$910-\$45,490 AUD) | From 28 June 2024, debts of less than £50,000 (\$94,868 AUD) (increasing from £30,000 (\$56,921 AUD)) | Debts are more than £1,500 (\$2,846 AUD) but less than £25,000 (\$47,434 AUD) | Less than €35,000 (\$57,079 AUD) |
| Assets | No realisable assets to sell to make payments. Exceptions: <ul style="list-style-type: none"> Tools up to a certain value furniture up to a certain value vehicle up to \$6,500 NZD (\$5,914 AUD) | <ul style="list-style-type: none"> Less than £2,000 (\$3,795 AUD) savings or assets Exceptions: <ul style="list-style-type: none"> one motor vehicle worth less than £4,000 (\$7,589 AUD) | <ul style="list-style-type: none"> Less than £2,000 (\$3,795 AUD) in total, with no single item worth more than £1,000 (\$1,897 AUD) Cannot own home, land or buildings Motor vehicle worth less than £3,000 (\$5,692 AUD) | <ul style="list-style-type: none"> Few assets – less than €1,500 (\$2,446 AUD). Exceptions: <ul style="list-style-type: none"> 1 item of jewellery worth less than €750 (\$1,223 AUD) one motor vehicle worth less than €5,000 (\$8,154 AUD) |

² Exchange rates are approximate as of 13 May 2024.

| | | | | |
|---------------|---|---|---|--|
| | <ul style="list-style-type: none"> money up to \$1,300 NZD (\$1,183 AUD) | | | <ul style="list-style-type: none"> reasonably necessary household equipment or tools worth less than €6,000 (\$9,785 AUD) |
| Income | Must have “no way to pay” debt | <ul style="list-style-type: none"> Less than £75 (\$142 AUD) spare each month after paying household bills | <ul style="list-style-type: none"> Income is made up solely of income-related benefits, or No money left over from total earned income after essential costs are paid | <ul style="list-style-type: none"> Under €60 (\$98 AUD) a month after reasonable living expenses are deducted |

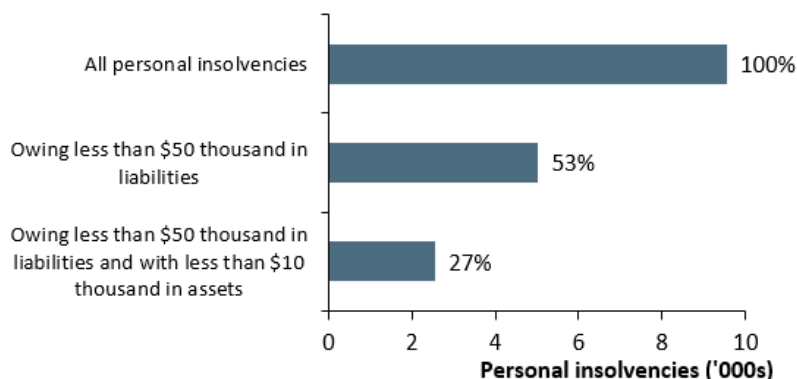
The Australian context - personal insolvencies in 2021-2022³

In 2021-2022, there were 9,551 personal insolvencies in Australia with 52.7% (5,034 of 9,551) owing less than \$50,000 in liabilities. The majority (50.8% or 2,559 of 5,034) of people owing less than \$50,000 in liabilities had less than \$10,000 in assets. This means that in 2021-22, 26.8% (2,559 of 9,551) of personal insolvencies had less than \$50,000 in liabilities and less than \$10,000 in assets.

Table: Involencies by liability and assets

| Type of insolvencies | Count | Thousands | Share |
|---|-------|-----------|-------|
| Owing less than \$50 thousand in liabilities and with less than \$10 thousand in assets | 2,559 | 2.56 | 27% |
| Owing less than \$50 thousand in liabilities | 5,034 | 5.03 | 53% |
| All personal insolvencies | 9,551 | 9.55 | 100% |

Figure: Involencies by liability and assets



³ [People in personal insolvencies with less than \\$50,000 in liabilities | Australian Financial Security Authority \(afsa.gov.au\).](https://www.afsa.gov.au/personal-insolvency/insolvency-statistics)

In addition, Australia's system already has certain asset thresholds relating to bankruptcy, which recognise that some assets are required to be maintained by debtors in order to make a living. Relevantly, the Bankruptcy Act currently allows a bankrupt person to hold tools of trade of up to \$4,200 and a car or motorcycle to the value of \$9,100 (amount updated each financial year).

Proposals: Debt thresholds and asset thresholds

Based on international examples and the above data, the department proposes the following thresholds:

- Minimum debt threshold: No limit, but a debtor can only enter into a Minimal Asset Procedure once in a lifetime.
- Maximum debt threshold: \$50,000.
- Asset threshold: of \$10,000 exclusive of tools of trade up to \$4,200 and vehicles up to \$9,100 (aligned with existing Bankruptcy Act provisions).

Inability to repay debts

In addition to maximum debt and asset thresholds, a key consideration for eligibility to enter into a Minimal Asset Procedure in Australia is an assessment of a debtor's ability to repay their debts. This is to ensure that the process captures, as close as possible, only those estates to which creditors would not have received a return, regardless of which insolvency option is chosen, and to minimise the proposed procedure being misused or abused by those that could in fact repay their debts.

In order to ascertain whether a debtor possesses an ability to repay debt, consideration must be given to two factors at separate points:

1. in order to determine eligibility for entry into a Minimal Asset Procedure, the income of the debtor at that point in time; and
2. during the administration of a Minimal Asset Procedure, whether the debtor receives an unexpected windfall (such as an inheritance).

In assessing these points, care must be taken to ensure a debtor is able to earn an income to pay for essentials without impacting their eligibility to enter into the proposed Minimal Asset Procedure. This must be balanced against setting any income threshold or 'ability to repay' threshold at an appropriate level so that those who do have an ability to pay their debts through their income or other sources are ineligible to enter into the procedure.

Overseas examples

In New Zealand, 'no way to repay' is determined through a means test. An applicant must complete a budget, including living costs, which is used to identify what discretionary funding the applicant has left over. This is used during the assessment of the application to determine whether the applicant has no way to repay their debt. New Zealand does not have a set dollar amount for what is considered 'reasonably left over at the end of the month' and some discretion is used in allowing for costs of medication and variations in cost of living.

In Scotland, reliance on welfare can be used as an eligibility factor. If a person’s income is made up of ‘income-related benefits’ (similar to Australian income support payments or Centrelink payments such as Jobseeker), then the person meets the income test. This appears to streamline the application process.

In other jurisdictions, such as the United Kingdom and Ireland, the policy specifies the threshold for discretionary funding. Refer to the table below.

| Overseas Jurisdiction | New Zealand – No Asset Procedure (NAP) | United Kingdom (England and Wales) – Debt Relief Order (DRO) | United Kingdom (Scotland) – Minimal Asset Process | Ireland – Debt Relief Notice (DRN) |
|------------------------------|---|---|--|--|
| Income | Must have ‘no way to pay’ debt | Less than £75 (\$142 AUD) spare each month after paying household bills | Income is made up solely of income-related benefits, or No money left over from total earned income after essential costs are paid | Under €60 (\$98 AUD) a month after reasonable living expenses are deducted |

The Australian context

In Australia, the Bankruptcy Act contains a model which could be used as a starting point for establishing an income threshold for eligibility to enter into a Minimal Asset Procedure.

The Base Income Threshold Amount (BITA) is a biannually indexed amount which allows a bankrupt person to earn a certain amount before being required to pay income contributions. The BITA informs the Annual Income Threshold Amount (AITA). The AITA for a person with no dependants is at \$70,006.30 after tax as at 24 April 2024. The AITA increases based on the number of dependants, where a person can earn more income before being required to pay income contributions in their bankruptcy. This recognises that those with dependants have a higher cost of living and require more money to pay for essentials.

The department recognises that factors such as dependants should be taken into account when determining a debtor’s maximum income to enter into a Minimal Asset Procedure. This would be in line with the current bankruptcy practice to ensure living standards and to further ensure that debtors are not entering into a Minimal Asset Procedure to avoid debt repayments.

Additionally, consideration should be given to whether a person’s sole income is made up of welfare payments such as Jobseeker. This could provide an avenue for streamlined eligibility.

Proposal

In addition to the maximum asset threshold, eligibility for the Minimal Asset Procedure in Australia will be subject to an income test. The income test will take into consideration:

- whether the debtor has dependants, which will impact the amount of income they are able to earn before entering into a Minimal Asset Procedure;
- income left after the payment of essentials; and
- whether a person is receiving welfare payments (affecting the suitability of the Minimal Asset Procedure).

Excluded debts

The Minimal Asset Procedure equivalent in other jurisdictions is distinguished from bankruptcy as it clears less debts than a formal bankruptcy. Some debts remain payable after discharge from the shorter bankruptcy period, whereby these debts would have been cleared if a person had become bankrupt. For example, in New Zealand, the No Asset Procedure does not clear a debtor of their student loan debt, which would otherwise be cleared in a bankruptcy. In Australia, a bankruptcy does not clear a debtor of all debts, however, the department has not yet formed a view as to whether the Minimal Asset Procedure should exclude debts that would otherwise be cleared through a bankruptcy. The department is seeking to understand what – if any – debts ought to be excluded from the Minimal Asset Procedure (i.e. that the debtor should remain liable for those debts, regardless of whether they enter into a Minimal Asset Procedure).

Other jurisdictions

Currently, different jurisdictions exclude the following debts:

| Overseas Jurisdiction | New Zealand – No Asset Procedure (NAP) | United Kingdom (England and Wales) – Debt Relief Order (DRO) | United Kingdom (Scotland) – Minimal Asset Process | Ireland – Debt Relief Notice (DRN) |
|-----------------------|--|--|---|--|
| Debt | <ul style="list-style-type: none"> • Court fines and reparation debt • Debt incurred after applying for NAP • Student loan debts • Debts incurred fraudulently • Child support or maintenance • Secured debt (if debtor wants to retain items) | <ul style="list-style-type: none"> • Child maintenance or anything owed under family proceedings • Student loans • Budgeting and crisis loans from the Social Fund • Debts secured against any possessions • Damages or fines a court has ordered a person to pay • Unpaid TV licence fees | <ul style="list-style-type: none"> • Court fines • Student loans • Child maintenance arrears • Debts taken out fraudulently | <p>Excluded:</p> <ul style="list-style-type: none"> • Family law orders • Court awards for personal injury or death • Loans obtained using fraud • Court orders made under the Proceeds of Crime Acts • Fines imposed by the courts for criminal offences <p>Excludable (requires creditor consent):</p> <ul style="list-style-type: none"> • State taxes, duties or levies • Service charges owed to local authorities |

Current insolvency options

Australia has 4 formal options for personal insolvencies under the Bankruptcy Act. Each option has serious consequences. These are listed below:

- **Temporary debt protection:** A temporary debt protection (TDP) provides a 21-day protection period which begins when AFSA accepts a debtor's application. A TDP covers unsecured debts (including sheriffs) where within the 21-day protection period they cannot take enforcement action to recover money owed. A TDP does not cover all debts, such as child support, HELP debts and fines imposed by a court.
- **Debt agreements:** A debt agreement, also known as a Part IX agreement, is a legally binding agreement between a debtor and their creditors where a debtor can negotiate a percentage of their combined debt over time. Upon completion of a debt agreement creditors are unable to pursue the debtor for further outstanding amounts.
- **Personal insolvency agreements:** A personal insolvency agreement (PIA), also known as a Part X agreement, is a legally binding agreement between a debtor and their creditors. It is a way to settle debts without filing for bankruptcy. A PIA does not have eligibility requirements in respect to debt, asset, or income limits. The length of a PIA may be negotiated between a debtor and their trustee and creditors.
- **Bankruptcy (via debtor's or creditor's petition):** A bankruptcy normally lasts for at least 3 years and 1 day. It is a legal process where a debtor is formally declared bankrupt as they are unable to pay their debts. Bankruptcy will usually release debtors from most debts, allowing for a fresh start. A debtor is able to enter into a voluntary bankruptcy or a creditor is able to make a debtor bankrupt through a court process known as a sequestration order.

This discussion paper seeks views about where the Minimal Asset Procedure would best fit, amongst Australia's current personal insolvency options, and whether the Minimal Asset Procedure would displace any existing options.

Section 2: Impact on debtors and creditors

Discussion questions

12. **Question 12:** Would there be any adverse impacts to creditors from the implementation of the Minimal Asset Procedure, noting that creditors would be unlikely to receive a dividend from such bankrupt estates? Please explain.
13. **Question 13:** What restrictions do you believe should be imposed on debtors seeking to access a Minimal Asset Procedure? Please explain.
14. **Question 14:** What, if any, harms do you believe may be caused by implementing the Minimal Asset Procedure?
15. **Question 15:** What safeguards do you believe are required to mitigate misuse of the Minimal Asset Procedure?
16. **Question 16:** How long should a debtor appear on the National Personal Insolvency Index for entering into a Minimal Asset Procedure?

Overview

In considering how the Minimal Asset Procedure fits in the Australian landscape, the department is considering the following points:

- how the Minimal Asset Procedure may be part of a more holistic approach when dealing with personal insolvency;
- ensuring there are safeguards against the possible misuse of the Minimal Asset Procedure;
- restrictions that a person entering into a Minimal Asset Procedure is subject to, and how these restrictions interact with the policy objective of a ‘fresh start’ for debtors; and
- the operational processes faced by creditors/administrators and how the Minimal Asset Procedure could impact these.

The primary objective of the proposed Minimal Asset Procedure is to allow debtors to access a ‘fresh start’ or ‘clean slate’ earlier than a full bankruptcy, in circumstances where creditors would be unlikely to receive payment through a bankruptcy. Taking the New Zealand example, debtors suitable for a No Asset Procedure are debtors with low incomes who possess little to no assets. Liabilities incurred by these debtors are usually for private family or household purposes. Such debtors often have limited liability to repay or service their debts. The debtors usually experienced a life event that caused insolvency.

The department considers that the Minimal Asset Procedure in Australia should be geared toward debtors in genuine situations of indebtedness, with unmanageable debt. However, there should also be safeguards in place for unintended consequences such as the inappropriate use or misuse of the procedure, and certain restrictions on those entering into the procedure.

Overseas examples

New Zealand's Ministry of Economic Development undertook a review of the No Asset Procedure and found the following unintended consequences.

Cost for creditors

Creditors reported that the administration of clients' accounts who have entered into a No Asset Procedure entailed large compliance costs. Creditors also reported that they were writing off considerable amounts of debts due to No Asset Procedures. It is possible that the No Asset Procedure has incentivised debtors to easily write-off debt, rather than go through longer-term repayments and better financial management.

Misuse

There have been reports of debtors using a No Asset Procedure inappropriately, including 'gaming' behaviour, such as an increase in last-minute spending prior to a No Asset Procedure application, thereby incurring more debt to be written-off. The United Kingdom addressed this behaviour in their insolvency options through the availability of the Debt Relief Restrictions Order (DRRO), which can be applied if the Official Receiver suspects misuse.

Safeguards against the misuse of the No Asset Procedure enacted in New Zealand include only allowing entry to a No Asset Procedure once in a person's lifetime. Should a person fall into debt again with no way to repay following a No Asset Procedure, the only insolvency option will be to declare bankruptcy. This prevents repeated use of the No Asset Procedure. Additionally, a person's appearance on the public register following a No Asset Procedure was increased to four years (five years including the one year No Asset Procedure).

In response to concerns raised toward fraudulent behaviour and the No Asset Procedure, debts obtained by fraudulent behaviour are not discharged through a No Asset Procedure.

The Australian context

In the Australian insolvency landscape, there are certain safeguards in place in order to ensure a debtor is capably able to comply with their requirements, allow realisation of assets, and ensure that bankruptcy does not discharge certain debts.

Safeguards include a restriction on a bankrupt person's travel without consent of the bankrupt estate's trustee and a restriction on a bankrupt person being the director of a company without permission from a court (the department notes this restriction does not exist when a person is subject to a No Asset Procedure in New Zealand). These restrictions vary with other insolvency options such as a debt agreement or a personal insolvency agreement.

The department believes that appropriate safeguards ought to be in place to ensure a debtor's access to a fresh start sooner does not allow for misuse of the Minimal Asset Procedure.

Proposals for possible safeguards

Based on international examples and the existing personal insolvency system in Australia, the department considers the following safeguards to be appropriate for the proposed Minimal Asset Procedure:

- ensuring that a person is only able to enter into a Minimal Asset Procedure once;
- a person cannot have been bankrupt prior to entering into a Minimal Asset Procedure;
- allowing the Official Receiver to assess whether a person has:
 - concealed assets,
 - incurred debts with no intention to pay, or
 - bankruptcy proceedings have begun; and
- allowing the Official Receiver powers to restrict a person's eligibility for, or terminate their Minimal Asset Procedure, where they are suspected of misusing the procedure.

The department is interested in views as to what other safeguards stakeholders believe may be appropriate in the implementation of the Minimal Asset Procedure in Australia.