

**BANKRUPTCY AMENDMENT (BANKRUPTCY THRESHOLD) REGULATIONS**  
**2020**

**EXPLANATORY STATEMENT**

Issued by authority of the Attorney-General

in compliance with section 5 of the *Bankruptcy Act 1966*

**PURPOSE AND OPERATION OF THE INSTRUMENT**

The *Bankruptcy Act 1966* (the Act) and associated legislation regulate Australia's personal insolvency system and provide a framework to allow people in severe financial stress to discharge unmanageable debts while providing for the realisation of a debtor's available assets for distribution to affected creditors.

Section 315 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act.

Section 5 of the Act prescribes a statutory minimum bankruptcy threshold of \$5000 unless a greater amount is prescribed. The statutory minimum bankruptcy threshold is the amount of debt required to be owed to a creditor, before that creditor can initiate involuntary bankruptcy proceedings against a debtor.

On 24 March 2020, the *Bankruptcy Regulations 1996* (the Bankruptcy Regulations) were amended by the *Coronavirus Economic Response Package Omnibus Act 2020* to prescribe a temporary bankruptcy threshold of \$20,000 in response to the Coronavirus pandemic. This temporary bankruptcy threshold will cease on 31 December 2020.

The Regulations amend the Bankruptcy Regulations to prescribe a statutory minimum bankruptcy threshold of \$10,000 with a commencement date of 1 January 2021. This means the bankruptcy threshold of \$10,000 applies to bankruptcy notices issued, or creditors' petitions presented, on or after this commencement date. This ensures there is no gap between the ceasing of the temporary bankruptcy threshold of \$20,000 on 31 December 2020 and the commencement of the bankruptcy threshold of \$10,000 thereafter.

Since the Act commenced, the bankruptcy threshold has increased a number of times from \$500 to the current statutory minimum bankruptcy threshold prescribed in the Act of \$5000. The policy reasons for raising the bankruptcy threshold have been the changing value of money, the increase in levels of personal debt, to discourage bankruptcy action over small debts and to respond to Coronavirus.

A bankruptcy threshold of \$10,000 accounts for changes in the value of money and levels of debt since the bankruptcy threshold was prescribed at \$5000 in 2010. It also addresses

concerns about the use of bankruptcy proceedings to pursue small debts without reducing the general availability of credit in the economy.

The proposed Regulations will commence on 1 January 2021.

Details of the Regulations are set out in **Attachment A**.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

## **CONSULTATION**

In August 2019, the Attorney-General's Department undertook targeted stakeholder consultation on the statutory minimum bankruptcy threshold. Stakeholders consulted included insolvency practitioner industry and member associations, consumer advocates and relevant Australian Government agencies.

## **REGULATION IMPACT STATEMENT**

The Office of Best Practice Regulation (OBPR) was consulted on the measures. OBPR advised that the measures were likely to have no more than minor regulatory impacts for business, individuals and community organisations. As such, a Regulatory Impact Statement does not need to be prepared (OBPR reference number 43312).

## **STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

A Statement of Compatibility with Human Rights is at **Attachment B**.

## NOTES ON SECTIONS

### Details of the proposed *Bankruptcy Amendment (Bankruptcy Threshold) Regulations 2020*

#### Section 1 - Name of Regulations

This section provides that the name of the Regulations is the *Bankruptcy Amendment (Bankruptcy Threshold) Regulations 2020*.

#### Section 2 - Commencement

This section provides for the Regulations to commence on 1 January 2021.

#### Section 3 - Authority

This section provides that the Regulations are made under the *Bankruptcy Act 1966*.

#### Section 4 - Schedule(s)

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

#### Schedule 1 - Amendments

##### **Item [1]**

This item prescribes an amount of \$10,000 for the purposes of paragraph (a) of the definition of statutory minimum in subsection 5(1) of the *Bankruptcy Act 1966*.

Consequently, instances of the term ‘statutory minimum’ in the *Bankruptcy Act 1966* refers to the prescribed amount of \$10,000. For example, the threshold amount for issuing a bankruptcy notice is \$10,000 for the purposes of subparagraphs 41(1)(a)(ii) and (b)(ii) of the *Bankruptcy Act 1966*. Similarly, the threshold amount for filing a creditor’s petition is \$10,000 for the purposes of paragraph 44(1)(a) of the *Bankruptcy Act 1966*.

## Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **Bankruptcy Amendment (Bankruptcy Threshold) Regulations 2020**

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

The *Bankruptcy Amendment (Bankruptcy Threshold) Regulations 2020* (the Regulations) relates to section 5 of the *Bankruptcy Act 1966* (the Act), which provides a statutory minimum bankruptcy threshold of \$5000 unless a greater amount is prescribed.

The Regulations amend the *Bankruptcy Regulations 1996* to prescribe a statutory minimum bankruptcy threshold of \$10,000.

A statutory minimum bankruptcy threshold of \$10,000 accounts for changes in the value of money and levels of debt since the bankruptcy threshold was prescribed in the Act at \$5000 in 2010. It also addresses concerns about the use of bankruptcy proceedings to pursue small debts without reducing the general availability of credit in the economy.

#### **Human rights implications**

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.