

EXPLANATORY STATEMENT

Select Legislative Instrument No. 179, 2015

Issued by the authority of the Attorney-General

Bankruptcy Act 1966

Bankruptcy Amendment (National Personal Insolvency Index) Regulation 2015

The *Bankruptcy Act 1966* (the Act) governs the law of personal insolvency in Australia by providing for three regulated forms of debt management - bankruptcy, debt agreements and personal insolvency agreements. The Act also provides a framework for registering and regulating trustees and administrators.

Section 315(2)(b) of the Act provides that the Governor-General may make regulations which specify matters that must be, or may be, entered in the Index.

Part IX of the Act specifies that certain debt agreement information must be listed on the National Personal Insolvency Index (NPII).

Items 21 to 23D of Schedule 8 of the *Bankruptcy Regulations 1996* set out the information regarding debt agreements which must be included on the NPII.

The Regulation aligns, as much as possible, the period of time that information regarding debt agreements and debt agreement proposals is retained on the NPII with the period of time that the same information is recorded on credit reports under the *Privacy Act 1988* (the Privacy Act). The relevant provisions of the Privacy Act commenced on 12 March 2014. Currently, information about debt agreements and debt agreement proposals is recorded permanently on the NPII while the Privacy Act provides for information about debt agreements and debt agreement proposals to be stored for a finite period of time on credit reports.

The Regulation allows for debtors who proactively seek to reach agreement with their creditors regarding repayment of their debts via a debt agreement not to be discouraged from doing so (where appropriate) - noting that the average return to creditors in a debt agreement is higher than that obtained in bankruptcy. Unlike bankruptcy, information on debts agreements would only be stored on the NPII for a finite period of time. A debtor may be more inclined to enter a debt agreement rather than becoming bankrupt, as there would be no permanent record of the arrangement (as opposed to bankruptcy, which is recorded on the NPII indefinitely).

Consultation was conducted in late 2012 as part of the *Review of Debt Agreements under the Bankruptcy Act: Proposals Paper*. Ten submissions were received and the proposals were generally supported by key stakeholders in the industry with minimal opposition.

Details of the Regulation are set out in the Attachment.

The Act specifies no conditions that need to be satisfied before the power to make the Regulation may be exercised.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Office of Best Practice Regulation was consulted and a Regulation Impact Statement was not required.

The Regulation commenced on 19 November 2015.

Authority: Section 315(2)(b) of the
Bankruptcy Act 1966

Details of the Bankruptcy Amendment (National Personal Insolvency Index) Regulation 2015

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Bankruptcy Amendment (National Personal Insolvency Index) Regulation 2015*.

Section 2 – Commencement

This section provides for the Regulation to commence on 19 November 2015.

Section 3 – Authority

This section provides that the *Bankruptcy Amendment (National Personal Insolvency Index) Regulation 2015* is 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] – After Division 2A of Part 13

Division 2A states when information must be removed from the NPII.

Provision 13.05A states information relating to a debt agreement must be removed within 1 month of a certain day.

Provision 13.05B states information relating to a debt agreement proposal must be removed within 1 year of a certain day.

Item [2] - At the end of Division 3 of Part 16

Provision 16.14 states information relating to debt agreements or debt agreement proposals, whose retention periods have already expired, must be removed from the NPII as soon as practicable after the day of commencement.

Item [3] – Schedule 8 (table item 22B)

This item substitutes Schedule 8 (table item 22B), incorporating an amendment stating that the item applies only in respect of pre-1 July 2007 debt agreements.

Item [4] – Schedule 8 (table item 22D)

This item substitutes Schedule 8 (table item 22D), incorporating an amendment stating that the item applies only in respect of pre-1 July 2007 debt agreements.