

EXPLANATORY STATEMENT

Issued by authority of the Attorney-General

Bankruptcy Act 1966

Bankruptcy Amendment (Debt Agreement Reform) Regulations 2019

PURPOSE AND OPERATION OF THE INSTRUMENT

The *Bankruptcy Act 1966* (the Act) provides for bankruptcy and personal insolvency laws in Australia.

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.

The purpose of the *Bankruptcy Amendment (Debt Agreement Reform) Regulations 2019* (the Regulations) is to make consequential amendments to the *Bankruptcy Regulations 1996* (the Principal Regulations) to support measures contained in the *Bankruptcy Amendment (Debt Agreement Reform) Act 2018* (Debt Agreement Reform Act).

The Debt Agreement Reform Act improves regulation of debt agreements and debt agreement administrators, in response to the increasing use of debt agreements and evidence of consumer exploitation by the debt agreement industry. The Debt Agreement Reform Act received Royal Assent on 27 September 2018 and the majority of its measures commenced on 27 June 2019. The Regulations will support the Debt Agreement Reform Act to operate as intended, including by removing a redundant reference and strengthening the standards that debt agreement administrators must satisfy.

In particular, the Regulations amend the Principal Regulations to:

- Remove reference to subsection 185E(1) of the Act in the Principal Regulations, as subsection 185E(1) was repealed by the Debt Agreement Reform Act;
- Update the educational qualifications required for registration as a debt agreement administrator, and prescribe equivalent qualifications from foreign institutions and membership of professional accounting bodies. This will ensure that people with relevant expertise are not excluded from becoming registered as debt agreement administrators; and

- Align debt agreement administrator registration renewal requirements with those of trustees, by preventing the Inspector-General in Bankruptcy from approving the renewal of a debt agreement administrator's registration if the administrator has outstanding estate charges of more than \$500.

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 accordance with the requirement for consultation under section 17 of the *Legislation Act 2003*, the Regulations have been informed by consultation with the Australian Financial Security Authority (AFSA), as the agency responsible for the administration and regulation of the personal insolvency system. AFSA is supportive of the amendments.

REGULATION IMPACT STATEMENT

The Office of Best Practice Regulation assessed the Regulations as having a minor regulatory impact on businesses, community organisations and individuals. As such, a Regulation Impact Statement was not required.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The Regulations are 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*. A Statement of Compatibility with Human Rights is set out in **Attachment B**.

NOTES ON SECTIONS

Preliminary

Section 1 – Name

This section provides that the title of the Regulations is the *Bankruptcy Amendment (Debt Agreement Reform) Regulations 2019*.

Section 2 – Commencement

This section provides that the Regulations commence on 27 June 2019, to align with the commencement of the relevant provisions in the *Bankruptcy Amendment (Debt Agreement Reform) Act 2018*.

Section 3 – Authority

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

Section 4 – Schedules

This section provides that the *Bankruptcy Regulations 1996* (the Principal Regulations) are amended or repealed as set out in the items of Schedule 1 to the Regulations. Any other item in Schedule 1 to the Regulations has effect according to its terms.

SCHEDULE 1 – Amendments

Item 1 – Subregulation 9.01(1)

This item amends subregulation 9.01(1) of the Principal Regulations to remove reference to subsection 185E(1) of the Act.

Item 2 – Regulation 9.02

This item repeals and replaces regulation 9.02, which prescribes the qualifications necessary, for the purposes of paragraph 186C(2)(e) of the Act, for approval of a person's application for registration as a debt agreement administrator. The replacement regulation 9.02 updates references to superseded qualifications, prescribes equivalent qualifications from foreign educational institutions and prescribes membership of professional accounting bodies.

Item 3 – At the end of Part 9

This item inserts regulation 9.03, which provides that \$500 is the relevant amount of notified estate charges for the purposes of paragraphs 186C(3)(d) and (5)(d) of the Act. This aligns registration renewal requirements for debt agreement administrators with those of trustees.

Item 4 – In the appropriate position in Division 3 of Part 16

This item inserts regulation 16.15, which provides that the requirements set out in the replacement regulation 9.02 only apply to applications for registration as a debt agreement administrator made on or after 27 June 2019.

Statement of Compatibility with Human Rights

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

Bankruptcy Amendment (Debt Agreement Reform) Regulations 2019

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 Regulations

The *Bankruptcy Amendment (Debt Agreement Reform) Regulations 2019* (the Regulations) support measures to better regulate the use of debt agreements and the practices of debt agreement administrators contained in the *Bankruptcy Amendment (Debt Agreement Reform) Act 2018* (Debt Agreement Reform Act).

The Regulations make consequential amendments to facilitate the Debt Agreement Reform Act to operate as intended. In particular, the Regulations remove a redundant reference, update the educational qualifications required for registration as a debt agreement administrator and strengthen the standards that debt agreement administrators must satisfy in order to have their registration renewed.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.