

# EXPLANATORY STATEMENT

## ***BANKRUPTCY ACT 1966***

### **Bankruptcy (Registration and Cancellation of Registration of a Debt Agreement Administrator) Guidelines 2020**

#### ***Purpose and operation of the instrument***

The *Bankruptcy Act 1966* (Bankruptcy Act) and associated legislation regulate Australia's personal insolvency laws, including the regulation of debt agreement administrators.

Section 186Q of the Bankruptcy Act provides that the Inspector-General may, by legislative instrument, formulate guidelines for the purposes of:

- (a) subsection 186C(6) of the Act, which concerns the registration of a company or an individual to act as a debt agreement administrator;
- (b) subsection 186K(7) of the Act, which concerns the cancellation of an individual's registration to act as a debt agreement administrator; and
- (c) subsection 186L(7) of the Act, which concerns the cancellation of a company's registration to act as a debt agreement administrator.

The *Bankruptcy (Registration and Cancellation of Registration of a Debt Agreement Administrator) Guidelines 2020* (the Guidelines) are made pursuant to section 186Q of the Bankruptcy Act. The Guidelines set out the considerations that the Inspector-General will take into account in making decisions on the registration and cancellation of registration of a debt agreement administrator.

The *Bankruptcy (Registered Debt Agreement Administrator Conditions) Determination 2020*, which will commence on 1 January 2021 (the Determination), prescribes registration conditions for debt agreement administrators. The Determination was made under subsection 186F(4) of the Bankruptcy Act and prescribes compliance with advertising standards, information disclosure standards and membership of the Australian Financial Complaints Authority, as conditions of registration as a debt agreement administrator. The Determination builds on amendments to the Bankruptcy Act made by the *Bankruptcy Amendment (Debt Agreement Reform) Act 2018*.

The Guidelines have been amended to incorporate the registration conditions prescribed by the Determination. By virtue of these amendments, the Guidelines will ensure the continued transparency of the Inspector-General's decision making with respect to these matters.

## **Authority**

The Guidelines have been made for the purposes of section 186Q of the Bankruptcy Act.

## **Consultation**

The Guidelines were subject to an external consultation process with stakeholders through the AFSAsandpit website. This is a website where the Australian Financial Security Authority (AFSA) can receive feedback on services and test new ideas with the public.

The Guidelines were on the AFSAsandpit from Monday 9 to Monday 23 November 2020. An email notification was sent out to stakeholders to inform them that the Guidelines were available for feedback. AFSA did not receive any feedback in relation to the Guidelines as a result of this process.

Further, the Attorney-General's Department undertook consultation on the Determination, which included consultation on the registration conditions for debt agreement administrators, with the following stakeholders:

- personal insolvency professional associations
- debt agreement administrators
- consumer groups
- the Australian Financial Complaints Authority
- the Australian Financial Security Authority, and
- the Treasury.

## **Regulation Impact Statement**

The Office of Best Practice Regulation assessed the Guidelines as machinery in nature because the amendments are required to support the reforms in the Determination. As this proposal will not be considered by Cabinet, a Regulation Impact Statement does not need to be prepared (ID 25251).

## **Statement of Compatibility with Human Rights**

The Guidelines 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 A**.

## **Commencement**

The Guidelines commence on 1 January 2021.

## Statement of Compatibility with Human Rights

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

### **Bankruptcy (Registration and Cancellation of Registration of a Debt Agreement Administrator) Guidelines 2020**

These Guidelines 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*.

#### **Overview of the Guidelines**

The *Bankruptcy (Registration and Cancellation of Registration of a Debt Agreement Administrator) Guidelines 2020* provide information on the factors that will be considered by the Inspector-General in deciding whether to approve an application for registration as a debt agreement administrator and whether to cancel an existing registration on a voluntary or involuntary basis under the *Bankruptcy Act 1966*. They incorporate changes contained in the *Bankruptcy (Registered Debt Agreement Administrator Conditions) Determination 2020*, which prescribes compliance with advertising standards, information disclosure standards and membership of the Australian Financial Complaints Authority, as conditions of registration as a debt agreement administrator

The Guidelines ensure the continued transparency of the Inspector-General's decision making with respect to these matters.

#### **Human rights implications**

The Guidelines do not engage any of the applicable rights or freedoms.

#### **Conclusion**

The Guidelines are compatible with human rights as they do not raise any human rights issues.

Note: The name of this instrument was amended on registration as the instrument as lodged did not have a unique name (see subsection 10(2), *Legislation Rule 2016*).