

BANKRUPTCY AND OTHER LEGISLATION AMENDMENT (REPEAL AND CONSEQUENTIAL AMENDMENTS) REGULATIONS 2021

EXPLANATORY STATEMENT

Issued by authority of the Assistant Minister to the Attorney-General

under the *Bankruptcy Act 1966* and the *National Consumer Credit Protection Act 2009*

PURPOSE AND OPERATION OF THE INSTRUMENT

The *Bankruptcy and Other Legislation Amendment (Repeal and Consequential Amendments) Regulations 2021* (the Regulations) facilitate the repeal of sunseting regulations, and make consequential amendments.

The *Bankruptcy Act 1966* (the Act) regulates Australia's personal insolvency system and provides 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.

The *National Consumer Credit Protection Act 2009* (the Credit Act) established a new national consumer credit regime, including a comprehensive licensing regime for persons engaging in credit activities and industry- wide responsible lending conduct requirements for licensees.

The *Bankruptcy Regulations 2021*, which are also made under the Act, remade the *Bankruptcy Regulations 1996* on 1 April 2021 in substantially the same form, with minor and technical amendments.

The Regulations address the sunseting of the *Bankruptcy Regulations 1996* on 1 April 2021. The Regulations provide for the repeal of the *Bankruptcy Regulations 1996*, the commencement of the *Bankruptcy Regulations 2021*, and make a minor consequential amendment to the *National Consumer Credit Protection (FinTech Sandbox Australian Credit Licence Exemption) Regulations 2020* (the Credit Regulations).

The purpose of the Regulations is to facilitate the smooth repeal and commencement of the remade *Bankruptcy Regulations 2021*, and to update the reference to the *Bankruptcy Regulations 1996* in the Credit Regulations.

CONSULTATION

Consistent with the requirements of the *Legislation Act 2003*, the Regulations were informed by close collaboration with the Treasury, which has responsibility for administering the Credit Regulations, and the Australian Financial Security Authority. As the amendment to the Credit

Regulations is minor and technical in nature, the Treasury determined that the amendment could be approved at the departmental level. The Treasury approved the Regulations in the form outlined at **Attachment A**.

REGULATION IMPACT STATEMENT

The *Sunsetting legislative instruments guidance note*, issued by the Office of Best Practice Regulation, stipulates that agencies can self-assess the performance of an instrument. The Attorney-General's Department assessed that the Regulations were operating effectively and efficiently and that a Regulation Impact Statement was not required.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Insolvency Practice (Bankruptcy) Amendment (Consequential Amendments) Rules 2021

This 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 and Other Legislation Amendment (Repeal and Consequential Amendments) Regulations 2021* (the Regulations) address the sunset of the *Bankruptcy Regulations 1996* on 1 April 2021. The Regulations provide for the repeal of the *Bankruptcy Regulations 1996*, the commencement of the *Bankruptcy Regulations 2021*, and make one minor consequential amendment to the *National Consumer Credit Protection (FinTech Sandbox Australian Credit Licence Exemption) Regulations 2020*.

The *Bankruptcy Act 1966* (the Act) regulates Australia's personal insolvency system and provides 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.

The *Bankruptcy Regulations 2021* remade the *Bankruptcy Regulations 1996* on 1 April 2021 in substantially the same form, with minor and technical amendments.

Human rights implications

As these Regulations simply facilitate the smooth repeal and commencement of the remade *Bankruptcy Regulations 2021*, and update one reference to the *Bankruptcy Regulations 1996* in the *National Consumer Credit Protection (FinTech Sandbox Australian Credit Licence Exemption) Regulations 2020*, they do not engage or impact any of the applicable rights or freedoms.

Conclusion

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

NOTES ON SECTIONS

Section 1 - Name

Section 1 provides that the title of the Regulations is the *Bankruptcy and Other Legislation Amendment (Repeal and Consequential Amendments) Regulations 2021*.

Section 2 – Commencement

Section 2 provides for the commencement of provisions of the Regulations, as set out in the table. Table item 1 provides that the whole of the Regulations commence at the same time as the *Bankruptcy Regulations 2021* commence: 1 April 2021.

Section 3 – Authority

Section 3 provides that the Regulations are made under the *Bankruptcy Act 1966* and the *National Consumer Credit Protection Act 2009*.

Section 4 – Schedules

Section 4 provides that each instrument specified in a Schedule to the Regulations is amended or repealed as set out in the applicable Schedule. It also provides that any other item in a Schedule to the Regulations has effect according to its terms.

Schedule 1 – Repeals and amendments

Part 1 – Repeals

Bankruptcy Regulations 1996

Item 1

Item 1 repeals the whole of the *Bankruptcy Regulations 1996*. This ensures that the 1996 Regulations are repealed and no longer in force, to allow for the commencement of their replacement, the *Bankruptcy Regulations 2021*.

Part 2 – Amendments

National Consumer Credit Protection (FinTech Sandbox Australian Credit Licence Exemption) Regulations 2020

Item 2 - Section 5 (paragraph (d) of the definition of eligible credit activity)

Item 2 stipulates that the reference to subregulation 6.03(2) of the *Bankruptcy Regulations 1996* is replaced with a reference to the equivalent provision in the *Bankruptcy Regulations 2021*, being subsection 27(1) of the *Bankruptcy Regulations 2021*. This consequential amendment updates the *National Consumer Credit Protection (FinTech Sandbox Australian Credit Licence Exemption) Regulations 2020* to ensure that it references the correct and up-to-date provision in the *Bankruptcy Regulations 2021*.