

INSOLVENCY PRACTICE (BANKRUPTCY) AMENDMENT (CONSEQUENTIAL AMENDMENTS) RULES 2021

EXPLANATORY STATEMENT

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

under the *Bankruptcy Act 1966*.

PURPOSE AND OPERATION OF THE INSTRUMENT

The Insolvency Practice (Bankruptcy) Amendment (Consequential Amendments) Rules 2021 (the Rules) make one minor, consequential amendment the Insolvency Practice Rules (Bankruptcy) 2016, to reflect that the *Bankruptcy Regulations 1996* were replaced by the *Bankruptcy Regulations 2021* on 1 April 2021.

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 Insolvency Practice Rules (Bankruptcy) 2016 are made under the Act, and give effect to reforms implemented by the *Insolvency Law Reform Act 2016* (the Reform Act). The Reform Act created common rules for the regulation of corporate insolvency and personal bankruptcy, including by removing unnecessary costs and increasing efficiency in insolvency administrations; aligning the registration and disciplinary frameworks that apply to registered liquidators and registered trustees; and improving overall confidence in the professionalism and competence of insolvency practitioners.

CONSULTATION

The Rules were informed by close collaboration with the Australian Financial Security Authority, which has responsibility for the administration and regulation of Australia's personal insolvency system.

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 Rules 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 Insolvency Practice (Bankruptcy) Amendment (Consequential Amendments) Rules 2021 (the Rules) make one minor consequential amendment to the Insolvency Practice Rules (Bankruptcy) 2016, to reflect that the *Bankruptcy Regulations 1996* sunset on the 1 April 2021 and were replaced by the *Bankruptcy Regulations 2021*.

The Insolvency Practice Rules (Bankruptcy) 2016 ensure that the framework for insolvency practitioners promotes a high level of professionalism and competence by practitioners, promote market competition on price and quality, and encourage greater transparency and communication between stakeholders.

Human rights implications

The single consequential amendment made by these Rules to the Insolvency Practice Rules (Bankruptcy) 2016 is minor and technical in nature. As such, the Rules do not engage or impact any of the applicable rights or freedoms.

Conclusion

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

NOTES ON SECTIONS

PART 1 – Preliminary

Section 1 – Name

Section 1 provides that the title of the Rules is the Insolvency Practice (Bankruptcy) Amendment (Consequential Amendments) Rules 2021.

Section 2 – Commencement

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

Section 3 – Authority

Section 3 provides that the Rules are made under the *Bankruptcy Act 1966*.

Section 4 - Schedules

Section 4 provides that each instrument that is specified in a Schedule to the Rules is amended or repealed as set out in the applicable Schedule.

SCHEDULE 1 – Amendments

Insolvency Practice Rules (Bankruptcy) 2016

Section 1 – Section 5-5 (definition of *regulations*)

Section 5-5 of the Insolvency Practice Rules (Bankruptcy) 2016 contained a minor drafting error: it incorrectly referred to the *Bankruptcy Regulations '1966'*, rather than the *Bankruptcy Regulations '1996.'*

Section 1 of these Rules, by omitting '1966' and replacing it with '2021', both corrects that historical drafting error and updates section 5-5 to reflect that the *Bankruptcy Regulations 1996* were replaced by the *Bankruptcy Regulations 2021* on 1 April 2021. This amendment ensures that any references made in the Insolvency Practice Rules (Bankruptcy) 2016 to 'the Regulations' are taken to refer to the current and in-force *Bankruptcy Regulations 2021*.