

## INSOLVENCY ALERT

### CREDITOR PETITIONS & BANKRUPTCY NOTICES - CHANGES TO MINIMUM DEBT

On 24 June 2010, the Federal Parliament passed amendments to the *Bankruptcy Act 1966* ("the Act") changing the minimum debt amount prescribed by the Act for:

- A bankruptcy notice to be issued (Section 41); and
- A creditor's petition (Section 44).

The change to the minimum amount will take effect 28 days following assent. The commencement date is anticipated to be early August 2010.

#### BEFORE THE AMENDMENT

Section 41 of the Act gives a creditor the right to apply to the Official Receiver for a bankruptcy notice to be issued, where the creditor has obtained the following:

- (a) a final judgment or final order that:
  - (i) is of the kind described in paragraph 40(1)(g); and
  - (ii) is for an amount of at least \$2,000; or
- (b) 2 or more final judgments or final orders that:
  - (i) are of the kind described in paragraph 40(1)(g); and
  - (ii) taken together are for an amount of at least \$2,000.

Further under Section 44 of the Act, the minimum amount prescribed for a creditor's petition was set as \$ 2,000.

#### NEW AMOUNT - \$ 5,000

Schedule 4 of the agreed amendments, change the minimum amount of \$ 2,000 to now read as \$ 5,000. The initial Bill proposed the amount be increased to \$ 10,000. Following the Senate Legal and Constitutional Affairs Legislation Committee report on the 23 February, it was agreed to amend the proposed amount to read as \$ 5,000.

#### STAY PERIOD AMENDED

A debtor is obligated to provide a declaration of intention following receipt of the creditor's petition or bankruptcy notice following the prescribed 'stay period'. The 'stay period' begins on the day the Official Receiver accepts the declaration and continues for the prescribed period of days unless a petition is presented against the debtor, the debtor signs a section 188 authority or a sequestration order is made against the debtor.

Amendments to the section 5 definition of 'stay period', increases the period to be 21 days from the current 7 day period. The change to the stay period will commence on a day to be fixed by Proclamation.

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### WHY THE CHANGES?

#### Minimum amount change

“The 2008-2009 financial year produced the highest ever level of personal insolvency activity (36,479). This represents an increase of 11 per cent on the 2007-2008 financial year level of personal insolvency activity. The vast majority of these are non-business bankruptcies principally involving consumer debts.”<sup>(i)</sup> The amount of \$ 5,000 gives debtors more scope to come to agreements with the creditors to repay the debts and avoid bankruptcy.

#### Stay period increase

“Many debtors who are overwhelmed by debts find it difficult to deal with all their creditors and may not always have the time available to do this. There are also opportunities to ensure debtors receive information and advice from a wider range of sources which will assist in rational decision making.”<sup>(ii)</sup>

During the stay period which follows the debtor’s declaration of intention, the debt owed by the debtor to the creditor is treated as a frozen debt. Enforcement proceedings cannot commence until the stay period ends, or as mentioned above a petition is presented against the debtor, the debtor signs a section 188 authority or a sequestration order is made against the debtor.

### CHANGES TO FORMS AND FEES FROM ITSA.

The Insolvency and Trustee Service of Australia (ITSA) have issued a statement changing the fee to issue a bankruptcy notice to \$ 440 from the 1 July 2010.

The Government is proposing amendments to the *Bankruptcy Regulations* to issue a new Form of Bankruptcy Notice. Following stakeholder consultation, if the draft Form is approved, ITSA propose the start date for use of the Form and Checklist to commence on the 1 August 2010.

Creditors should note that it will not be possible to present a creditor’s petition after the amendments take effect based solely on a judgment or order for less than \$5,000.

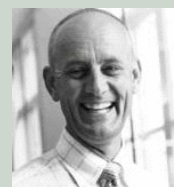
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Article by **Guy Edgecombe, Partner**

#### Footnotes:

i) Replacement Explanatory Memorandum available from <http://parlinfo.aph.gov.au>

ii) See footnote (i)



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