



# AUSTRALIAN GOVERNMENT REFORMS: BANKRUPTCY AND CORPORATE INSOLVENCY



Bankruptcy (individual)	Insolvency (company)
 <p>The Government has increased the threshold amount before a creditor can issue a bankruptcy notice from 1 January 2021.</p>	 <p>Australia's largest corporate insolvency reform in 30 years came into effect at the beginning of 2021.</p>
<b>Statutory Minimum</b>	
<p>The statutory minimum threshold amount at which a creditor can issue a bankruptcy notice to an individual, as at 1 January 2021:</p> <ul style="list-style-type: none"> <li>will permanently increase from \$5,000 to <b>\$10,000</b>.<sup>1</sup></li> </ul>	<p>The statutory minimum threshold amount at which a creditor can apply to wind up a company as at 1 January 2021:</p> <ul style="list-style-type: none"> <li>will be <b>\$2,000</b><sup>2</sup>, unless the company is eligible for temporary restructuring relief and then the statutory minimum increases to <b>\$20,000</b><sup>3</sup>.</li> </ul>
<b>Statutory Period</b>	
<p>An individual has <b>21 days</b><sup>4</sup> to respond to a bankruptcy notice before bankruptcy proceedings are commenced.</p>	<p>A company has <b>21 days</b><sup>5</sup> to respond to a statutory demand unless the company is eligible for temporary restructuring relief and then then the statutory period increases to <b>six (6) months</b><sup>6</sup>.</p>

**Due to the COVID-19 pandemic, the Australian government recently introduced legislation reforming bankruptcy and corporate insolvency rules. The reforms allow a company to have the benefit of an extended Statutory Minimum and Statutory Period if the Company director makes a declaration to ASIC and the Company fulfils ASIC's eligibility criteria. The table below summarises some of the information about temporary restructuring relief for eligible companies.**

<sup>1</sup> *Bankruptcy Regulations 1996* (Cth) regulation 4.02AA.  
<sup>2</sup> *Corporations Regulations 2001* (Cth) regulation 5.4.01AAA(1)(b).  
<sup>3</sup> *Bankruptcy Regulations 1996* (Cth) regulation 5.4.01AAA(1)(a).  
<sup>4</sup> *Bankruptcy Act 1966* (Cth) s 5(1).  
<sup>5</sup> *Corporations Regulations 2001* (Cth) regulation 5.4.01AAA(2)(b); *Corporations Act 2001* (Cth) s 9.  
<sup>6</sup> *Corporations Regulations 2001* (Cth) regulation 5.4.01AAA(2)(a).

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## Temporary Restructuring Relief for eligible companies (Relief)

### What is the Relief?

The Relief increases the:

1. Statutory Minimum to \$20,000;
2. Statutory Period to six (6) months; and
3. Provides a director with a temporary safe harbour from personal liability for insolvent trading for debts incurred in the ordinary course of business before any appointment of an administrator/liquidator during the period of safe harbour protection.

### When is the Relief available?

A company can access Relief during the period 1 January 2021 to 31 March 2021.<sup>7</sup>

The period of Relief only begins when the directors have made a declaration about the company's eligibility for Relief to the Australian Securities and Investments Commission (**ASIC**) and the declaration is published on ASICs published notices (**Declaration**).

The Relief commences from the date the declaration is published on ASICs published notices.

### When is a company eligible for Relief?

The company is eligible for Relief if, before 31 March 2021:

1. the company makes and publishes a Declaration about the company's eligibility for Relief;<sup>8</sup>
2. there are reasonable grounds to believe the company is insolvent (or likely to become insolvent) before the Declaration expires;<sup>9</sup>

<sup>7</sup> Corporations Amendment (Corporate Insolvency Reforms) Act 2020 (Cth) sch 2, s 458D.

<sup>8</sup> Corporations Amendment (Corporate Insolvency Reforms) Act 2020 (Cth) sch 2, s 458E(1)(a).

<sup>9</sup> Corporations Amendment (Corporate Insolvency Reforms) Act 2020 (Cth) sch 2, s 458E(1)(b).

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## Temporary Restructuring Relief for eligible companies (Relief), continued

### When is a company eligible for Relief? (*continued*)

3. there are reasonable grounds to believe that the following "eligibility criteria for restructuring" would be met if a restructuring practitioner were appointed on the date or after the date the Declaration was published;<sup>10</sup>
  - (a) the total liabilities<sup>11</sup> of the company on the day the restructuring begins does not exceed \$1 million;<sup>12</sup>
  - (b) none of the company directors (within the last 12 months) have been a director of another company that has been under restructuring / simplified liquidation (within last 7 years);<sup>13</sup>
  - (c) the company has not been under restructuring (within last 7 years);<sup>14</sup>
4. the company board resolved that a restructuring practitioner should be appointed;<sup>15</sup>
5. there is no external administrator appointed to the company;<sup>16</sup>

<sup>10</sup> *Corporations Amendment (Corporate Insolvency Reforms) Act 2020* (Cth) sch 2, s 458E(1)(a).

<sup>11</sup> Liability means any liability to pay an admissible debt or claim; *Corporations Regulations 2001* (Cth) regulation 5.3B.03(5).

<sup>12</sup> *Corporations Act 2011* (Cth) s 453C(1)(a); *Corporations Regulations 2001* (Cth) regulation 5.3B.03(1).

<sup>13</sup> *Corporations Act 2011* (Cth) s 453C(1)(b); *Corporations Regulations 2001* (Cth) regulation 5.3B.03(2).

<sup>14</sup> *Corporations Act 2011* (Cth) s 453C(1)(c); *Corporations Regulations 2001* (Cth) regulation 5.3B.03(3).

<sup>15</sup> *Corporations Amendment (Corporate Insolvency Reforms) Act 2020* (Cth) sch 1, s 458E(1)(c).

<sup>16</sup> *Corporations Amendment (Corporate Insolvency Reforms) Act 2020* (Cth) sch 1, s 458E(1)(d).

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## Temporary Restructuring Relief for eligible companies (Relief), continued

### When is a company eligible for Relief? (*continued*)

6. the Declaration has not expired;<sup>17</sup>
7. the company has not otherwise ceased to be eligible for Relief;<sup>18</sup> and
8. the company has not previously been eligible for Relief that has ceased because a Declaration has expired or for any other reason.<sup>19</sup>

### How can Boss Lawyers help?

If you need help navigating the new bankruptcy and corporate insolvency provisions, contact us at Boss Lawyers so that we can assist.

Our team is experienced in the field and will be able to help you and your business through these tough times. Why not give us a call today?



**MARK HARLEY**  
PRINCIPAL



**SHARON SORBELLO**  
LAWYER

<sup>17</sup> *Corporations Amendment (Corporate Insolvency Reforms) Act 2020* (Cth) sch 1, s 458E(1)(e).

<sup>18</sup> *Corporations Amendment (Corporate Insolvency Reforms) Act 2020* (Cth) sch 1, s 458E(1)(f).

<sup>19</sup> *Corporations Amendment (Corporate Insolvency Reforms) Act 2020* (Cth) sch 1, s 458D(1)(g).