



# INSOLVENCY

## COVID-19 RESPONSE



FEDERAL

### TEMPORARY DEBT RELIEF

On 25 March 2020, changes came into effect to support individuals and businesses. The temporary debt relief measures include:

- ▶ Six-month temporary debt protection
- ▶ Changes to bankruptcy notices
- ▶ Impacts to people who are currently bankrupt

If you have been financially impacted by Coronavirus (COVID-19), you may be eligible to receive financial assistance - see the Services Australia website [Affected by coronavirus](#) for more information.

If your business has been impacted, you can find more information on the [business.gov.au](http://business.gov.au) website:

- ▶ Coronavirus information and support for business – summary of all Australian Government information and support
- ▶ Temporary relief for financially distressed businesses - temporary changes to bankruptcy and director liabilities for trading while insolvent

### SIX-MONTH TEMPORARY DEBT PROTECTION

The Government has increased the temporary debt protection period available for people in financial difficulty from 21 days to six months. This protection now prevents recovery action by unsecured creditors for a six-month period. The Government is temporarily increasing the current minimum threshold for creditors issuing a statutory demand on a company under the Corporations Act 2001 from \$2,000 to \$20,000. This will apply for 6 months.

You can use this time to:

- ▶ Seek advice from a free financial counsellor
- ▶ Negotiate a payment plan with your creditors. You can do this yourself or authorise someone else to negotiate on your behalf.
- ▶ Consider if any of the formal insolvency options would be right for you

### CHANGES TO BANKRUPTCY NOTICES

- ▶ The Government has increased the debt threshold required for creditors to apply for a bankruptcy notice against a debtor. The limit has increased from \$5,000 to \$20,000.



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- ▶ The Government has increased the timeframe for a debtor to respond to a Bankruptcy notice from 21 days to up to six months. This means that a creditor will have to wait until the six-month period has passed before they can commence bankruptcy proceedings.

### WHAT HAPPENS TO BANKRUPTCY NOTICES ISSUED BEFORE 25 MARCH 2020?

If the bankruptcy notice was issued before 25 March 2020, the debtor has 21 days to comply with the bankruptcy notice. For more information see Bankruptcy notices.

These temporary measures will be available for six months.

### IMPACTS TO PEOPLE WHO ARE CURRENTLY BANKRUPT

How will payments from the Coronavirus Economic Response Package affect people in bankruptcy?

- ▶ Economic support payments - are not claimable by your bankruptcy trustee as income or as an asset, regardless of whether you receive the payments before or after the date of bankruptcy.
- ▶ COVID-19 supplement payments - are claimable by the trustee if you receive them before the date of bankruptcy and it remains in your bank account when you become bankrupt. During bankruptcy, these payments are included in your after-tax income amount. If your after-tax income exceeds a set amount, you may have to make compulsory payments. For more information see Income and employment.

### HOW TO APPLY

If your business has been impacted by Covid-19, you don't need to apply, these temporary relief measures will apply for 6 months.



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## FAQS

### What are the new Covid-19 'safe harbour' measures?

As of the 23 March 2020, the Commonwealth Government has introduced a new insolvent trading 'safe harbour' comprising a six-month moratorium on insolvent trading liability in respect of debts incurred "in the ordinary course of the company's business" (the COVID Safe Harbour).

The COVID Safe Harbour will provide useful immediate relief for companies and their directors, particularly those who need time to assess the company's position before developing a turnaround plan or pursuing an insolvency administration if that becomes necessary.

However, most distressed businesses will still need to work quickly to prepare a detailed survival and turnaround plan that will encompass some or all of the well-established techniques used by insolvency professionals. They will also need to monitor the implementation of the turnaround plan and ensure that it is updated and revisited as the COVID-19 crisis evolves. In these circumstances, it would make sense for businesses to prepare a plan which meets many of the requirements of the existing 2017 Safe Harbour provisions.

### Has there been an increase to the threshold at which creditors can issue a statutory demand and the time companies have to respond?

Yes. The current minimum threshold for creditors to issue a statutory demand on a company will be increased from \$2,000 to \$20,000 for the next six months. Helpfully, a company will also have six months to respond to a statutory demand, a significant increase from the current 21 day timeframe. This development will ensure that companies have the breathing space they need to deal with their financial issues without the immediate threat and distraction of winding up proceedings being commenced by aggressive creditors.

### Is there flexibility in obtaining relief from other Corporations Act provisions?

Yes. The Treasurer will be given a temporary instrument-making power to amend provisions of the Corporations Act, to provide relief from, or modify, obligations under the Act. The power is intended to allow the Treasurer the flexibility to deal quickly with unforeseen circumstances arising from COVID-19, without the need for legislation with its attendant delay. The instrument-making power will apply for six months, and any instrument made under this power will apply for six months from the date it is made.



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## **Has there been an increase in the threshold for bankruptcy notices and the time individuals have to respond?**

The minimum debt to initiate bankruptcy proceedings against an individual will temporarily be increased from \$5,000 to \$20,000. The time to respond to a bankruptcy notice will be increased from 21 days to six months.