

COVID-19 UPDATE

TEMPORARY CHANGES TO INSOLVENCY LAWS

SUMMARY OF AMENDMENTS

- Government announces temporary changes as part of its plan to keep businesses operating during the crisis.
- Amendments include temporary changes to rules around statutory demands, insolvent trading and bankruptcy.
- Changes came into effect **25 March 2020** and will be in force for 6 months.

Background:

In recognition of the financial hardships faced by Australians and Australian businesses in light of COVID-19, the Australian Government has passed the [Coronavirus Economic Response Omnibus Bill 2020](#) which makes temporary amendments to the *Corporations Act 2001 (Cth)* and the *Bankruptcy Act 1966 (Cth)* to lessen the financial impact of COVID-19 on both individuals and businesses.

There are four key features of the changes.

Temporary changes to creditor's statutory demands laws:

- A creditor can only issue a statutory demand if the debt is at least \$20,000 (rather than \$2,000) and;
- The debtor company will have 6 months from the date of service to respond to the statutory demand (rather than 21 days).

Temporary changes to bankruptcy laws:

- A creditor can only initiate bankruptcy proceedings if the debt is at least \$20,000 (rather than \$5,000);
- Individual debtors will have 6 months from the date of service to respond to a bankruptcy notice served on them by a creditor (rather than 21 days); and
- If an individual debtor applies for voluntary bankruptcy, unsecured creditors cannot take further action against them for 6 months (rather than 21 days).

Temporary protection from directors' personal liability for insolvent trading:

- Directors will be temporarily relieved from their obligations to prevent their companies trading while insolvent if the debts are incurred in the company's ordinary course of business;
- Directors may, however, still face criminal penalties if debts are incurred dishonestly or fraudulently during this period.

Impact of the temporary changes on the Ipso Facto provisions:

- The temporary amendments will only affect the operation of ipso facto provisions to the extent that such provisions expressly include a reference to the presumption of insolvency where the debtor fails to respond to a statutory demand within the response period.
- Even where the right to terminate exists, it will be necessary to wait for the new response period of 6 months to expire prior to exercising rights under an ipso facto provision.