3 November 2026

Personal Insolvency and Personal Property Securities Unit
Corporations Branch
The Treasury

Via online lodgement only

Dear Sir/Madam,

RE: Reforms to the bankruptcy system – Exposure draft

The Australian Collectors & Debt Buyers Association appreciates the opportunity to provide the attached Submission in response to Treasury's exposure draft personal insolvency amendments.

ACDBA supports additional time to respond to a bankruptcy notice, the removal of proposal and acceptance of a debt agreement as acts of bankruptcy, and predictable annual indexation of an appropriately set threshold. We do not support the proposed doubling to $20,000 on the material provided and recommend further assessment of the need for that increase and its consequences for creditors. The Submission also addresses the practical operation of the indexation and transitional provisions and the need for separate consultation on changes to the National Personal Insolvency Index.

Please do not hesitate to contact the writer to discuss any aspect of the Submission.

Yours sincerely,



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Introduction

The Australian Collectors & Debt Buyers Association (ACDBA) welcomes this opportunity to comment on the exposure draft personal insolvency amendments released by Treasury on 23 October 2026.[1]

ACDBA was established in 2009 for the benefit of companies that collect, buy and/or sell debt. Our members (refer Appendix 1) represent the majority of the collection market in Australia and include contingent collection agencies and specialist debt purchasers operating throughout Australia.

Members work to resolve overdue accounts arising across banking, non-bank lending, utilities, telecommunications and trade credit. This involves establishing the basis of a claim, investigating disputes and understanding the debtor's circumstances so that appropriate payment and financial hardship arrangements can be considered. Where an account cannot be resolved, members assess the available remedies and refer appropriate matters for legal action.

Effective, lawful recovery returns funds to creditors, helping them meet their own commitments and continue supplying other customers. For a small business, an unpaid account can affect its ability to pay wages, purchase stock or maintain trading arrangements. The practical availability of recovery options therefore matters both to the creditor's immediate financial position and to its willingness to extend further credit.

Personal insolvency forms part of that framework by providing relief where debts have become unmanageable and an orderly process for dealing with the assets available to creditors. Our members' experience of both financial hardship and unpaid accounts informs this Submission, which considers how the proposed reforms can preserve those functions and support confidence in the provision of credit.

Response

ACDBA supports extending the statutory period for responding to a bankruptcy notice from 21 to 28 days and removing the proposal and acceptance of a debt agreement as acts of bankruptcy. We also support predictable annual indexation of an appropriately set bankruptcy threshold.

We do not, however, support doubling the threshold to $20,000 on the information provided. The material accompanying the draft does not establish why a further increase of that size is necessary or adequately explain its consequences for affected creditors. ACDBA recommends an assessment of an inflation-based adjustment and more targeted safeguards, informed by the experience under the current threshold and the practical effectiveness of other recovery options.

This approach is consistent with ACDBA's earlier submissions. In 2020, we proposed a threshold of $7,000 to reflect the changing value of money, supported by ongoing annual indexation and additional scrutiny of proceedings involving smaller debts. Our 2022 submission also expressly supported removing the lodgement of a debt agreement as an act of bankruptcy.[2]

The bankruptcy threshold

The effect on creditors and the provision of credit

The bankruptcy threshold affects a range of obligations dealt with by members, including consumer debts, amounts owed by sole traders and liabilities under personal guarantees. A trade supplier may have provided stock or materials to a sole trader, or relied on a personal guarantee when supplying a company, and may itself have wages, supplier invoices and finance commitments to meet. The effect of restricting recovery options therefore needs to be considered from the perspective of those creditors as well as the individuals who owe the debts.

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[1] Treasury, Reforms to the bankruptcy system, exposure draft inserts for the Treasury Laws Amendment (Regulatory Reform and Other Measures) Bill 2026 and accompanying Exposure Draft Explanatory Materials (October 2026). References below to the exposure draft and explanatory materials are to those consultation documents. Consultation materials

[2] ACDBA, Review of the bankruptcy threshold (20 August 2020), pp 6–8; ACDBA, Possible reforms to the bankruptcy system (24 February 2022), p 8. ACDBA submissions archive

For example, a $15,000 judgment against a sole trader may represent several months of unpaid supply for a small business which has already incurred the cost of obtaining judgment and attempting enforcement. Describing the amount as a relatively minor debt does not address whether that creditor has another effective and proportionate means of resolving the account. The consequences of bankruptcy for the debtor must be considered alongside the financial circumstances of the creditor and the recovery options actually available.

Ordinary enforcement remedies would remain available following an increase in the threshold, but their effectiveness depends on the debtor's circumstances. A garnishee process requires an identifiable source of funds, while execution against property depends on assets that can lawfully and economically be reached. Where those avenues have been unsuccessful, further attempts can add costs without resolving the account. If the requirements for bankruptcy are met, the trustee's powers to investigate the debtor's affairs, realise available assets and examine transactions can provide a collective process for creditors.[3]

The amount owed to an individual creditor also provides an incomplete picture of the debtor's total indebtedness and the assets available for distribution. Although qualifying debts can be aggregated in a joint petition, identifying and coordinating other creditors involves work and expense which may limit the practical availability of that option. It is also distinct from the bankruptcy notice process, which cannot combine judgments owed to different creditors.[4]

The consequences can extend to decisions made before an account becomes overdue. A supplier considering an unsecured account takes into account the prospect of obtaining payment if the customer defaults and may respond to the loss of an effective recovery option by reducing the credit limit, seeking security or requiring payment before supply. Where other remedies are ineffective, those responses can restrict another business's ability to trade. The assessment of a higher threshold should therefore include its potential effect on credit terms and availability, as well as the direct costs of proceedings.

Evidence for the proposed increase

The proposed increase follows the doubling of the ordinary threshold from $5,000 to $10,000 on 1 January 2021, after the temporary COVID-19 measures ended. In making that change, the Government referred to changes in the value of money and personal debt levels since 2010, together with concerns about bankruptcy proceedings for small debts.[5] Adjusting $5,000 for changes in the ABS All Groups CPI from the September quarter 2010 to the December quarter 2020 would have produced approximately $6,075, meaning that the $10,000 figure already represented a substantial increase in real terms.[6]

The current threshold is not subject to automatic annual indexation, but adjusting $10,000 for CPI changes from the December quarter 2020 to the September quarter 2026 produces approximately $12,732. The proposed $20,000 threshold is approximately 57 per cent higher than that inflation-adjusted amount and would therefore introduce a further substantial increase in real terms.[7]

The explanatory materials identify living costs, wages, unemployment and other economic conditions as relevant considerations, but do not explain how those factors lead to the selection of $20,000 or support the conclusion that the amendments would not put pressure on creditors.[8] In light of the

[3] Bankruptcy Act 1966 (Cth), ss 19, 58, 116 and 120–122. The availability of a particular enforcement or recovery process depends on its statutory requirements and the circumstances of the matter.

[4] Bankruptcy Act 1966 (Cth), ss 41(1) and 44(1)(a); AFSA, Make someone bankrupt, questions concerning multiple judgments and different creditors (accessed 23 October 2026). AFSA guidance

[5] Explanatory Statement, Bankruptcy Amendment (Bankruptcy Threshold) Regulations 2020, pp 1–2; Bankruptcy Act 1966 (Cth), s 5, definition of statutory minimum; Bankruptcy Regulations 2021, s 10A. The temporary $20,000 COVID-19 threshold expired on 31 December 2020. 2020 explanatory statement

[6] ACDBA calculation using ABS, Consumer Price Index, Australia, September 2026 (28 October 2026), Table 17, All Groups CPI, Australia, series A2325846C: $5,000 × 81.40 (December quarter 2020) ÷ 67.00 (September quarter 2010) = $6,074.63. ABS CPI data

[7] ACDBA calculation using the same ABS series: $10,000 × 103.64 (September quarter 2026) ÷ 81.40 (December quarter 2020) = $12,732.19. The proposed $20,000 is 57.1 per cent above that amount. December 2020 is the quarter immediately preceding the current threshold's commencement. This comparison uses the latest available quarter and does not forecast inflation to the proposed application date of 1 July 2027. ABS CPI data

[8] Explanatory materials, paras 1.3 and 1.9–1.10; exposure draft, Schedule 1, items 1 and 8.

earlier increase, Treasury should explain how the adjustment made in 2021 has been taken into account, what the operation of the current threshold demonstrates about the need for another doubling, and why an inflation adjustment followed by annual indexation would be inadequate.

For that purpose, ACDBA recommends that Treasury publish an assessment of matters involving debts between $10,000 and $20,000, distinguishing bankruptcy notices, creditors' petitions and sequestration orders, as well as matters resolved by payment or agreement before bankruptcy. Where the information is available, the assessment should identify the original debt, the contribution of interest and costs, the nature of the creditor and the outcome of earlier enforcement. This would provide a more useful basis for assessing the proposed change than aggregate insolvency figures alone.

Assessing the intended benefits for debtors also requires an understanding of whether matters that no longer meet the threshold are resolved through sustainable arrangements or continue through repeated enforcement, further costs or later insolvency with greater liabilities. Those outcomes need to be considered alongside creditor recoveries when determining whether the proposed increase would provide the relief intended.

A proportionate alternative

Pending that assessment, ACDBA recommends retaining the current threshold and examining an adjustment reflecting the change in the value of money, followed by predictable annual indexation, as an alternative to the proposed doubling. Concerns about the use of bankruptcy for smaller debts should also be addressed through safeguards directed to the circumstances of the proceedings.

Any additional safeguards should be assessed against the Court's existing powers, including its ability to dismiss a petition where satisfied that the debtor can pay their debts or that there is other sufficient cause. A creditor's inability to recover a particular debt does not, by itself, justify a bankruptcy order, and those existing protections are relevant when considering how smaller matters should be dealt with.[9]

Our 2020 submission proposed that, for debts above the threshold but below approximately $20,000, a creditor be required to provide an affidavit explaining the enforcement steps already taken without success or the reasons why other steps had not been taken. This would give the Court relevant information about the appropriateness of the proceedings while preserving access where the circumstances warrant it.[10]

We recommend revisiting that proposal with creditors and insolvency practitioners, with any requirement framed to accommodate circumstances in which another enforcement step would plainly be futile or inappropriate. Its purpose should be to assist judicial consideration of the particular matter, with the process and cost remaining proportionate so that smaller creditors can continue to use it.

If the Government proceeds with the $20,000 threshold, ACDBA recommends a review within three years of its application, supported by arrangements to collect the necessary information from the outset. The review should assess debtor outcomes and creditor recoveries, including the costs incurred in pursuing other enforcement remedies and any demonstrated effects on credit terms or availability.

Indexation

ACDBA supports a transparent annual adjustment which keeps the threshold consistent with changes in the value of money and allows creditors, advisers and debtors to plan on a predictable basis. The proposed March-quarter CPI reference and single annual adjustment date provide a suitable basis for administration, although the formula and rounding provisions require further consideration.

[9] Bankruptcy Act 1966 (Cth), ss 43, 44 and 52, particularly s 52(2).

[10] ACDBA, Review of the bankruptcy threshold (20 August 2020), pp 6 and 8. 2020 submission

Under proposed section 304B, the annual CPI percentage change is applied to a fixed $20,000 base and the resulting increment is added to the previous financial year's statutory minimum. The result is then rounded to the nearest $1,000, with an exact $500 rounded down. The explanatory materials state that the fixed base is intended to moderate increases by avoiding ordinary compounding.[11]

Because the calculation uses the previous year's rounded statutory minimum, discarded increments are not carried forward. For illustration, assuming no higher amount is prescribed, an annual CPI increase of 2 per cent produces a $400 increment which is rounded away; repeating that increase in subsequent years would leave the threshold at $20,000 despite cumulative inflation. At 3 per cent, the $600 increment would be rounded up to $1,000, producing a 5 per cent increase in the first year. These examples illustrate the formula's operation and are not inflation forecasts.

To avoid repeatedly discarding or amplifying annual movements, ACDBA recommends retaining an unrounded reference amount and applying rounding only to the threshold used operationally. This would allow the intended approach to be applied more consistently, with the explanatory materials distinguishing the policy choice to moderate growth through a fixed base from the additional effects of rounding.

Creditors, advisers and debtors need to know the applicable threshold when assessing a notice or petition, yet proposed subsection 304B(5) requires publication only as soon as practicable after 1 July and provides that a failure to publish does not invalidate indexation.[12] ACDBA recommends publication on AFSA's website with sufficient notice before the amount takes effect, supported by an accessible record of earlier thresholds and their effective dates.

Time to respond to a bankruptcy notice

ACDBA supports extending the response period from 21 to 28 days, giving a debtor additional time to obtain advice, understand the notice and discuss a payment arrangement before the matter progresses. A reasonable opportunity to resolve the account at that stage can benefit both the debtor and creditors.

Item 9(2) preserves the earlier response period where the application for the notice was made before commencement, including where the notice is issued afterwards.[13] To ensure that parties can identify the period that applies to their matter, AFSA's updated notices, guidance and information for practitioners should be available before the new period commences.

Debt agreement proposals and acceptance

ACDBA supports item 3, which removes the proposal and acceptance of a debt agreement as acts of bankruptcy. An eligible debtor should be able to put forward a sustainable repayment proposal without that step itself creating an additional ground for bankruptcy proceedings. Where an agreement is workable, it provides a means of addressing financial distress while allowing creditors to receive payments the debtor can reasonably afford.

The amendment retains the existing provisions concerning breach, termination and court review of debt agreements, subject to the restrictions on enforcement while a proposal is being processed and while an agreement remains in force.[14] Accompanying guidance should explain how those provisions operate when a proposal is unsuccessful or an accepted agreement subsequently fails, including when a relevant stay begins and ends, how existing proceedings are affected and what remedies remain available.

Guidance should also address the effect on contracts that expressly use an act of bankruptcy as a trigger. Removing proposal and acceptance as acts of bankruptcy requires parties to distinguish

[11] Exposure draft, Schedule 1, item 7, proposed s 304B(1)–(4); explanatory materials, paras 1.16–1.21. The annual CPI ratio is rounded to three decimal places before the increment is calculated.

[12] Exposure draft, Schedule 1, item 7, proposed s 304B(5).

[13] Exposure draft, Schedule 1, items 2 and 9(2).

[14] Exposure draft, Schedule 1, item 3; Bankruptcy Act 1966 (Cth), ss 40(1)(hc)–(hd), 185F, 185K, 185Q and 185T–185U. The retained breach and termination provisions operate with the restrictions and court procedures in Part IX.

those contractual provisions from defaults based on non-payment or other underlying events, so that the consequences of the reform can be understood in the context of the particular contract.

The removal of these acts of bankruptcy does not alter the separate recording requirements. Debt agreement proposals accepted for processing and accepted agreements remain subject to NPII recording, while the Privacy Act expressly includes proposals and agreements within personal insolvency information.[15] As credit reporting and retention operate under rules separate from the NPII, the guidance should explain what information remains available to creditors and the access, use and retention requirements that apply.

Paragraph 54(1)(d) of the Bankruptcy Regulations 2021 currently requires debtors to be given a statement that providing a debt agreement proposal is an act of bankruptcy.[16] That requirement, together with the relevant forms and guidance, should be amended to take effect with item 3 so that debtors receive information consistent with the new law.

The duration of debt agreements

Consistent with our 2022 submission, ACDBA recommends reconsidering the broader availability of debt agreements lasting up to five years. The current law generally provides a three-year payment limit, with limited five-year avenues for qualifying homeowners and specified hardship variations.[17]

A longer term may reduce the instalments needed to make an agreement viable, provided the proposed payments remain affordable over its full duration. Any broader five-year option should therefore retain creditor approval and appropriate assessment of the debtor's ability to complete the agreement. An assessment of completion rates, total fees and payments, and returns to creditors would assist Treasury in determining whether greater flexibility would improve outcomes.

National Personal Insolvency Index

The Government has announced separate regulations to end permanent public bankruptcy listings on the NPII, with the July 2024 announcement describing a period of seven years following discharge.[18] As this change falls outside the exposure draft, ACDBA requests a separate opportunity to comment on the regulations, including confirmation of the records affected, the retention period and the point from which it is calculated.

Creditors and collection agencies use insolvency information to establish a person's status and determine whether an account is affected by an earlier bankruptcy. Checking the relevant dates and identifying the trustee can be necessary before deciding what further inquiries or action are appropriate, and helps prevent the pursuit of liabilities from which a person has been released. ACDBA does not support shortening access to that information without evidence that these legitimate needs will continue to be met.

Insolvency history is also relevant when creditors assess applications for new credit. If that information becomes unavailable, creditors may adopt more restrictive terms to manage uncertainty about repayment risk, an effect which should be assessed alongside the intended benefits for discharged bankrupts. Any proposal to shorten public access should therefore explain how a creditor with a legitimate need to verify an earlier insolvency would obtain the necessary information and how those arrangements would interact with the separate credit reporting rules.

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[15] Bankruptcy Regulations 2021, s 76(1)–(2) and table item 12; Bankruptcy Act 1966 (Cth), s 185H(2)(c) and (3)(d); Privacy Act 1988 (Cth), ss 6U, 20V and 20X. Exposure draft item 3 does not amend those provisions.

[16] Bankruptcy Regulations 2021, s 54(1)(d), prescribing information for the purposes of Bankruptcy Act 1966 (Cth), s 185C(2D)(b).

[17] ACDBA, Possible reforms to the bankruptcy system (24 February 2022), p 7; Bankruptcy Act 1966 (Cth), ss 185C(2AA)–(2AC) and 185M(1D)–(1DB). The hardship variation requires the specified administrator certification and must not increase the total required payments. 2022 submission

[18] Mark Dreyfus, Bankruptcy law reforms (8 July 2024); Andrew Leigh, Bankruptcy Reforms To Give Australians A Fairer Chance To Start Again (23 October 2026). The latter statement confirms a separate regulations process and refers to removal after seven years; the July 2024 announcement expressly measures the period from discharge. July 2024 announcement

Commencement and transitional arrangements

Matters spanning a threshold change

Although Schedule 1 would commence on the day after Royal Assent, the new threshold would apply when determining the statutory minimum at a time on or after 1 July 2027, with indexation beginning on 1 July 2028. The response-period and debt-agreement amendments would take effect on commencement and may therefore precede the threshold change. Implementation materials should distinguish those dates clearly so that parties can identify the rules applying to their matter.[19]

Items 4 and 5 determine the threshold for a notice at the time of its application and for a creditor's petition at the time of presentation. The use of separate assessment dates means that a notice which satisfies the threshold when applied for may not support a petition presented after the threshold changes.

For example, assuming commencement has already occurred, a creditor applying in June 2027 for a notice concerning a qualifying $15,000 debt may satisfy the threshold then applicable. A petition presented on or after 1 July would be assessed against the higher threshold, which that debt alone would not satisfy. The same issue can arise at later annual indexation dates.[20]

Item 9(1) contains savings for earlier applications, notices and petitions, but is tied to commencement rather than the separate threshold application date and does not expressly preserve the notice threshold for a later petition relying on non-compliance with that notice. ACDBA recommends a time-limited saving which allows such a petition to use the threshold applicable when the notice was applied for, provided the petition is presented within the existing statutory time limits. This would recognise reasonable expenditure and procedural steps already undertaken while allowing the new threshold to govern new matters.

Debt agreement amendments and existing matters

The explanatory materials should clarify how item 3 applies to proposals given or accepted before commencement, including whether those events remain available as acts of bankruptcy for pending petitions or later petitions relying on them. Existing savings and general interpretation provisions may be relevant, but the materials do not separately explain their operation in these circumstances.[21]

That clarification should extend to the interaction with section 115, which can refer to an earlier act of bankruptcy when determining when a later bankruptcy is taken to have commenced. As that date is relevant to provisions dealing with property and earlier transactions, the explanatory materials should confirm whether consequential amendments are required to avoid unintended effects.[22]

[19] Exposure draft, commencement table and Schedule 1, items 1–3 and 7–9; explanatory materials, paras 1.26–1.29.

[20] Exposure draft, Schedule 1, items 4, 5, 8 and 9; Bankruptcy Act 1966 (Cth), s 44(1)(c).

[21] Exposure draft, Schedule 1, items 3 and 9(1); Acts Interpretation Act 1901 (Cth), s 7; explanatory materials, paras 1.24–1.29.

[22] Bankruptcy Act 1966 (Cth), ss 115, 116 and 120. Different transaction provisions have their own requirements and reference dates; the effect of removing an act of bankruptcy should be assessed against the particular provision.

Concluding comments

ACDBA supports the additional time to respond to a bankruptcy notice, the removal of proposal and acceptance of a debt agreement as acts of bankruptcy, and predictable indexation of an appropriately set threshold. These measures can assist debtors to obtain advice and reach sustainable arrangements while preserving a workable process for creditors.

The further doubling of the threshold requires stronger evidence of the need for that change and its consequences for affected creditors. We recommend assessing an inflation-based alternative and targeted scrutiny of smaller matters, together with the amendments to indexation and transitional arrangements discussed in this Submission. If the $20,000 threshold proceeds, its practical effects should be reviewed within three years.

ACDBA would welcome the opportunity to discuss these matters with Treasury and contribute members' practical experience to the further development of the reforms.

Contact

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Appendix 1

Members of Australian Collectors & Debt Buyers Association

- Arbor Knot Holdings Pty Ltd
- Axess Recoveries & Collections Pty Ltd
- CCC Financial Solutions Pty Ltd
- Charter Mercantile Pty Ltd
- Credit Corp Group Limited (ASX: CCP)
- PRA Australia Pty Ltd (NASDAQ: PRAA)
- Recoveries Corporation Pty Ltd
- Standard8 Advisory Pty Ltd
- Strategic Collections Pty Ltd

Affiliate Members of Australian Collectors & Debt Buyers Association

- Acceleon
- Collect!
- CreditSoft Solutions
- Equifax
- Experian Australia
- TaleFin Australia
- TCN