

Geoff Green



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Dear Mr Mason,

Combatting Illegal Phoenixing proposals

I am a Chartered Accountant and former registered liquidator, with more than 20 years' experience in financial and professional services at Nab, ANZ Bank, and Ernst & Young.

In my current role I lead complex loan workouts across the Institutional and Corporate platforms at Nab, and I am an ARITA Vic./Tas. board member.

I very much appreciate the opportunity to provide feedback on the *Combatting Illegal Phoenixing Proposals Paper*, which for clarity represent my personal views and are not made on behalf of either Nab or ARITA.

Summary

- Most of the illegal phoenix activity is already caught by existing laws and recovery options and so there is little need for new offences. More appropriate would be:
 - Greater targeting of registered liquidators directly involved in phoenix activity.
 - Greater resourcing to pursue liquidator complaints about phoenix activity, and generally.
 - Regulation of current unregulated 'pre-insolvency advisers' – whilst some are legitimate advisers, it seems some promote or assist phoenix activity.
 - Presumptions which might operate to enhance liquidator's capacity to recover improper phoenix transactions.
- The *Corporations Act* already provides a mechanism by which directors can be disqualified. To create a second, similar mechanism - albeit with a narrower focus does not appear to be an effective use of scarce resources.
- The proposal to prevent directors from 'abandoning' companies and backdating resignation notices is simple, very appropriate, and should be strongly supported.
- The proposals for the introduction of an administrative recovery notice regime in corporate liquidations appears to provide an appropriate and cost-effective enhancement to recover voidable transactions

- Comment on the ‘cab rank’ proposal is challenging given the limited detail about the operation of the mechanism, however the following points are significant:
 - Any cab rank system will be ineffective unless there are safeguards to ensure that a cab-rank appointee is only replaced for appropriate reasons (for example in the way that the law operated prior to the changes made by the ILRA).
 - Measures to restrict votes of related parties will be very difficult in practice:
 - Liquidators will not always be aware of whether a creditor is related – phoenix promoters may implement structures to conceal such relationships.
 - There are many situations (for example companies that operate as group employers or group treasurers) where the votes of related parties are legitimate and should not be discounted.
 - An industry wide cab-rank would be very clearly anti-competitive and against broader government policy.

Whether a ‘narrow’ cab-rank system was anti-competitive would require an understanding of the criteria for entrance to the panel, the timing and mechanism by which new entrants might be added to the panel, the process by which parties might be excluded from the panel, and any respective appeal processes.
- The ‘Government liquidator’ proposal are problematic. There is no need to insert a subsidised competitor into an already crowded market place, and the cost and infrastructure would be significant

Please feel free to call me on [REDACTED] if that would be of assistance.

Yours sincerely,

Geoff Green

1 Broad Reforms

1.1 A Phoenix Hotline

1.	<p><i>On a scale of one to ten, where one is 'ineffective' and ten is 'highly effective', please rate how well you think this measure will operate to deter and disrupt illegal phoenix activity.</i></p> <p>2</p>
2.	<p><i>Are there any other reporting mechanisms which you think would assist people to report suspected illegal phoenix activity?</i></p> <p>Input by ASIC may assist an evaluation of this proposal but it appears unnecessary. Under the current law there are already well used mechanisms – in 2016 Liquidators lodged 9,951 reports with ASIC which identified 8,258 instances of alleged misconduct.</p> <p>It seems that ASIC does not currently have sufficient resources to investigate those cases as only 129 reports were referred for compliance, investigation or surveillance.</p> <p>Now that the User Pays regime is operative it should be simpler for ASIC to secure and assign resources to allow investigation of the complaints that ASIC receives.</p>
3.	<p><i>What are the benefits and risks of a 'phoenix hotline'?</i></p> <p>Given that ASIC already receives far more complaints than it has resources to investigate, a mechanism that would generate more complaints for investigation would not appear to be the best use of limited resources.</p>
4.	<p><i>Which agency do you believe would be best placed to operate such a hotline?</i></p> <p>The ATO</p>
5.	<p><i>What public reporting would be appropriate to ensure transparency? What other mechanism could be considered?</i></p> <p>The statistics reported need to show reports received and action commenced as a result of those reports, together with outcomes.</p> <p>Detailed information should be available at no cost to support academic study and analysis.</p>

1.2 A Phoenixing Offence

6.	<p><i>On a scale of one to ten, where one is 'ineffective' and ten is 'highly effective', please rate how well you think this measure will operate to deter and disrupt illegal phoenix activity</i></p> <p>8</p>
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7.	<p><i>What are the benefits and risks of this approach?</i></p> <p>Almost all phoenix type activity is well covered by existing offence provisions and there is no need for additional offence provisions, especially when it appears that ASIC does not currently have resourcing to appropriately pursue the existing offences already reported by liquidators. For this reason it is difficult to see a net benefit arising from the introduction of additional offences.</p> <p>The administrative recovery notice regime has the potential to provide a more cost-effective and expedient process for liquidators to pursue actionable phoenix transactions under the existing law</p>
8.	<p><i>Should ASIC retain control of the issuing of such notices to ensure that they are not issued inappropriately?</i></p> <p>The issue of the notices by an independent person or office (ASIC or some other party) offers some advantages.</p>
9.	<p><i>Are there other regulators who should also be able to issue such notices (for example the Fair Entitlement Guarantee Recovery Program)?</i></p> <p>FEG is often a creditor in liquidations and so would not be seen as truly impartial and independent.</p>
10.	<p><i>Should liquidators have the ability to independently issue such notices in cases where they suspect that illegal phoenixing has taken place?</i></p> <p>As per Q8.</p>
11.	<p><i>How long should the law allow for the recipient to respond?</i></p> <p>Fifteen business days</p>
12.	<p><i>What course of action should be pursued where the recipient fails to comply with a notice?</i></p> <p>As under the <i>Bankruptcy Act</i>, the amount payable under the notice should be recoverable by the liquidator as a debt.</p>
13.	<p><i>What are the some of the challenges ASIC is likely to face in seeking compliance with the notice?</i></p> <p>The party issuing the notices must be provided with sufficient resources to ensure that notices are issued on a timely basis.</p>
14.	<p><i>Do you think that such an arrangement will reduce the cost of taking recovery action or seeking compensation for the loss suffered?</i></p> <p>Yes</p>
15.	<p><i>Are there safeguards which should be implemented in respect of the proposal?</i></p> <p>Yes, a recipient should have capacity to apply to Court to have a notice set aside.</p>
16.	<p><i>If such a provision were to be introduced, should any of the existing voidable</i></p>

	<p><i>transaction provisions be amended or repealed?</i></p> <p>No</p>
17.	<p><i>Are these remedies appropriate? Are there further remedies or penalties we should consider?</i></p> <p>It is sometimes difficult for a liquidator to undertake recovery action because of missing documents or other information.</p> <p>Recovery might be facilitated by a statutory presumption that there had been an ‘unreasonable director-related transaction’ (ie in terms of section 588FDA) if assets, records, business premises or information formerly used by a company was being used by a related party, and that related party was unable to provide sufficient information to explain the transaction such that a liquidator could confirm fair value has been received by the company for the benefit of creditors.</p>
18.	<p><i>If the above amendments are made, should the law also be amended to include a specific provision to the effect that knowing involvement in a contravention of the provision will itself constitute a contravention of the provision (as per sections 181 — 183 of the Act)?</i></p> <p>No</p>
19.	<p><i>What tests can be applied to determine if a person has been involved in the facilitation of illegal phoenix activity?</i></p> <p>The existing laws are satisfactory if sufficient resources are made available to ASIC to ensure enforcement.</p>
20.	<p><i>On a scale of one to ten, where one is ‘ineffective’ and ten is ‘highly effective’, please rate how well you think this measure will operate to deter and disrupt illegal phoenix activity?</i></p> <p>One</p>
21.	<p><i>Which existing breaches of the law, if any, should be designated as phoenix offences?</i></p> <p>Such designation is not necessary. The existing laws are satisfactory if sufficient resources are made available to ASIC to ensure enforcement.</p>

1.3 Addressing issues with directorships

22.	<p><i>On a scale of one to ten, where one is ‘ineffective’ and ten is ‘highly effective’, please rate how well you think this measure will operate to deter and disrupt illegal phoenix activity</i></p> <p>Nine</p>
23.	<p><i>Do you agree that there should be a rebuttable presumption that a director should still be held responsible for misconduct if the required notice is not</i></p>

	<p><i>lodged with ASIC in a timely way?</i></p> <p>Yes</p>
24.	<p><i>What are the benefits and risks of this approach?</i></p> <p>Such a change will provide a clear and simple accountability, with no evident risks or downside.</p>
25.	<p><i>What is a reasonable period to allow for the requisite notice to be lodged with ASIC?</i></p> <p>Ten business days.</p>
26.	<p><i>Should the onus for reporting to ASIC be placed on the individual director, rather than the company?</i></p> <p>Yes, the individual director</p> <p><i>If so, would this constitute a significant compliance burden?</i></p> <p>No, it would not.</p>
27.	<p><i>How should the above measure be enforced? For example, by application to court or ASIC taking other administrative action?</i></p> <p>There should be no need for enforcement. The director will remain in place and be subject to their normal duties.</p>
28.	<p><i>On a scale of one to ten, where one is 'ineffective' and ten is 'highly effective', please rate how well you think this measure will operate to deter and disrupt illegal phoenix activity</i></p> <p>Eight</p>
29.	<p><i>Should sole directors be able to resign without appointing a liquidator or deregistering the company?</i></p> <p>No</p>
30.	<p><i>What are the benefits and risks of this approach?</i></p> <p>Such a change will provide a clear and simple accountability, with no evident risks or downside.</p>
31.	<p><i>Should abandoning a company instead be an offence?</i></p> <p>No. The law should not allow a sole director to resign unless they arrange a replacement.</p>
32.	<p><i>Should a company with no director for a prescribed period be automatically deregistered? If so, what would be an appropriate period before deregistration should commence?</i></p> <p>If the law was changed to prevent a sole director from resigning then this could not occur other than by the death of a sole director. ASIC should have the power to administratively wind up a company with no directors.</p>

33.	<i>What other options are available for consideration?</i> Nil
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1.4 Restrictions on voting rights

34.	<i>On a scale of one to ten, where one is 'ineffective' and ten is 'highly effective', please rate how well you think this measure will operate to deter and disrupt illegal phoenix activity</i> Three
35.	<i>What are the benefits and risks of this approach?</i> The benefits of the approach are modest because a liquidator will only be able to invoke the restriction if he or she is aware that a party is related. There are risks in the approach because it may operate to exclude the votes of related parties in circumstances where there are genuine and proper grounds to replace a liquidator.
36.	<i>Is the current definition of "related creditor" too broad for this purpose? If so, how should "related creditor" be defined?</i> No
37.	<i>Should related creditors that were company employees be subjected to a different treatment than, say, if they were directors? Why or why not?</i> No. There is no justification for identifying sub-classes of 'related creditors' and applying different levels of restriction on them.
38.	<i>What level of evidence should be imposed on related creditors to substantiate their respective debts?</i> There is no reason to modify the requirement in s 75-100(2) of the <i>Insolvency Practice Rules (Corporations) 2016</i> .
39.	<i>Should restrictions on related creditor voting be extended to all resolutions proposed in an external administration? Why or why not?</i> No. Assuming that the claim can be substantiated, related creditors are still creditors and legitimate stakeholders.
40.	<i>Will limiting related creditor voting participation in a creditors' meeting add additional complexities to proceedings? For example quorum requirements in order to validly hold a creditors' meeting.</i> Yes
41.	<i>Should the above rule apply to a particular size or type of external administrations or liquidations?</i>

	No
42.	<i>Should the court have the power to overturn this restriction?</i> Yes
43.	<i>Should this restriction only be applied to certain types of companies, for example small proprietary companies?</i> No
44.	<i>Are there circumstances where this restriction should not apply?</i> Yes, in relation to all matters except the replacement of a liquidator
45.	<i>What are some of the ways a related creditor might attempt to circumvent the above measure?</i> Phoenix promoters are likely to attempt to circumvent the measure by creating false claims owed to parties that are not ostensibly creditors, or by assigning real claims to parties that are ostensibly not related.
46.	<i>What other measures could be considered to avoid collusion between liquidators and related creditors?</i> Enforcement against liquidators who do not fulfil their statutory duties

1.5 Promoter penalties

47.	<i>On a scale of one to ten, where one is 'ineffective' and ten is 'highly effective', please rate how well you think this measure will operate to deter and disrupt illegal phoenix activity</i> Three
48.	<i>Should the promoter penalty laws be expanded to apply to promoters or facilitators of illegal phoenix activity?</i> The only argument to support such a broadening of the ambit of promoter penalty laws is the possibility that it might bring their enforcement to a regulator with access to greater resourcing than ASIC appears to currently have. Otherwise there is no real justification given the current availability of offences and penalties.
49.	<i>What are the benefits and risks of this approach?</i> Refer the answer to Q48
50.	<i>If the promoter penalty laws are expanded to illegal phoenix activity, how would they best be structured? For example by adding a new limb to the existing provisions or creating a separate new provision?</i> Not applicable

51.	<i>Are there additional safeguards that would be needed to ensure innocent advisers are not caught by the provisions? Should the adviser have to corroborate that they acted as mere adviser and not as a promoter?</i> I do not have appropriate background or knowledge to comment
52.	<i>If promoter penalties are expanded to apply to promoters of illegal phoenix activity, do the existing sanctions provide sufficient deterrent?</i> I do not have appropriate background or knowledge to comment
53.	<i>Are the offences of civil penalty and criminal prosecution available under section 202 the Superannuation Industry (Supervision) ACT 1993 preferred to the promoter penalty options above?</i> I do not have appropriate background or knowledge to comment
54.	<i>An alternative approach to stop the promotion or facilitation of illegal phoenix activity may be a Court order to require specific performance of some action, for example, submitting a company liquidation proposal for consideration by ASIC. Is there merit in this or alternate approaches to effectively deter those who promote or facilitate illegal phoenix activity?</i> The provision of 'pre-insolvency advice' should be regulated, with similar standards and enforcement as currently apply to registered liquidators

1.6 Extending the Director Penalty Notice regime to GST

55.	<i>On a scale of one to ten, where one is 'ineffective' and ten is 'highly effective', please rate how well you think this measure will operate to deter and disrupt illegal phoenix activity</i> Six
56.	<i>What are the benefits and risks of this approach?</i> I support extension of the DPN regime to all Commonwealth tax debts. It is difficult to identify a risk or adverse consequence of this measure.
57.	<i>Should the DPN regime be expanded to cover GST for all directors, or be restricted to those identified as High Risk Phoenix Operators (see Part Two)?</i> It should apply to all directors
58.	<i>Are there alternative approaches to securing outstanding payment of GST from companies and their directors?</i> Consideration of the implementation of a single touch approach for GST

1.7 Security Deposits

59.	<p><i>On a scale of one to ten, where one is 'ineffective' and ten is 'highly effective', please rate how well you think this measure will operate to deter and disrupt illegal phoenix activity</i></p> <p>Five</p>
60.	<p><i>What are the benefits and risks of this approach?</i></p> <p>This approach will provide greater protection for the ATO but it will require close monitoring to ensure that bond amounts are increased as the size of the potential tax debt increases.</p> <p>Such an approach is also likely to impose a significant funding requirement on a new business, so should only be utilised in relatively infrequent circumstances</p>
61.	<p><i>Would improvements to the garnishee provisions adequately address the proposal to strengthen the effectiveness of the security deposit power?</i></p> <p>Garnishees provide an unfair advantage to the ATO with potential to 'jump the queue' ie disrupt the long held principle of 'pari passu.'</p>
62.	<p><i>Should the proposal be limited to businesses that have been identified as High Risk Phoenix Operators (see Part Two)?</i></p> <p>They measures should be used infrequently or they will become a blocker to business start-up.</p>
63.	<p><i>Are there concerns or practical issues that would need to be addressed with expanding the garnishee power generally for future tax liabilities?</i></p> <p>Expanding the garnishee power would further advantage the ATO to the disadvantage of all other creditors, and for that reason should be avoided.</p>
64.	<p><i>Are there any further concerns if this were achieved through amending the definition of 'tax-related liability' to include the amount of an anticipated future tax liability which is the subject of a security deposit demand</i></p> <p>I do not have appropriate background or knowledge to comment</p>
65.	<p><i>Are there any issues with the existing garnishee processes that should be considered</i></p> <p>Yes, as mentioned at 61, garnishees provide an unfair advantage to the ATO as the ATO is able to obtain payment without risk of subsequent recovery as a preference</p>
66.	<p><i>Should the Government consider additional measures to prevent circumvention of the provisions by transferring, disposing or encumbering assets where a request is issued?</i></p> <p>Current laws provide measures to allow recovery of such transfers however liquidators do not always have resources to pursue them. Some type of litigation fund, to fill the current gap of funding for smaller claims, might be appropriate</p>

67.	<p><i>Should the penalties for not complying with a security deposit request be increased to improve compliance?</i></p> <p>I do not have appropriate background or knowledge to comment</p>
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2 Dealing with Higher Risk Entities

2.1 Targeting higher risk entities

68.	<p><i>On a scale of one to ten, where one is 'ineffective' and ten is 'highly effective', please rate how well you think this measure will operate to deter and disrupt illegal phoenix activity.</i></p> <p>Three</p>
69.	<p><i>What are the benefits and risks of this approach?</i></p> <p>Targeting 'High Risk Phoenix Operators' is a sensible approach.</p> <p>However, the activities which are of concern are already offences, and there already exist ample opportunities to enforce those offences and/or or seek director disqualification.</p> <p>Resources would be better deployed in enforcement of existing laws rather than the creation of parallel offences and mechanism that will still require enforcement.</p>
70.	<p><i>Are the safeguards for designating HRPO sufficient? Can you suggest any alternative safeguards that would still allow for swift preventative action to be taken to prevent phoenix activity from occurring</i></p> <p>As above, enforcement of the existing laws is an appropriate alternative.</p>
71.	<p><i>What safeguards would be required to ensure that the measure is appropriately targeted?</i></p> <p>I do not have appropriate background or knowledge to comment</p>
72.	<p><i>Should the Commissioner of Taxation have a discretion to declare a company of which a HRPO is, or has recently been, an officer to also be a HRPO? Should this be extended to other individuals or entities which are associates of the HRPO?</i></p> <p>I do not have appropriate background or knowledge to comment</p>
73.	<p><i>Should "associate" be defined or determined administratively?</i></p> <p>Defined</p>

2.2 Appointing liquidators on a cab rank basis

2.2.1 Option 1: High risk phoenix operators

74.	<p><i>On a scale of one to ten, where one is 'ineffective' and ten is 'highly effective', please rate how well you think this measure will operate to deter and disrupt illegal phoenix activity</i></p> <p>Two</p>
75.	<p><i>Are there alternate measures that would be more effective? If so, please provide an outline of what you think would work</i></p> <p>Comment on the 'cab rank' proposal is challenging given the limited detail about the operation of the mechanism, however the following points are significant:</p> <ul style="list-style-type: none">• Any cab rank system will be ineffective unless there are safeguards to ensure that a cab-rank appointee is only replaced for appropriate reasons (for example in the way that the law operated prior to the changes made by the ILRA). <p>The measures to restrict votes of related parties at first glance appear to address this however they will be problematic in practice:</p> <ul style="list-style-type: none">• Liquidators will not always be aware of whether a creditor is related – phoenix promoters may implement structures to conceal such relationships.• There are many situations (for example companies that operate as group employers or group treasurers) where the votes of related parties are legitimate and should not be discounted.• An industry wide cab-rank would be very clearly anti-competitive and against broader government policy. Whether a 'narrow' cab-rank system was anti-competitive would require an understanding of the criteria for entrance to the panel, the timing and mechanism by which new entrants might be added to the panel, the process by which parties might be excluded from the panel, and any respective appeal processes. <p>A cab rank system is unlikely to be an effective and practical measure, and for that reason, enforcement of current laws, and the other measures in this proposals paper are all likely to be more effective.</p>
76.	<p><i>Currently, it is intended that the cab rank be restricted to circumstances where an HRPO is or has recently been an officer of the company?</i></p> <p>For the reasons in the answer to Q75, any cab rank system should operate as narrowly as possible.</p>
77.	<p><i>Should a cab rank apply to all external administration appointments?</i></p> <p>No. Not only would an industry-wide cab rank system be clearly uncompetitive and unlikely to be effective, there would need to be measures, undetermined as yet, to ensure that directors had access to an immediate appointment of someone free of conflict, with appropriate industry experience, and proximity to address any</p>

	immediate issues.
78.	<p><i>Should it be applied more widely, but be limited to specified types of external administration appointments where certain criteria are met? For example:</i></p> <ul style="list-style-type: none"> • <i>whether it was a director initiated creditors' voluntary liquidation and/or the appointment of a liquidator following a voluntary administration</i> • <i>industry sector</i> • <i>whether pre-insolvency advice was received</i> • <i>prescribed criteria on the company's financial affairs</i> • <i>when there has been a recent transfer identified for some or all the companies assets</i> • <i>where there has been a change of directors within a prescribed period.</i> <p><i>If the cab rank applies only to those companies where specified criteria are met what should those criteria be? Please specify your reasons</i></p> <p>A conditional regime operated by reference to criteria would need to ensure that there was some review of the claimed criteria, and enforcement action where it had been misapplied. It is difficult to understand how this could operate effectively in practice.</p>
79.	<p><i>Who should administer the cab rank and how should it be administered? Please explain your reasoning</i></p> <p>Administration of a cab rank will require:</p> <ul style="list-style-type: none"> • Criteria for entrance to the panel • The timing and mechanism by which new entrants might be added to the panel • A process by which parties might be excluded from the panel • Respective appeal processes. <p>Given that ASIC currently has a role regulating entry and exit to the profession ASIC would have potential conflict of interest in 'overruling' its own entry and exit decisions.</p>
80.	<p><i>How do you think such a system should be funded?</i></p> <p>The costs of enforcement/regulation/protection mechanism which arise from director misconduct should be funded by allocation of costs to the user-pays pool to which they belong. This would include the costs of administering the cab-rank system, and the funding of any guaranteed remuneration.</p> <p>Pre-insolvency advisers should be regulated and licensed, and any enforcement costs should be recovered from their population.</p>

2.2.2 A Government liquidator

81.	<i>On a scale of one to ten, where one is 'ineffective' and ten is 'highly effective',</i>
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	<p><i>please rate how well you think this measure will operate to deter and disrupt illegal phoenix activity.</i></p> <p>One</p>
82.	<p><i>Should consideration be given to establishing a government liquidator to conduct small-to-medium external administrations? Please provide your reasons</i></p> <p>No. A government liquidator would be both expensive and unnecessary, given the large number of operators already in the market.</p> <p>If such a measure was to be considered then such consideration should include analysis as to whether the existence of a Government trustee (AFSA) has resulted in better compliance with regulation for individual debtors.</p>
83.	<p><i>What are the benefits and risks of this approach?</i></p> <p>A government liquidator would be both expensive, and unnecessary give the large number of operators already in the market</p>
84.	<p><i>If a government liquidator is created, what external administrations should they conduct? Please provide your reasons</i></p> <p>It is difficult to see how a government liquidator would have the skills and capacity to manage trading businesses, and so any appointments should be to non-trading businesses only.</p>
85.	<p><i>How do you believe a government liquidator should be funded?</i></p> <p>Under the User-Pays regime any costs should be allocated to industry participants, in this case, company directors.</p>

2.3 Removing the 21-day waiting period for a DPN

86.	<p><i>On a scale of one to ten, where one is 'ineffective' and ten is 'highly effective', please rate how well you think this measure will operate to deter and disrupt illegal phoenix activity</i></p> <p>Three</p>
87.	<p><i>Should the 21 day notice period be removed where a director has been designated as a HRPO?</i></p> <p>The DPN regime must necessarily provide directors with time to obtain proper advice. Such advice may result in director misconduct but it may also result in compliance with the law.</p>
88.	<p><i>What are the benefits and risks of this approach?</i></p> <p>It seems likely that HRPO directors will be well advised, and will already have taken steps to minimise their personal risks well before the receipt of any DPN, and so it is difficult to see any practical benefits</p>

89.	<p><i>Should further safeguards attach to DPNs issued to HRPOs in addition to the existing legal rights and safeguards that currently apply to DPNs?</i></p> <p>I do not have appropriate background or knowledge to comment</p>
90.	<p><i>Are there alternative approaches to stop a designated HRPO from disposing of their personal assets once they are aware they are required to pay a director penalty?</i></p> <p>Providing funding to liquidators and bankruptcy trustees to enable them to take action to 'claw back' such divestments.</p>

2.4 Providing the ATO with the power to retain refunds

91.	<p><i>On a scale of one to ten, where one is 'ineffective' and ten is 'highly effective', please rate how well you think this measure will operate to deter and disrupt illegal phoenix activity.</i></p> <p>Three</p>
92.	<p><i>Should the ATO's power to retain refunds be broadened in respect of HRPOs who have failed to provide other notifications/lodgements capable of affecting their tax liability?</i></p> <p>Yes</p>
93.	<p><i>What are the benefits and risks of this approach?</i></p> <p>The ATO should have the capacity to set off mutual claims, as any other creditor does, subject to the restrictions in the Corporations Act.</p>
94.	<p><i>Should this proposed power be broadened further where notifications are not yet due but will become due in the next reporting cycle? For example where lodgement of an income tax return by the HRPO is not due for some months but is expected to result in a significant liability, should the ATO be able to retain a refund presently owed?</i></p> <p>Yes, subject to appropriate controls and mitigations. A debtor should not be in a better position because it has failed to comply with its ATO reporting obligations.</p>