
TREASURY LAWS AMENDMENT (CORPORATE INSOLVENCY REFORMS
CONSEQUENTIALS) BILL 2021

EXPOSURE DRAFT EXPLANATORY MATERIALS

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Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
ADI	authorised deposit-taking institution
APRA	Australian Prudential Regulation Authority
APRA Act	<i>Australian Prudential Regulation Authority Act 1998</i>
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
ATO	Australian Taxation Office
Bill	<i>Treasury Laws Amendment (Corporate Insolvency Reforms Consequential) Bill 2021</i>
CATSI Act	<i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i>
CATSI Regulations	<i>Corporations (Aboriginal and Torres Strait Islander) Regulations 2017</i>
Corporations Act	<i>Corporations Act 2001</i>
Corporations Regulations	<i>Corporations Regulations 2001</i>
Fair Entitlements Guarantee Act	<i>Fair Entitlements Guarantee Act 2012</i>

Overview and context for corporate insolvency reforms

Context of reforms

On 1 January 2021, the Australian Government's corporate insolvency reforms – *Corporations Amendment (Corporate Insolvency Reforms) Act 2020* and *Corporations Amendment (Corporate Insolvency Reforms) Regulations 2020* – commenced. The corporate insolvency reforms support small businesses by reducing the costs of external administration and the compliance burden for insolvency practitioners.

Before these reforms came into effect, Australia's corporate insolvency system was based on a one-size-fits-all model that imposed the same duties and obligations, regardless of the size and complexity of the administration. High costs and rigid processes created barriers to access and depleted the limited resources held by distressed small businesses. In doing so, the system failed to account for the needs of small businesses. The impact of these issues risked becoming more acute because of the economic consequences of the COVID-19 pandemic, and a potential increase in numbers of businesses facing financial distress.

The corporate insolvency reforms will help businesses remain viable and improve the returns to creditors and employees when the business is unviable. Further, the reforms are aimed at achieving greater economic dynamism by helping more small businesses to survive and increasing the efficient reallocation of capital where survival is not possible.

The new debt restructuring process is a key aspect of the corporate insolvency reforms framework and allows eligible companies to restructure their debts and maximise their opportunity for survival with the assistance of a small business restructuring practitioner.

Another key aspect of the corporate insolvency reforms framework is the new simplified liquidation process which gives eligible companies in a voluntary winding up a faster and lower cost liquidation, increasing returns for both creditors and employees.

Following introduction of the reforms, consequential amendments are now needed to reflect the intended outcomes of the new debt restructuring and simplified liquidation processes across the Commonwealth statute book.

Overview of the consequential amendments

The Bill makes consequential amendments to the following Acts necessary to support implementation of the corporate insolvency reforms:

- *Australian Securities and Investments Commission Act 2001*
- *Banking Act 1959*
- *Corporations (Aboriginal and Torres Strait Islander) Act 2006*
- *Corporations Act 2001*
- *Fair Entitlements Guarantee Act 2012*
- *Insurance Act 1973*
- *Life Insurance Act 1995*
- *Superannuation Industry (Supervision) Act 1993*.

The Fair Entitlements Guarantee Act provides for financial assistance for workers who have not been fully paid for work done for an employer who becomes insolvent or bankrupt. The Bill amends the Fair Entitlements Guarantee Act to ensure employees who are otherwise eligible to receive entitlements can access the Fair Entitlements Guarantee scheme where their employer had been under restructuring prior to being wound up. More information can be found in Chapter 1.

The Bill amends the Corporations Act, *Banking Act 1959*, *Insurance Act 1973*, and *Life Insurance Act 1995* to clarify that entities subject to prudential regulation by APRA are not eligible to access the new simplified insolvency processes. More information can be found in Chapter 1.

The Bill makes consequential amendments to the ASIC Act, the Corporations Act and the *Superannuation Industry (Supervision) Act 1993* to clarify the operation of the new debt restructuring and simplified liquidation processes and to ensure that such processes work as intended. More information can be found in Chapter 1.

The Bill amends the CATSI Act to ensure that Aboriginal and Torres Strait Islander corporations may utilise the new debt restructuring and simplified liquidation processes, with some modifications to ensure consistency with the objectives and framework of the CATSI Act. More information can be found in Chapter 2.

Additional consequential amendments to other Acts may also be identified for inclusion in the final Bill.

Chapter 1

Corporate insolvency reforms— consequential amendments

Outline of chapter

- 1.1 The Bill makes consequential amendments necessary to support implementation of the corporate insolvency reforms as follows:
- amendments to the Fair Entitlements Guarantee Act to ensure employees who are otherwise eligible to receive entitlements can access the Fair Entitlements Guarantee scheme where their employer had been under restructuring prior to being wound up;
 - amendments to the Corporations Act, *Banking Act 1959*, *Insurance Act 1973*, and *Life Insurance Act 1995* to clarify that entities subject to prudential regulation by APRA are not eligible to access the new simplified insolvency processes; and
 - amendments to the ASIC Act, the Corporations Act and the *Superannuation Industry (Supervision) Act 1993* to clarify the operation of the new debt restructuring and simplified liquidation processes and to ensure that such processes work as intended.

Detailed explanation of new law

Fair Entitlements Guarantee Act

What does the Fair Entitlements Guarantee Act do?

1.2 Under the Fair Entitlements Guarantee Act, an employee is eligible for financial assistance from the Commonwealth (called an advance) if:

- their employment by an employer has ended; and
- the employer is being wound up or bankrupt; and
- the end of the employment is connected with the insolvency or bankruptcy of the employer; and

- the person has not been fully paid his or her entitlements relating to that employment; and
- the person has made a claim for the advance.

1.3 If an employee submits a claim for an advance under the Fair Entitlements Guarantee Act, the Secretary of the Attorney-General's Department (or their delegate) determines if they are eligible and, if so, the amount they are eligible for. Any such decisions regarding a person's eligibility or the amount of the advance may be subject to review.

1.4 The Fair Entitlements Guarantee Act sets out eligibility criteria for claimants where an insolvency practitioner has been appointed to their employer.

Consequential amendments to the Fair Entitlements Guarantee Act

1.5 The Bill amends the Fair Entitlements Guarantee Act to ensure that these provisions also apply, as appropriate, where the employer had been under restructuring prior to being wound up.

1.6 The definition of insolvency practitioner in the Fair Entitlements Guarantee Act is amended to include a restructuring practitioner for a company or for a restructuring plan. [*Schedule 1, item 35, section 5 of the Fair Entitlements Guarantee Act*]

1.7 The timing of the appointment of an insolvency practitioner is a critical factor in determining an employee's eligibility for a Fair Entitlements Guarantee advance. The eligibility criteria (section 10(1) of the Fair Entitlements Guarantee Act) provides that (among other things) the end of the employee's employment must have occurred:

- due to the insolvency of the employer; or
- less than six months before the appointment of an insolvency practitioner; or
- on or after the appointment of an insolvency practitioner.

1.8 Amending the definition of insolvency practitioner to include restructuring practitioners provides consistent treatment of employees' eligibility for Fair Entitlements Guarantee advances, where there is sufficient nexus between the end of their employment and the commencement of any form of external administration to deal with the employer's financial difficulties.

1.9 Subject to one exception, the amended definition of insolvency practitioner – to include a restructuring practitioner – flows through to all provisions referring to insolvency practitioners throughout the Fair Entitlements Guarantee Act.

1.10 The exception is that, for the purposes of determining the wages entitlement period under the Fair Entitlements Guarantee Act, insolvency

practitioner does not include a restructuring practitioner. [*Schedule 1, item 36, section 5 of the Fair Entitlements Guarantee Act*]

1.11 When assessing a claim for a Fair Entitlements Guarantee advance, the employee's **wages entitlement** is the amount of wages they are entitled to receive from the employer for work done, or paid leave taken, during the wages entitlement period.

1.12 The **wages entitlement period** for an employee whose employment by an employer has ended means the 13 weeks ending at the earlier of the following times:

- the time the person's employment ended;
- the first time an insolvency practitioner has power (however expressed) to control or manage employment by the employer.

1.13 The policy intent of the wages entitlement period is to enable the Fair Entitlements Guarantee advance to cover the last 13 weeks of an employee's employment where the employer was liable for any unpaid wages. As the directors remain in control of the company after the appointment of a restructuring practitioner, they remain liable for paying employees' wages. Given that a company under restructuring is likely to continue to trade while developing a restructuring plan to put to creditors, and is responsible for paying its employees their entitlements throughout the process, it would not be appropriate to anchor the employees' 13 weeks wages entitlement period to the appointment of a restructuring practitioner.

Application and transitional provisions

1.14 The amendments to the Fair Entitlements Guarantee Act apply in relation to an employer that appoints a restructuring practitioner before, on or after the commencement of this Schedule. [*Schedule 1, item 37*]

1.15 The Bill will also include [yet to be drafted] transitional provisions to deal with Fair Entitlements Guarantee applications submitted prior to commencement.

1.16 The application and transitional provisions will provide that, when assessing an application for a Fair Entitlements Guarantee advance or an application for review of a previous decision, the decision-maker will assess the person's eligibility based on the Fair Entitlements Guarantee Act as amended by this Bill. This will ensure that employees are not disadvantaged if their employer commences restructuring prior to commencement of the consequential amendments to the Fair Entitlements Guarantee Act, and subsequently gets wound up.

Entities regulated by APRA are not eligible to access the new simplified insolvency processes

1.17 The new simplified insolvency processes – debt restructuring and simplified liquidation – implemented via the corporate insolvency reforms are only intended for small businesses. This is primarily achieved through the eligibility criteria imposing a \$1 million liabilities threshold. That is, a corporation cannot access debt restructuring or simplified liquidation if its total liabilities exceed \$1 million.

1.18 The new simplified insolvency processes are not appropriate for large corporations. Corporations which do not meet the eligibility criteria for debt restructuring or simplified liquidation can continue to access existing insolvency processes – such as voluntary administration and standard liquidation – if they are insolvent. These processes are more suited to the complexity and risk profile of a larger business.

1.19 Entities operating within the banking, insurance and superannuation industries are generally large corporations, and subject to prudential regulation by APRA. These entities are not small businesses and are not intended to be eligible to access the new simplified insolvency processes. The existing legislative framework imposes separate requirements on entities subject to prudential regulation by APRA in the event that such entities face financial difficulties.

1.20 Given that the eligibility criteria for debt restructuring and simplified liquidation apply at the individual corporation level, this could potentially allow an individual corporation within a large corporate group to access restructuring or simplified liquidation. While this may be appropriate in some circumstances, it is not appropriate in the context of prudentially-regulated bodies such as banks, insurance and superannuation entities.

Clarifying the eligibility criteria for the new simplified insolvency processes

1.21 The eligibility criteria for debt restructuring and simplified liquidation are amended to clarify that these insolvency processes are not available to any corporation within the broader APRA-regulated corporate group. *[Schedule 1, items 28 and 31, sections 453B(2)(aa) and 500A(2)(aa) of the Corporations Act]*

1.22 This carve-out applies to any company that is, or is a related body corporate of, a body regulated by APRA, as defined in the APRA Act as follows:

- an ADI, within the meaning of the *Banking Act 1959*;
- an authorised non-operating holding company, within the meaning of the *Banking Act 1959*;

- a general insurer, authorised non-operating holding company or subsidiary of a general insurer or authorised non-operating holding company, within the meaning of the *Insurance Act 1973*;
- Lloyd’s, or a Lloyd’s underwriter, as defined in section 3 of the *Insurance Act 1973*;
- a life company that is registered under section 21 of the *Life Insurance Act 1995* or a registered non-operating holding company within the meaning of that Act;
- a private health insurer, within the meaning of the *Private Health Insurance (Prudential Supervision) Act 2015*;
- the trustee of a superannuation entity, within the meaning of the *Superannuation Industry (Supervision) Act 1993*;
- a retirement savings account provider, within the meaning of the *Retirement Savings Accounts Act 1997*.

1.23 Consequential amendments are made to reverse previous amendments to the definition of external administrator in the *Banking Act 1959*, *Insurance Act 1973* and *Life Insurance Act 1995* which were made via the corporate insolvency reforms. The previous amendments – to include restructuring practitioners in the definition of external administrator – are not necessary, as entities regulated under those Acts are not eligible to access debt restructuring. [*Schedule 1, items 2, 38 and 39, section 5(1) of the Banking Act, section 3(1) of the Insurance Act and Schedule— Dictionary to the Life Insurance Act*]

Corporate insolvency clarifications

Role of the restructuring practitioner

1.24 The amendments clarify that the rules about declaring relevant relationships at section 453D of the Corporations Act only apply to a restructuring practitioner appointed to a company. Similar rules are outlined in the Corporations Regulations in relation to a restructuring practitioner appointed to administer a restructuring plan. [*Schedule 1, item 29, section 453D of the Corporations Act*]

1.25 The amendments clarify that a restructuring practitioner for a company or for a restructuring plan has qualified privilege for statements they make in performing their functions. Protection from liability is an important safeguard to ensure that practitioners are able to undertake their functions. [*Schedule 1, item 30, section 456LA of the Corporations Act*]

1.26 Where any person deals with a restructuring practitioner who is acting as an agent of the company, they should be entitled to the same protections that arise if they were dealing with the company itself. The

amendments provide for this. These protections are consistent with the existing protections in relation to voluntary administration. [*Schedule 1, item 30, section 456LB of the Corporations Act*]

Other amendments relating to the appointment of a restructuring practitioner

1.27 The *Superannuation Industry (Supervision) Act 1993* sets standards for trustees, custodians and investment managers of superannuation entities. Currently, section 120(2) of the *Superannuation Industry (Supervision) Act 1993* disqualifies a body corporate if the body has become insolvent and entered a specified insolvency process. The amendments simply add the appointment of a restructuring practitioner to the list of insolvency events that trigger the disqualification of a corporate trustee, custodian or investment manager of a superannuation entity. [*Schedule 1, item 40, section 120 of the Superannuation Industry (Supervision) Act 1993*]

1.28 Section 652C of the Corporations Act entitles a bidder to withdraw an unaccepted takeover offer if the company that is the target of the offer becomes insolvent. The Bill amends section 652C to add the appointment of a restructuring practitioner and the making of a restructuring plan by a target company to the list of circumstances that entitle a bidder to withdraw an unaccepted takeover offer. [*Schedule 1, item 33, section 652C of the Corporations Act*]

Liquidator requirements under simplified liquidation

1.29 The purpose of the simplified liquidation process is to provide a quicker and cheaper pathway for less complex liquidations. For this reason, the corporate insolvency reforms replaced the section 533 report (an obligation under the full liquidation process) with a fit-for-purpose reporting process under section 5.5.05 of the Corporations Regulations. This reporting process requires a liquidator to submit a report to ASIC if the liquidator has reasonable grounds to believe offences have been committed.

1.30 The Bill clarifies that ASIC may investigate offences identified in this report. [*Schedule 1, item 1, section 15 of the ASIC Act*]

1.31 The Bill further enables this report to be exempt from public disclosure. This exemption power is delegated to regulations because it is undesirable to list a reference to the regulations in primary legislation. The scope of the regulation-making power has been delegated narrowly to ensure it is used appropriately. [*Schedule 1, item 34, section 1274 of the Corporations Act*]

Powers of the liquidator for a company under simplified liquidation

1.32 Section 477 of the Corporations Act allows a liquidator appointed to a company to compromise debts existing between a company

and a contributory or other debtor. If a debt is over \$100,000, the liquidator cannot compromise the debt unless they obtain approval of the Court, or of the committee of inspection, or a resolution of the creditors is passed, which all involve meetings. These methods are unsuitable in the case of a simplified liquidation process because the process removes the obligation for a liquidator to convene these meetings.

1.33 The Bill therefore enables a resolution to be passed without a meeting of creditors, by way of a proposal to creditors and contributories (in the circumstances prescribed in Schedule 2 of the Corporations Act), in a simplified liquidation. [*Schedule 1, item 32, section 506(1A)(c) of the Corporations Act*]

Technical amendments

1.34 The corporate insolvency reforms allow electronic communication to be used for the purpose of providing documents under the insolvency framework. The purpose of this change was to support changes in the industry towards virtual meetings. The amendments provide further clarification for determining the place where electronic communication is taken to have been sent from and received – where the originator or addressee has a principal place of business in Australia but not a registered office or an address on a register of the company or registered scheme, that address is taken to be the place where the electronic communication was sent from or received. [*Schedule 1, items 26 and 27, sections 105B(2)(b) and 105B(3)(b) of the Corporations Act*]

1.35 Section 91 of the Corporations Act includes a table setting out the meaning of ***relation-back day*** in relation to the winding up of a company. The relation back day is the day on which the liquidation is recognised to have commenced, depending on the type of liquidation (e.g. Court-ordered or creditors’ voluntary winding up) and whether the company commenced another form of external administration (e.g. voluntary administration or debt restructuring) prior to liquidation. The table identifies the relevant relation-back day applicable to different circumstances. Items 15 and 23 in the table both refer to the circumstance where ‘any other case applies’. The amendments repeal table item 15 to correct this error. [*Schedule 1, item 25, section 91 of the Corporations Act*]

Chapter 2

Aboriginal and Torres Strait Islander corporations

Outline of chapter

2.1 The Bill amends the CATSI Act to enable registered Aboriginal and Torres Strait Islander corporations to utilise the debt restructuring and simplified liquidation processes established under the Corporations Act. The Bill modifies the application of certain restructuring and simplified liquidation provisions to Aboriginal and Torres Strait Islander corporations to ensure the provisions are applied consistently with the CATSI Act's objectives and legislative framework.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
If a special administrator is appointed while an Aboriginal and Torres Strait Island corporation is under restructuring, the restructuring process ends when the special administrator is appointed	No equivalent
A small business restructuring practitioner cannot be appointed while an Aboriginal and Torres Strait Island corporation is under special administration	No equivalent
If an Aboriginal and Torres Strait Island corporation is under special administration, a small business restructuring practitioner cannot exercise any powers or functions unless they obtain approval from the special administrator	No equivalent
If an Aboriginal and Torres Strait Island corporation is under special administration, a small business restructuring practitioner cannot deal with the company's property unless	No equivalent

they obtain approval from the special administrator	
Eligible Aboriginal and Torres Strait Islander corporations can enter the simplified liquidation process by passing a special resolution under section 526-20 of the CATSI Act	No equivalent

Detailed explanation of new law

Restructuring of an Aboriginal and Torres Strait Islander corporation

Current law

2.2 The *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) is a special measure for the benefit of Aboriginal and Torres Strait Islander people. Corporations registered under the CATSI Act are regulated by the Registrar of Indigenous Corporations (the Registrar).

2.3 The CATSI Act provisions are modelled on Corporations Act provisions, but maintain special powers (including modification powers) to ensure the Corporations Act provisions are appropriate for Aboriginal and Torres Strait Islander people and take account of the special risks and requirements of the Indigenous corporate sector.

2.4 A core feature of the CATSI Act framework is the bespoke external management process tailored for the requirements of Aboriginal and Torres Strait Islander corporations known as ‘special administration’. Special administration involves the Registrar placing an Aboriginal and Torres Strait Islander corporation under special administration and appointing an independent and suitably qualified person (a special administrator) to take control of and administer the corporation. Typically, a special administrator is appointed where governance failures are identified by the Registrar. More rarely, a special administrator may be appointed where a corporation has encountered financial difficulty and needs assistance dealing with their debts.

Applying Corporations Act restructuring provisions to Aboriginal and Torres Strait Islander corporations

2.5 The Bill ensures that, in addition to special administration, voluntary administration, receivership, and winding up, an Aboriginal and Torres Strait Islander corporation may utilise the new debt restructuring process. [Schedule 1, items 6 and 7, section 482-1 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*]

2.6 New Part 11-4A of the CATSI Act is established to enable the restructuring of an Aboriginal and Torres Strait Islander corporation. New Part 11-4A is modelled on existing Part 11-4 of the CATSI Act, which enables the voluntary administration of Aboriginal and Torres Strait Islander corporations. *[Schedule 1, item 15, Part 11-4A of the Corporations (Aboriginal and Torres Strait Islander) Act 2006]*

2.7 Consistent with the CATSI Act legislative framework, the amendments apply the Corporations Act **restructuring provisions** (that is, Part 5.3B of, and Schedule 2 to, the Corporations Act and other relevant provisions) to Aboriginal and Torres Strait Islander corporations with certain modifications. *[Schedule 1, items 15 and 20, sections 522-1 and 700-1 of the Corporations (Aboriginal and Torres Strait Islander) Act 2006]*

2.8 The effect of these modifications is that the specially designed powers of the CATSI Act are maintained to ensure that the Corporations Act restructuring provisions are tailored to the special risks and requirements of the Indigenous corporate sector.

2.9 The amendments prohibit any modifications made by the CATSI Regulations from increasing the maximum penalty for or widening the scope of any offence under the Corporations Act restructuring provisions *[Schedule 1 item 15, section 522-1 of the Corporations (Aboriginal and Torres Strait Islander) Act 2006]*

Appointing a special administrator or small business restructuring practitioner

2.10 For Aboriginal and Torres Strait Islander corporations, the special administration regime takes priority over the debt restructuring process. The amendments reflect this intention by allowing the Registrar to make a determination that an Aboriginal and Torres Strait Islander corporation is to be put under special administration even if it is currently under restructuring. *[Schedule 1, items 8 and 15, sections 487-1(3)(b), 522-3 of the Corporations (Aboriginal and Torres Strait Islander) Act 2006]*

2.11 Two options are currently under consideration for the treatment of a restructuring plan upon the appointment of a special administrator to an Aboriginal and Torres Strait Islander corporation.

2.12 Option one, supported by the Office of the Registrar of Indigenous Corporations, is that the special administrator can choose whether to continue with the restructuring plan or apply to the Court to terminate the plan.

2.13 Option two is that a restructuring plan terminates automatically upon the appointment of a special administrator to an Aboriginal and Torres Strait Islander corporation.

2.14 Views are sought on both options during the public consultation period on the exposure draft Bill.

2.15 Further, the Bill stipulates that a small business restructuring practitioner cannot be appointed if:

- an Aboriginal and Torres Strait Islander corporation is under special administration; or
- the Registrar has given the Aboriginal and Torres Strait Islander corporation a notice under subsection 487-10(1) of the CATSI Act but has not yet decided whether to proceed with the special administration.

2.16 However, if the Registrar has only provided a notice under subsection 487-10(1) of the CATSI Act, the Registrar is able to consent in writing to the appointment of the small business restructuring practitioner (the amendment requiring consent is not a legislative instrument within the meaning of subsection 8(1) of the *Legislation Act 2003*). [*Schedule 1, item 15, section 522-2 of the Corporations (Aboriginal and Torres Strait Islander) Act 2006*]

Interaction between the role of a special administrator and a small business restructuring practitioner

2.17 Division 499 of the CATSI Act gives the special administrator functions and powers in relation to an Aboriginal and Torres Strait Islander corporation's business, property and affairs. A special administrator can also deal with transactions concerning the property of the Aboriginal and Torres Strait Islander corporation.

2.18 To ensure that special administrators can utilise their functions and powers without interference, the Bill specifies that a small business restructuring practitioner cannot exercise any powers without approval from the special administrator. [*Schedule 1, items 9, 10, 12 and 13, sections 496-10(6) and (7) and 496-15(6) of the Corporations (Aboriginal and Torres Strait Islander) Act 2006*]

2.19 Despite needing the special administrator's consent before exercising any powers, the amendments specify that anything the small business restructuring practitioner does after special administration commences (and before notice is given by the Registrar) is still valid. This is to ensure certainty for actions taken by small business restructuring practitioners before notice is given of the special administration. [*Schedule 1, items 11 and 14, sections 496-10(7)(c) and 496-15(7)(c) of the Corporations (Aboriginal and Torres Strait Islander) Act 2006*]

Appeals from decisions of a small business restructuring practitioner

2.20 Section 576-10 of the CATSI Act enables a person who is aggrieved by acts, omissions or decisions made by a special administrator, receiver, a Corporations Act administrator or liquidator to appeal to the Court.

2.21 The amendments extend this provision to include a small business restructuring practitioner. In effect, a person can appeal to the Court if they are aggrieved by any acts, omissions or decisions made by a small business restructuring practitioner either during restructuring or while a restructuring plan is in place. [*Schedule 1, item 16, section 576-10(1) of Corporations (Aboriginal and Torres Strait Islander) Act 2006*]

Relief from liability for directors of Aboriginal and Torres Strait Islander corporations

2.22 Section 588G of the Corporations Act states that a director commits an offence if they fail to prevent a company from trading while the company is insolvent. However, section 386-60 of the CATSI Act allows the court to provide relief from liability for a director of an Aboriginal and Torres Strait Islander corporation who contravenes section 588G of the Corporations Act if they had acted honestly and should be fairly excused for the contravention.

2.23 When determining whether a director should be fairly excused for contravening section 588G of the Corporations Act, the Court is to have regard to a list of matters set out in section 386-60. The Bill adds that regard should be had for any action the director of an Aboriginal and Torres Strait Islander corporation took concerning the appointment of a small business restructuring practitioner. This ensures that the Court gives similar consideration for directors who, in contravening section 588G, intended to appoint small business restructuring practitioners alongside directors who took the view to appoint special administrators or Corporations Act administrators. [*Schedule 1, item 4, section 386-60(3)(a)(ia) of the Corporations (Aboriginal and Torres Strait Islander) Act 2006*]

Other amendments

2.24 To fully integrate the debt restructuring process into the CATSI Act, the following definitions have been inserted or amended:

- affairs;
- examinable affairs;
- officer;
- remuneration;
- restructuring plan; and
- restructuring practitioner.

[Schedule 1, items 17 to 19 and 21 to 23, sections 683-1(3)(d)(iia) and 700-1 of the Corporations (Aboriginal and Torres Strait Islander) Act 2006]

2.25 Additionally, minor amendments have been made to specify how a notice, demand, summons, writ or other document or process may

be served on an Aboriginal and Torres Strait Islander corporation if a small business restructuring practitioner is appointed. *[Schedule 1, item 3, section 120-1(1)(fa) of the Corporations (Aboriginal and Torres Strait Islander) Act 2006]*

Simplified liquidation for an Aboriginal and Torres Strait Islander corporation

Records exempt from inspection and production

2.26 Under section 421-1 of the CATSI Act, a person may inspect any document lodged with the Registrar, unless it is an exempt document. Exempt documents include documents made by a liquidator under section 533 of the Corporations Act that contain information about offences or breaches committed by officers of a corporation.

2.27 The amendments extend the definition of ‘exempt document’ to include reports made by a liquidator under regulation 5.5.05 of the Corporations Regulations, as these reports are essentially the same as those made under section 533 of the Corporations Act. The effect of this is that a person cannot inspect a document made by a liquidator (of an Aboriginal and Torres Strait Islander corporation that is subject to the simplified liquidation process), if the document contains information about offences or breaches related to the corporation. *[Schedule 1, item 5, section 421-1(4) of the Corporations (Aboriginal and Torres Strait Islander) Act 2006]*