2019‑2020‑2021

The Parliament of the

Commonwealth of Australia

HOUSE OF REPRESENTATIVES

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| **EXPOSURE DRAFT** |

Treasury Laws Amendment (Corporate Insolvency Reforms Consequentials) Bill 2021

No. , 2021

(Treasury)

A Bill for an Act to deal with consequential and transitional matters arising from the enactment of the *Corporations Amendment (Corporate Insolvency Reforms) Act 2020*, and for related purposes

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A Bill for an Act to deal with consequential and transitional matters arising from the enactment of the *Corporations Amendment (Corporate Insolvency Reforms) Act 2020*, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act is the *Treasury Laws Amendment (Corporate Insolvency Reforms Consequentials) Act 2021*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
| --- | --- | --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. The whole of this Act | The day after this Act receives the Royal Assent. |  |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Australian Securities and Investments Commission Act 2001

1 Section 15

After “Corporations Act”, insert “or regulation 5.5.05 of the *Corporations Regulations 2001*”.

Banking Act 1959

2 Subsection 5(1) (paragraph (d) of the definition of *external administrator*)

Repeal the paragraph.

Corporations (Aboriginal and Torres Strait Islander) Act 2006

3 After paragraph 120‑1(1)(f)

Insert:

(fa) if a restructuring practitioner for the corporation has been appointed—leaving it at, or posting it to, the address of the restructuring practitioner in the most recent notice of that address lodged with the Registrar; or

4 After subparagraph 386‑60(3)(a)(i)

Insert:

(ia) appointing a restructuring practitioner for the Aboriginal and Torres Strait Islander corporation; or

5 Subsection 421‑1(4) (subparagraph (b)(iii) of the definition of *exempt document*)

After “Corporations Act”, insert “and regulation 5.5.05 of the *Corporations Regulations 2001*”.

6 Section 482‑1 (paragraph beginning “There are basically”)

Omit “4 ways”, substitute “5 ways”.

7 Section 482‑1

After:

(c) An administrator for the corporation may be appointed under Part 5.3A of the Corporations Act (as applied by Part 11‑4 of this Act).

insert:

(ca) A restructuring practitioner for the corporation may be appointed under Part 5.3B of the Corporations Act (as applied by Part 11‑4A of this Act).

8 Paragraph 487‑1(3)(b)

Repeal the paragraph, substitute:

(b) may make a determination under subsection (1) even if the corporation is:

(i) being administered under Part 5.3A of the Corporations Act (as applied by section 521‑1 of this Act); or

(ii) under restructuring under Part 5.3B of the Corporations Act (as applied by section 522‑1 of this Act).

9 After paragraph 496‑10(6)(b)

Insert:

; and (c) Part 5.3B of the Corporations Act (as applied by section 522‑1 of this Act).

10 Subsection 496‑10(6) (note)

Repeal the note, substitute:

Note: This means that a receiver, an administrator appointed under Part 5.3A of the Corporations Act (as applied by section 521‑1 of this Act) or a restructuring practitioner appointed under Part 5.3B of the Corporations Act (as applied by section 522‑1 of this Act) cannot exercise any powers without the approval of the special administrator.

11 After paragraph 496‑10(7)(b)

Insert:

or (c) a restructuring practitioner for the corporation, or for a restructuring plan made by the corporation, appointed under Part 5.3B of the Corporations Act;

12 After paragraph 496‑15(6)(b)

Insert:

; and (c) Part 5.3B of the Corporations Act (as applied by section 522‑1 of this Act).

13 Subsection 496‑15(6) (note)

Repeal the note, substitute:

Note: This means that a receiver, an administrator appointed under Part 5.3A of the Corporations Act (as applied by section 521‑1 of this Act) or a restructuring practitioner appointed under Part 5.3B of the Corporations Act (as applied by section 522‑1 of this Act) cannot exercise any powers without the approval of the special administrator.

14 After paragraph 496‑15(7)(b)

Insert:

or (c) a restructuring practitioner for the corporation, or for a restructuring plan made by the corporation, appointed under Part 5.3B of the Corporations Act;

15 After Part 11‑4

Insert:

Part 11‑4A—Restructuring of an Aboriginal and Torres Strait Islander corporation

Division 522—Restructuring of an Aboriginal and Torres Strait Islander corporation

522‑1 Applying Corporations Act restructuring provisions to Aboriginal and Torres Strait Islander corporations

(1) The Corporations Act restructuring provisions apply to an Aboriginal and Torres Strait Islander corporation as if the following substitutions were made:

| Substitutions to be made | | |
| --- | --- | --- |
| Item | For a reference to... | substitute a reference to... |
| 1 | a company | an Aboriginal and Torres Strait Islander corporation |
| 2 | ASIC | the Registrar |
| 3 | a deed of company arrangement | a deed of corporation arrangement |

(2) The Corporations Act restructuring provisions apply to an Aboriginal and Torres Strait Islander corporation:

(a) only to the extent to which they are capable of applying to an Aboriginal and Torres Strait Islander corporation; and

(b) with the modifications specified in the regulations.

(3) Regulations made for the purposes of paragraph (2)(b) must not:

(a) increase, or have the effect of increasing, the maximum penalty for any offence; or

(b) widen, or have the effect of widening, the scope of any offence.

(4) In this Act:

***Corporations Act restructuring provisions*** means:

(a) Part 5.3B of, and Schedule 2 to, the Corporations Act; and

(b) the other provisions of that Act (including Parts 1.2, 5.8, 5.9 and 9.4 and Schedule 3 but not including Parts 1.1, 1.1A and 9.4A) to the extent to which they relate to the operation of Part 5.3B of, and Schedule 2 to, that Act; and

(c) the regulations and rules made under that Act for the purposes of Part 5.3B of, and Schedule 2 to, that Act and the provisions referred to in paragraph (b).

522‑2 Corporations Act restructuring practitioner cannot be appointed if special administrator appointed

(1) A restructuring practitioner for an Aboriginal and Torres Strait Islander corporation cannot be appointed under Part 5.3B of the Corporations Act (as applied by section 522‑1 of this Act) if:

(a) the corporation is under special administration under Part 11‑2; or

(b) the Registrar:

(i) has given the corporation a notice under subsection 487‑10(1); and

(ii) has not given the corporation a notice under subsection 487‑10(5).

(2) Paragraph (1)(b) does not apply if the Registrar has consented in writing to the appointment of the restructuring practitioner under Part 5.3B of the Corporations Act (as applied by section 522‑1 of this Act).

(3) A consent under subsection (2) to the appointment of a restructuring practitioner is not a legislative instrument.

522‑3 Effect of appointment of special administrator—Aboriginal and Torres Strait Islander corporation under restructuring

If:

(a) a restructuring practitioner for an Aboriginal and Torres Strait Islander corporation is appointed under Part 5.3B of the Corporations Act (as applied by section 522‑1 of this Act); and

(b) while that appointment continues, a special administrator for the corporation is appointed under Part 11‑2; and

(c) at the time the special administrator is appointed, the corporation has not made a restructuring plan;

the restructuring of the corporation under Part 5.3B of the Corporations Act (as applied by section 522‑1 of this Act) ends on the day on which the special administrator is appointed.

16 After paragraph 576‑10(1)(d)

Insert:

(da) a restructuring practitioner for an Aboriginal and Torres Strait Islander corporation; or

(db) a restructuring practitioner for a restructuring plan made by an Aboriginal and Torres Strait Islander corporation; or

17 After subparagraph 683‑1(3)(d)(iii)

Insert:

(iiia) a person appointed as a restructuring practitioner for the corporation, or for a restructuring plan made by the corporation, under Part 5.3B of the Corporations Act (as applied by section 522‑1 of this Act); or

18 Section 700‑1 (after subparagraph (j)(iv) of the definition of *affairs*)

Insert:

(iva) the body is under restructuring; or

(ivb) a restructuring plan made by the body has not yet terminated; or

19 Section 700‑1 (after subparagraph (k)(v) of the definition of *affairs*)

Insert:

(va) such a restructuring practitioner for the body; or

(vb) a restructuring practitioner for such a restructuring plan; or

20 Section 700‑1

Insert:

***Corporations Act restructuring provisions*** has the meaning given by subsection 522‑1(4).

21 Section 700‑1 (paragraph (a) of the definition of *examinable affairs*)

After “administration”, insert “, restructuring”.

22 Section 700‑1 (after paragraph (c) of the definition of *remuneration*)

Insert:

(ca) a restructuring practitioner for the corporation;

(cb) a restructuring practitioner for a restructuring plan made by the corporation;

23 Section 700‑1

Insert:

***restructuring plan***:

(a) in relation to an Aboriginal and Torres Strait Islander corporation—means a plan executed by the corporation under Part 5.3B of the Corporations Act (as applied by section 522‑1 of this Act), or such a plan as varied and in force from time to time; or

(b) in relation to a body corporate other than an Aboriginal and Torres Strait Islander corporation—means a plan executed by the body corporate under Part 5.3B of the Corporations Act, or such a plan as varied and in force from time to time.

***restructuring practitioner***:

(a) in relation to an Aboriginal and Torres Strait Islander corporation but not in relation to a restructuring plan:

(i) means a small business restructuring practitioner for the corporation appointed under Part 5.3B of the Corporations Act (as applied by section 522‑1 of this Act); and

(ii) if 2 or more persons are appointed under that Part as small business restructuring practitioners for the corporation—has a meaning affected by paragraph 456M(2)(b) of that Act as so applied; or

(b) in relation to a restructuring plan made by an Aboriginal and Torres Strait Islander corporation:

(i) means a small business restructuring practitioner for the plan appointed under Part 5.3B of the Corporations Act (as applied by section 522‑1 of this Act); and

(ii) if 2 or more persons are appointed under that Part as small business restructuring practitioners for the plan—has a meaning affected by paragraph 456N(2)(b) of that Act as so applied; or

(c) in relation to a body corporate (other than an Aboriginal and Torres Strait Islander corporation) but not in relation to a restructuring plan:

(i) means a small business restructuring practitioner for the body or entity appointed under Part 5.3B of the Corporations Act; and

(ii) if 2 or more persons are appointed under that Part as small business restructuring practitioners for the body or entity—has a meaning affected by paragraph 456M(2)(b) of the Corporations Act; or

(d) in relation to a restructuring plan made by a body corporate (other than an Aboriginal and Torres Strait Islander corporation):

(i) means a small business restructuring practitioner for the plan appointed under Part 5.3B of the Corporations Act; and

(ii) if 2 or more persons are appointed under that Part as small business restructuring practitioners for the plan—has a meaning affected by paragraph 456N(2)(b) of the Corporations Act.

24 Application—effect of appointment of special administrator

Section 522‑4 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*, as inserted by this Schedule, applies in relation to a restructuring plan made on or after the commencement of this Schedule.

Corporations Act 2001

25 Section 91 (table item 15)

Repeal the item.

26 After paragraph 105B(2)(b)

Insert:

(ba) if the originator has a principal place of business in Australia and neither paragraph (a) nor (b) applies—the address of the originator’s principal place of business in Australia; and

27 After paragraph 105B(3)(b)

Insert:

(ba) if the addressee has a principal place of business in Australia and neither paragraph (a) nor (b) applies—the address of the addressee’s principal place of business in Australia; and

28 Before paragraph 453B(2)(a)

Insert:

(aa) the company is, or is a related body corporate of, a body regulated by APRA (within the meaning of the *Australian Prudential Regulation Authority Act 1998*); or

29 Subsection 453D(1)

After “a restructuring practitioner”, insert “for a company”.

30 At the end of Subdivision C of Division 4 of Part 5.3B

Add:

456LA Restructuring practitioner has qualified privilege

A person who is or has been the restructuring practitioner for a company or a company’s restructuring plan has qualified privilege in respect of a statement that the person has made, whether orally or in writing, in the course of performing or exercising any of the person’s functions and powers as restructuring practitioner for the company or the plan.

456LB Protection of persons dealing with restructuring practitioner

(1) Sections 128 and 129 apply in relation to a company that is under restructuring as if:

(a) a reference in those sections to the company, or to an officer of the company, included a reference to the restructuring practitioner for the company; and

(b) a reference in those sections to an assumption referred to in section 129 included a reference to an assumption that the restructuring practitioner is:

(i) acting within the restructuring practitioner’s functions and powers as restructuring practitioner; and

(ii) in particular, is complying with this Act.

(2) Sections 128 and 129 apply in relation to a company that has made a restructuring plan as if:

(a) a reference in those sections to the company, or to an officer of the company, included a reference to the restructuring practitioner for the plan; and

(b) a reference in those sections to an assumption referred to in section 129 included a reference to an assumption that the restructuring practitioner is:

(i) acting within the restructuring practitioner’s functions and powers as restructuring practitioner; and

(ii) in particular, is complying with this Act.

(3) The effect that sections 128 and 129 have because of subsections (1) and (2) of this section is additional to, and does not prejudice, the effect that sections 128 and 129 otherwise have in relation to a company that is under restructuring or that has made a restructuring plan.

31 Before paragraph 500A(2)(a)

Insert:

(aa) the company is, or is a related body corporate of, a body regulated by APRA (within the meaning of the *Australian Prudential Regulation Authority Act 1998*); or

32 At the end of subsection 506(1A)

Add:

; and (c) in the case of a simplified liquidation process—a reference in subsection 477(2A) to a resolution of the creditors were a reference to a resolution passed by the creditors without a meeting in the circumstances prescribed under paragraph 75‑40(5)(b) of Schedule 2.

33 After paragraph 652C(2)(d)

Insert:

(da) a restructuring practitioner for the target, or for a subsidiary, is appointed under section 453B;

(db) the target or a subsidiary makes a restructuring plan under Division 3 of Part 5.3B;

34 Subparagraph 1274(2)(a)(iv)

After “or 533”, insert “, or any other document prescribed by the regulations for the purposes of this subparagraph”.

Fair Entitlements Guarantee Act 2012

35 Section 5 (after paragraph (b) of the definition of *insolvency practitioner*)

Insert:

(ba) a restructuring practitioner for the employer appointed under that Act; or

36 Section 5 (paragraph (b) of the definition of *wages entitlement period*)

After “insolvency practitioner”, insert “(other than a restructuring practitioner within the meaning of the *Corporations Act 2001*)”.

37 Application of amendments

The amendments to the *Fair Entitlements Guarantee Act 2012* made by this Schedule apply in relation to an employer that appoints a restructuring practitioner (within the meaning of the *Corporations Act 2001*) before, on or after the commencement of this Schedule.

Insurance Act 1973

38 Subsection 3(1) (paragraph (d) of the definition of *external administrator*)

Repeal the paragraph.

Life Insurance Act 1995

39 Dictionary (paragraph (d) of the definition of *external administrator*)

Repeal the paragraph.

Superannuation Industry (Supervision) Act 1993

40 After paragraph 120(2)(c)

Insert:

(ca) a restructuring practitioner (within the meaning of the *Corporations Act 2001*) has been appointed in respect of the body; or