

EXPOSURE DRAFT

2019-2020-2021

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

Treasury Laws Amendment (Corporate Insolvency Reforms Consequential) 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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1 **A Bill for an Act to deal with consequential and**
2 **transitional matters arising from the enactment of**
3 **the *Corporations Amendment (Corporate Insolvency***
4 ***Reforms) Act 2020, and for related purposes***

5 The Parliament of Australia enacts:

6 **1 Short title**

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

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1 **2 Commencement**

2 (1) Each provision of this Act specified in column 1 of the table
3 commences, or is taken to have commenced, in accordance with
4 column 2 of the table. Any other statement in column 2 has effect
5 according to its terms.
6

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.	

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

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

13 **3 Schedules**

14 Legislation that is specified in a Schedule to this Act is amended or
15 repealed as set out in the applicable items in the Schedule
16 concerned, and any other item in a Schedule to this Act has effect
17 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*”.

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Schedule 1 Amendments

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

2 Omit “4 ways”, substitute “5 ways”.

3 **7 Section 482-1**

4 After:

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

8 insert:

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

13 **8 Paragraph 487-1(3)(b)**

14 Repeal the paragraph, substitute:

- 15 (b) may make a determination under subsection (1) even if the
16 corporation is:
- 17 (i) being administered under Part 5.3A of the Corporations
18 Act (as applied by section 521-1 of this Act); or
 - 19 (ii) under restructuring under Part 5.3B of the Corporations
20 Act (as applied by section 522-1 of this Act).

21 **9 After paragraph 496-10(6)(b)**

22 Insert:

23 ; and (c) Part 5.3B of the Corporations Act (as applied by section
24 522-1 of this Act).

25 **10 Subsection 496-10(6) (note)**

26 Repeal the note, substitute:

27 Note: This means that a receiver, an administrator appointed under Part 5.3A
28 of the Corporations Act (as applied by section 521-1 of this Act) or a
29 restructuring practitioner appointed under Part 5.3B of the

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Amendments **Schedule 1**

1 Corporations Act (as applied by section 522-1 of this Act) cannot
2 exercise any powers without the approval of the special administrator.

3 **11 After paragraph 496-10(7)(b)**

4 Insert:

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

8 **12 After paragraph 496-15(6)(b)**

9 Insert:

10 ; and (c) Part 5.3B of the Corporations Act (as applied by section
11 522-1 of this Act).

12 **13 Subsection 496-15(6) (note)**

13 Repeal the note, substitute:

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

19 **14 After paragraph 496-15(7)(b)**

20 Insert:

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

24 **15 After Part 11-4**

25 Insert:

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Schedule 1 Amendments

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

- 1 (b) the other provisions of that Act (including Parts 1.2, 5.8, 5.9
2 and 9.4 and Schedule 3 but not including Parts 1.1, 1.1A and
3 9.4A) to the extent to which they relate to the operation of
4 Part 5.3B of, and Schedule 2 to, that Act; and
5 (c) the regulations and rules made under that Act for the
6 purposes of Part 5.3B of, and Schedule 2 to, that Act and the
7 provisions referred to in paragraph (b).

8 **522-2 Corporations Act restructuring practitioner cannot be**
9 **appointed if special administrator appointed**

- 10 (1) A restructuring practitioner for an Aboriginal and Torres Strait
11 Islander corporation cannot be appointed under Part 5.3B of the
12 Corporations Act (as applied by section 522-1 of this Act) if:
13 (a) the corporation is under special administration under
14 Part 11-2; or
15 (b) the Registrar:
16 (i) has given the corporation a notice under
17 subsection 487-10(1); and
18 (ii) has not given the corporation a notice under
19 subsection 487-10(5).
20 (2) Paragraph (1)(b) does not apply if the Registrar has consented in
21 writing to the appointment of the restructuring practitioner under
22 Part 5.3B of the Corporations Act (as applied by section 522-1 of
23 this Act).
24 (3) A consent under subsection (2) to the appointment of a
25 restructuring practitioner is not a legislative instrument.

26 **522-3 Effect of appointment of special administrator—Aboriginal**
27 **and Torres Strait Islander corporation under**
28 **restructuring**

- 29 If:
30 (a) a restructuring practitioner for an Aboriginal and Torres
31 Strait Islander corporation is appointed under Part 5.3B of the
32 Corporations Act (as applied by section 522-1 of this Act);
33 and
-

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Schedule 1 Amendments

- 1 (b) while that appointment continues, a special administrator for
2 the corporation is appointed under Part 11-2; and
3 (c) at the time the special administrator is appointed, the
4 corporation has not made a restructuring plan;
5 the restructuring of the corporation under Part 5.3B of the
6 Corporations Act (as applied by section 522-1 of this Act) ends on
7 the day on which the special administrator is appointed.

8 **16 After paragraph 576-10(1)(d)**

9 Insert:

- 10 (da) a restructuring practitioner for an Aboriginal and Torres
11 Strait Islander corporation; or
12 (db) a restructuring practitioner for a restructuring plan made by
13 an Aboriginal and Torres Strait Islander corporation; or

14 **17 After subparagraph 683-1(3)(d)(iii)**

15 Insert:

- 16 (iia) a person appointed as a restructuring practitioner for the
17 corporation, or for a restructuring plan made by the
18 corporation, under Part 5.3B of the Corporations Act (as
19 applied by section 522-1 of this Act); or

20 **18 Section 700-1 (after subparagraph (j)(iv) of the definition 21 of affairs)**

22 Insert:

- 23 (iva) the body is under restructuring; or
24 (ivb) a restructuring plan made by the body has not yet
25 terminated; or

26 **19 Section 700-1 (after subparagraph (k)(v) of the definition 27 of affairs)**

28 Insert:

- 29 (va) such a restructuring practitioner for the body; or
30 (vb) a restructuring practitioner for such a restructuring plan;
31 or

1 **20 Section 700-1**

2 Insert:

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

5 **21 Section 700-1 (paragraph (a) of the definition of**
6 ***examinable affairs*)**

7 After “administration”, insert “, restructuring”.

8 **22 Section 700-1 (after paragraph (c) of the definition of**
9 ***remuneration*)**

10 Insert:

- 11 (ca) a restructuring practitioner for the corporation;
12 (cb) a restructuring practitioner for a restructuring plan made by
13 the corporation;

14 **23 Section 700-1**

15 Insert:

16 ***restructuring plan:***

- 17 (a) in relation to an Aboriginal and Torres Strait Islander
18 corporation—means a plan executed by the corporation under
19 Part 5.3B of the Corporations Act (as applied by section
20 522-1 of this Act), or such a plan as varied and in force from
21 time to time; or
22 (b) in relation to a body corporate other than an Aboriginal and
23 Torres Strait Islander corporation—means a plan executed by
24 the body corporate under Part 5.3B of the Corporations Act,
25 or such a plan as varied and in force from time to time.

26 ***restructuring practitioner:***

- 27 (a) in relation to an Aboriginal and Torres Strait Islander
28 corporation but not in relation to a restructuring plan:
29 (i) means a small business restructuring practitioner for the
30 corporation appointed under Part 5.3B of the
31 Corporations Act (as applied by section 522-1 of this
32 Act); and

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- 1 (ii) if 2 or more persons are appointed under that Part as
2 small business restructuring practitioners for the
3 corporation—has a meaning affected by
4 paragraph 456M(2)(b) of that Act as so applied; or
- 5 (b) in relation to a restructuring plan made by an Aboriginal and
6 Torres Strait Islander corporation:
- 7 (i) means a small business restructuring practitioner for the
8 plan appointed under Part 5.3B of the Corporations Act
9 (as applied by section 522-1 of this Act); and
- 10 (ii) if 2 or more persons are appointed under that Part as
11 small business restructuring practitioners for the plan—
12 has a meaning affected by paragraph 456N(2)(b) of that
13 Act as so applied; or
- 14 (c) in relation to a body corporate (other than an Aboriginal and
15 Torres Strait Islander corporation) but not in relation to a
16 restructuring plan:
- 17 (i) means a small business restructuring practitioner for the
18 body or entity appointed under Part 5.3B of the
19 Corporations Act; and
- 20 (ii) if 2 or more persons are appointed under that Part as
21 small business restructuring practitioners for the body or
22 entity—has a meaning affected by
23 paragraph 456M(2)(b) of the Corporations Act; or
- 24 (d) in relation to a restructuring plan made by a body corporate
25 (other than an Aboriginal and Torres Strait Islander
26 corporation):
- 27 (i) means a small business restructuring practitioner for the
28 plan appointed under Part 5.3B of the Corporations Act;
29 and
- 30 (ii) if 2 or more persons are appointed under that Part as
31 small business restructuring practitioners for the plan—
32 has a meaning affected by paragraph 456N(2)(b) of the
33 Corporations Act.

1 **24 Application—effect of appointment of special**
2 **administrator**

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

6 ***Corporations Act 2001***

7 **25 Section 91 (table item 15)**

8 Repeal the item.

9 **26 After paragraph 105B(2)(b)**

10 Insert:

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

14 **27 After paragraph 105B(3)(b)**

15 Insert:

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

19 **28 Before paragraph 453B(2)(a)**

20 Insert:

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

24 **29 Subsection 453D(1)**

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

26 **30 At the end of Subdivision C of Division 4 of Part 5.3B**

27 Add:

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Schedule 1 Amendments

1 **456LA Restructuring practitioner has qualified privilege**

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

8 **456LB Protection of persons dealing with restructuring practitioner**

- 9 (1) Sections 128 and 129 apply in relation to a company that is under
10 restructuring as if:
- 11 (a) a reference in those sections to the company, or to an officer
12 of the company, included a reference to the restructuring
13 practitioner for the company; and
- 14 (b) a reference in those sections to an assumption referred to in
15 section 129 included a reference to an assumption that the
16 restructuring practitioner is:
- 17 (i) acting within the restructuring practitioner's functions
18 and powers as restructuring practitioner; and
- 19 (ii) in particular, is complying with this Act.
- 20 (2) Sections 128 and 129 apply in relation to a company that has made
21 a restructuring plan as if:
- 22 (a) a reference in those sections to the company, or to an officer
23 of the company, included a reference to the restructuring
24 practitioner for the plan; and
- 25 (b) a reference in those sections to an assumption referred to in
26 section 129 included a reference to an assumption that the
27 restructuring practitioner is:
- 28 (i) acting within the restructuring practitioner's functions
29 and powers as restructuring practitioner; and
- 30 (ii) in particular, is complying with this Act.
- 31 (3) The effect that sections 128 and 129 have because of
32 subsections (1) and (2) of this section is additional to, and does not
33 prejudice, the effect that sections 128 and 129 otherwise have in

1 relation to a company that is under restructuring or that has made a
2 restructuring plan.

3 **31 Before paragraph 500A(2)(a)**

4 Insert:

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

8 **32 At the end of subsection 506(1A)**

9 Add:

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

15 **33 After paragraph 652C(2)(d)**

16 Insert:

17 (da) a restructuring practitioner for the target, or for a subsidiary,
18 is appointed under section 453B;
19 (db) the target or a subsidiary makes a restructuring plan under
20 Division 3 of Part 5.3B;

21 **34 Subparagraph 1274(2)(a)(iv)**

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

24 ***Fair Entitlements Guarantee Act 2012***

25 **35 Section 5 (after paragraph (b) of the definition of**
26 ***insolvency practitioner*)**

27 Insert:

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

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Schedule 1 Amendments

1 **36 Section 5 (paragraph (b) of the definition of *wages***
2 ***entitlement period*)**

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

5 **37 Application of amendments**

6 The amendments to the *Fair Entitlements Guarantee Act 2012* made by
7 this Schedule apply in relation to an employer that appoints a
8 restructuring practitioner (within the meaning of the *Corporations Act*
9 *2001*) before, on or after the commencement of this Schedule.

10 ***Insurance Act 1973***

11 **38 Subsection 3(1) (paragraph (d) of the definition of *external***
12 ***administrator*)**

13 Repeal the paragraph.

14 ***Life Insurance Act 1995***

15 **39 Dictionary (paragraph (d) of the definition of *external***
16 ***administrator*)**

17 Repeal the paragraph.

18 ***Superannuation Industry (Supervision) Act 1993***

19 **40 After paragraph 120(2)(c)**

20 Insert:

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