

EXPOSURE DRAFT

2016-2017-2018

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

Treasury Laws Amendment (Combating Illegal Phoenixing) Bill 2018

No. , 2018

(Treasury)

**A Bill for an Act to amend the law relating to
corporations and taxation, and for related purposes**

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1 **A Bill for an Act to amend the law relating to**
2 **corporations and taxation, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act is the *Treasury Laws Amendment (Combating Illegal*
6 *Phoenixing) Act 2018.*

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

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Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details

1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
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2. Schedule 1, Parts 1 and 2	The day after this Act receives the Royal Assent.	
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3. Schedule 1, Part 3, Division 1	The day after this Act receives the Royal Assent. However, the provisions do not commence at all if the <i>Corporations Amendment (Strengthening Protections for Employee Entitlements) Act 2018</i> commences on or before that day.	
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4. Schedule 1, Part 3, Division 2	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of the <i>Corporations Amendment (Strengthening Protections for Employee Entitlements) Act 2018</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	
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5. Schedule 2	The day after this Act receives the Royal Assent.	
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6. Schedules 3 and 4	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	
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1 Note: This table relates only to the provisions of this Act as originally
2 enacted. It will not be amended to deal with any later amendments of
3 this Act.

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

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1 **3 Schedules**

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

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Schedule 1 Phoenixing offences and other rules about property transfers to defeat creditors

Part 1 Main amendments of the Corporations Act 2001

1 **Schedule 1—Phoenixing offences and other**
2 **rules about property transfers to**
3 **defeat creditors**

4 **Part 1—Main amendments of the Corporations Act**
5 **2001**

6 *Corporations Act 2001*

7 **1 Section 9**

8 Insert:

9 *creditor-defeating disposition* has the meaning given by
10 section 588FDB.

11 **2 Section 9 (definition of *linked*)**

12 Repeal the definition, substitute:

13 *linked*:

- 14 (a) the incurring of a debt and a contravention of section 596AB
15 are *linked* if they are linked under subsection 596AB(4); and
16 (b) the disposition of a company's property and a contravention
17 of section 596AB are *linked* if they are linked under
18 subsection 596AB(5).

19 **3 Subsection 588E(1) (after paragraph (a) of the definition of**
20 ***recovery proceeding*)**

21 Insert:

- 22 (aa) action by ASIC under section 588FGAA; or
23 (ab) proceedings under section 588FGAE; or

24 **4 Subsection 588E(1) (after paragraph (e) of the definition of**
25 ***recovery proceeding*)**

26 Insert:

- 27 (ea) proceedings for a contravention of subsection 588GAA(2) or
28 588GAB(2) in relation to a disposition of property of the
-

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Schedule 1

Main amendments of the Corporations Act 2001 **Part 1**

1 company (including proceedings under section 588M in
2 relation to the disposition but not including proceedings for
3 an offence); or

4 **5 Paragraph 588E(8)(a)**

5 After “subsection 588FG(2)”, insert “, (9) or (10)”.

6 **6 After paragraph 588E(8)(a)**

7 Insert:

8 (aa) if the other proceeding is of the kind referred to in
9 paragraph (1)(ab) of this section—a matter of the kind
10 referred to in a paragraph of subsection 588FG(2),
11 588GAA(2) or 588GAB(2), or a defence under
12 subsection 588GAA(3) or 588GAB(3) or section 588H; or

13 **7 Paragraph 588E(8)(b)**

14 After “subsection 588FG(2)”, insert “, (9) or (10)”.

15 **8 After paragraph 588E(8)(d)**

16 Insert:

17 (da) if the other proceeding is of the kind referred to in
18 paragraph (1)(ea) of this section—a matter of the kind
19 referred to in a paragraph of subsection 588GAA(2) or
20 588GAB(2), or a defence under subsection 588GAA(3) or
21 588GAB(3) or section 588H; or

22 **9 Paragraph 588E(8A)(a)**

23 Omit “a debt”, substitute “either a debt or a disposition”.

24 **10 Before section 588FA**

25 Insert:

26 **Subdivision A—Kinds of transactions that may be voidable**

27 **11 After section 588FDA**

28 Insert:

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Part 1 Main amendments of the Corporations Act 2001

1 **588FDB Creditor-defeating disposition**

- 2 (1) A disposition of property of a company is a *creditor-defeating*
3 *disposition* if the disposition has the effect of:
4 (a) preventing the property from becoming available for the
5 benefit of the company's creditors in the winding-up of the
6 company; or
7 (b) hindering, or significantly delaying, the process of making
8 the property available for the benefit of the company's
9 creditors in the winding-up of the company.

10 *Extensions of concept of disposition*

- 11 (2) For the purposes of this section and provisions of this Act that refer
12 to a creditor-defeating disposition, if a company does something
13 that results in another person becoming the owner of property that
14 did not previously exist, the company is taken to have made a
15 disposition of the property.
- 16 (3) For the purposes of this section and provisions of this Act that refer
17 to a creditor-defeating disposition, if:
18 (a) a company makes a disposition of property to another person;
19 and
20 (b) the other person gives some or all of the consideration for the
21 disposition to a person (the *third party*) other than the
22 company;
23 the company is taken to have made a disposition of the property
24 constituting so much of the consideration as was given to the third
25 party.

26 **Subdivision B—Voidable transactions**

27 **12 At the end of subsection 588FE(1)**

- 28 Add:
29 ; and (c) a transaction of the company may be voidable because of
30 subsection (6B) if the transaction was entered into on or after
31 the commencement of that subsection.

32 **13 After subsection 588FE(6A)**

33 Insert:

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- 1 (6B) The transaction is voidable if:
2 (a) it is a creditor-defeating disposition of property of the
3 company; and
4 (b) at least one of the following applies:
5 (i) the transaction was entered into, or an act was done for
6 the purposes of giving effect to it, when the company
7 was insolvent;
8 (ii) the company became insolvent because of the
9 transaction or an act done for the purposes of giving
10 effect to the transaction;
11 (iii) less than 12 months after the transaction or an act done
12 for the purposes of giving effect to the transaction, the
13 start of an external administration (as defined in
14 Schedule 2) of the company occurs as a direct or
15 indirect result of the transaction or act; and
16 (c) the transaction, or the act done for the purpose of giving
17 effect to it, was not entered into, or done:
18 (i) under a compromise or arrangement approved by a
19 Court under section 411; or
20 (ii) under a deed of company arrangement executed by the
21 company; or
22 (iii) by a liquidator of the company; or
23 (iv) by a provisional liquidator of the company.

24 **14 Before section 588FF**

25 Insert:

26 **Subdivision C—Court orders about voidable transactions**

27 **15 Before subsection 588FG(1)**

28 Insert:

29 *If no benefit or benefit received in good faith without grounds for*
30 *suspecting insolvency*

31 **16 Before subsection 588FG(2)**

32 Insert:

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Part 1 Main amendments of the Corporations Act 2001

1 *If transaction entered into for valuable consideration in good faith*
2 *without grounds for suspecting insolvency*

3 **17 At the end of section 588FG**

4 Add:

5 *If transaction is creditor-defeating disposition*

6 (7) Subsections (1) and (2) do not apply to an order made solely on the
7 grounds of subsection 588FE(6B).

8 (8) A court is not to make under section 588FF an order solely on the
9 grounds of subsection 588FE(6B) (as applying wholly or partly
10 because of subparagraph 588FE(6B)(b)(i) or (ii)) if it is proved that
11 paragraphs 588GA(1)(a) and (b) apply in relation to an officer of
12 the company and the disposition. For the purposes of determining
13 whether it is proved that those paragraphs apply in that way:

14 (a) subsections 588GA(2) to (7) apply; and

15 (b) section 588GB applies as if the proceeding under
16 section 588FF were a relevant proceeding.

17 (9) A court is not to make, solely on the grounds of
18 subsection 588FE(6B) (about a creditor-defeating disposition of
19 property), an order under section 588FF materially prejudicing a
20 right or interest of a person to whom the disposition of property
21 was made if:

22 (a) there is evidence before the court that suggests a reasonable
23 possibility that:

24 (i) consideration was given for the disposition; and

25 (ii) the value of the consideration was at least the market
26 value of the property at the time of the disposition or at
27 the time the relevant agreement (as defined in section 9)
28 was made for the disposition; and

29 (b) the court is not satisfied that subparagraph (a)(ii) does not
30 apply.

31 (10) A court is not to make, solely on the grounds of
32 subsection 588FE(6B) (about a creditor-defeating disposition of
33 property), an order under section 588FF materially prejudicing a
34 right or interest of a person other than a party to the

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Schedule 1

Main amendments of the Corporations Act 2001 **Part 1**

- 1 creditor-defeating disposition if it is proved that the person later
2 acquired the property:
3 (a) in good faith; and
4 (b) for consideration whose value was at least the market value
5 of the property when the person acquired it.

6 **18 After section 588FG**

7 Insert:

8 **Subdivision D—ASIC orders about certain voidable**
9 **transactions**

10 **588FGAA ASIC may order undoing of effect of creditor-defeating**
11 **dispositions by company being wound up**

12 *Scope of this section*

- 13 (1) This section applies if:
14 (a) a company for which a liquidator has been appointed has
15 made a creditor-defeating disposition of property; and
16 (b) the disposition is voidable under subsection 588FE(6B); and
17 (c) a person has received any money or property as a direct or
18 indirect result of:
19 (i) the disposition; or
20 (ii) the person's acquisition of the property after the
21 disposition.

22 Note: The person may receive money or property as an indirect result of
23 acquiring (by the creditor-defeating disposition or a later transaction)
24 the property of the company that was the subject of the
25 creditor-defeating disposition, and later disposing of that property and
26 receiving money or property as consideration for the later disposal.

27 *Liquidator may request order*

- 28 (2) Within 12 months of a liquidator of the company first being
29 appointed, the company's liquidator may request ASIC to make an
30 order under subsection (3). ASIC must decide whether to grant the
31 request.

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Schedule 1 Phoenixing offences and other rules about property transfers to defeat creditors

Part 1 Main amendments of the Corporations Act 2001

1

Orders by ASIC

2

(3) ASIC may, on request under subsection (2) or on its own initiative, make one or more of the following orders in writing given to the person:

3

4

5

(a) an order directing the person to transfer to the company property that was the subject of the disposition;

6

7

(b) an order requiring the person to pay to the company an amount that, in ASIC's opinion, fairly represents some or all of the benefits that the person has received (directly or indirectly) because of the disposition;

8

9

10

11

(c) an order requiring the person to transfer to the company property that, in ASIC's opinion, fairly represents the application of proceeds of property that was the subject of the disposition.

12

13

14

15

Note 1: Subsection (5) sets out matters ASIC must consider in deciding whether to make an order.

16

17

Note 2: Section 588FGAB provides further for the content of orders.

18

Limit on power to make orders

19

(4) However, ASIC must not make an order under subsection (3) if ASIC has reason to believe that, if it were a court, subsection 588FG(8), (9) or (10) would prevent it from making a corresponding order under section 588FF.

20

21

22

23

Considerations in deciding whether to make orders

24

(5) In deciding whether to make an order under subsection (3), ASIC must have regard to the following:

25

26

(a) the conduct of the company and its officers;

27

(b) the conduct of the person;

28

(c) the circumstances, nature and terms of the disposition;

29

(d) the relationship (if any) between the company and the person;

30

(e) any other matter ASIC considers relevant.

31

Revocation and amendment of orders

32

(6) At any time, ASIC may, in writing given to the person, revoke or amend an order under subsection (3).

33

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1 Note: A court may also set aside an order made under subsection (3) of this
2 section: see section 588FGAE.

3 **588FGAB Content and copies of orders**

4 *Reasons*

5 (1) An order under subsection 588FGAA(3) must include written
6 reasons for the making of the order (including why ASIC is
7 satisfied section 588FGAA applies).

8 *Orders for payment*

9 (2) An order under paragraph 588FGAA(3)(b) (requiring a person to
10 pay a company an amount) may require the amount to be paid at a
11 time or within a period set out in the order.

12 *Liquidator to be given copies of orders etc.*

13 (3) If ASIC makes an order under subsection 588FGAA(3) relating to
14 a company, ASIC must give the company's liquidator a copy of the
15 order, and of any revocation or amendment of the order.

16 **588FGAC Compliance with orders generally**

17 A person must not engage in conduct if the conduct contravenes an
18 order under subsection 588FGAA(3).

19 Note: Failure to comply with this section is an offence: see
20 subsection 1311(1).

21 **588FGAD Compliance with orders for payment**

22 *Enforcement of order for payment generally*

23 (1) An amount payable by a person to a company under an order made
24 under paragraph 588FGAA(3)(b) is recoverable by the company as
25 a debt by action against the person in a court of competent
26 jurisdiction.

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Part 1 Main amendments of the Corporations Act 2001

1 *Court order for payment if person convicted of offence*

- 2 (2) If a court convicts a person of an offence based on
3 section 588FGAC relating to a contravention by the person or
4 someone else of an order made under paragraph 588FGAA(3)(b),
5 the court may (in addition to imposing a penalty on the person for
6 the offence) order the person to pay the company an amount not
7 exceeding the amount involved in the contravention.

8 *Complying with order for payment by transferring property*

- 9 (3) A person ordered under paragraph 588FGAA(3)(b) to pay a
10 company the value of any property may comply with the order by
11 transferring the property to the company.

12 **588FGAE Court may set aside order by ASIC**

- 13 (1) The person subject to an order under subsection 588FGAA(3) or
14 any other person interested in such an order may apply to a Court
15 within the period described in subsection (2) to have the order set
16 aside.
- 17 (2) The period is 60 days after the day the applicant was given the
18 order or otherwise became aware of it.
- 19 (3) The Court may set the order aside if satisfied, on the basis of the
20 written reasons for the order, that section 588FGAA did not apply.
- 21 (4) If the order is set aside, it is taken never to have been made.

22 **Subdivision E—Various rules about voidable transactions**

23 **19 Subsection 588FGA(1)**

24 After “section 588FF”, insert “, or ASIC makes an order under
25 section 588FGAA,”.

26 **20 After subsection 588FGB(4)**

27 Insert:

- 28 (4A) Subsections (3) and (4) of this section do not apply if the order
29 mentioned in subsection 588FGA(1) was made wholly or partly
30 because the condition in 588FE(6B)(b)(iii) was met.
-

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Schedule 1

Main amendments of the Corporations Act 2001 **Part 1**

1 **21 Subsection 588FH(3)**

2 After “section 588FF”, insert “or 588FGAA”.

3 **22 Subsection 588FH(3)**

4 After “court”, insert “or ASIC”.

5 **23 Paragraph 588FI(1)(b)**

6 After “section 588FF”, insert “or 588FGAA”.

7 **24 After subsection 588FI(2)**

8 Insert:

9 (2A) ASIC must not make an order under section 588FGAA that relates
10 to the transaction and prejudices a right or interest of the creditor.

11 **25 Division 3 of Part 5.7B (heading)**

12 Repeal the heading, substitute:

13 **Division 3—Duties to prevent insolvent trading and**
14 **creditor-defeating dispositions**

15 **Subdivision A—Director’s duty to prevent insolvent trading**

16 **26 After section 588G**

17 Insert:

18 **Subdivision B—Duties to prevent creditor-defeating**
19 **dispositions**

20 **588GAA Officer’s duty to prevent creditor-defeating disposition**

21 (1) An officer of a company must not engage in conduct that results in
22 the company making a creditor-defeating disposition of property of
23 the company, if:

24 (a) the company is insolvent; or

25 (b) the company becomes insolvent because of the disposition or
26 a number of dispositions made at the time of the disposition;

27 or

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1 (c) less than 12 months after the disposition, the start of an
2 external administration (as defined in Schedule 2) of the
3 company occurs as a direct or indirect result of the
4 disposition.

5 Note 1: Failure to comply with this subsection is an offence: see
6 subsection 1311(1).

7 Note 2: Recklessness is the fault element for the result of the company making
8 the creditor-defeating disposition and for paragraphs (1)(a), (b) and
9 (c): see section 5.6 of the *Criminal Code*.

10 (2) An officer of a company must not engage in conduct that results in
11 the company making a disposition of property of the company, if:

12 (a) one or more of the following applies:

13 (i) the company is insolvent;

14 (ii) the company becomes insolvent because of the
15 disposition or a number of dispositions made at the time
16 of the disposition;

17 (iii) less than 12 months after the disposition, the start of an
18 external administration (as defined in Schedule 2) of the
19 company occurs as a direct or indirect result of the
20 disposition; and

21 (b) the officer knows, or a reasonable person in the position of
22 the officer would know, that the disposition is a
23 creditor-defeating disposition.

24 Note 1: This subsection is a civil penalty provision (see section 1317E).

25 Note 2: Section 588E provides for presumptions about when a company is
26 insolvent.

27 *Exceptions*

28 (3) Subsections (1) and (2) do not apply if:

29 (a) the disposition was made:

30 (i) under a compromise or arrangement approved by a
31 Court under section 411; or

32 (ii) under a deed of company arrangement executed by the
33 company; or

34 (iii) by the company's liquidator; or

35 (iv) by a provisional liquidator of the company; or

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Schedule 1

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- 1 (b) the value of the consideration for the disposition of the
2 property is at least the market value of the property at the
3 time of:
4 (i) the disposition; or
5 (ii) the making of the relevant agreement (as defined in
6 section 9) for the disposition.

7 Note: Section 588GA also provides for subsections (1) and (2) of this
8 section not to apply if the disposition was connected with a course of
9 action likely to lead to a better outcome for the company.

10 **588GAB Procuring creditor-defeating disposition**

- 11 (1) A person must not engage in conduct of procuring, inciting,
12 inducing or encouraging the making by a company of a disposition
13 of property that results in the company making the disposition of
14 the property, if:
15 (a) one or more of the following applies:
16 (i) the company is insolvent;
17 (ii) the company becomes insolvent because of the
18 disposition or a number of dispositions made at the time
19 of the disposition;
20 (iii) less than 12 months after the disposition, the start of an
21 external administration (as defined in Schedule 2) of the
22 company occurs as a direct or indirect result of the
23 disposition; and
24 (b) the disposition is a creditor-defeating disposition.

25 Note 1: Failure to comply with this subsection is an offence: see
26 subsection 1311(1).

27 Note 2: Recklessness is the fault element for the result of the company making
28 the disposition and for subparagraphs (1)(a)(i), (ii) and (iii) and
29 paragraph (1)(b): see section 5.6 of the *Criminal Code*.

- 30 (2) A person must not engage in conduct of procuring, inciting,
31 inducing or encouraging the making by a company of a disposition
32 of property that results in the company making the disposition of
33 the property, if:
34 (a) one or more of the following applies:
35 (i) the company is insolvent;

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- 1 (ii) the company becomes insolvent because of the
2 disposition or a number of dispositions made at the time
3 of the disposition;
4 (iii) less than 12 months after the disposition, the start of an
5 external administration (as defined in Schedule 2) of the
6 company occurs as a direct or indirect result of the
7 disposition; and
8 (b) the person knows, or a reasonable person in the position of
9 the person would know, that the disposition is a
10 creditor-defeating disposition.

11 Note 1: This subsection is a civil penalty provision (see section 1317E).

12 Note 2: Section 588E provides for presumptions about when a company is
13 insolvent.

14 *Exceptions*

- 15 (3) Subsections (1) and (2) do not apply if:
16 (a) the disposition was made:
17 (i) under a compromise or arrangement approved by a
18 Court under section 411; or
19 (ii) under a deed of company arrangement executed by the
20 company; or
21 (iii) by the company's liquidator; or
22 (iv) by a provisional liquidator of the company; or
23 (b) the value of the consideration for the disposition of the
24 property is at least the market value of the property at the
25 time of:
26 (i) the disposition; or
27 (ii) the making of the relevant agreement (as defined in
28 section 9) for the disposition.

29 Note: Section 588GA also provides for subsections (1) and (2) of this
30 section not to apply if the disposition was connected with a course of
31 action likely to lead to a better outcome for the company.

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Phoenixing offences and other rules about property transfers to defeat creditors

Schedule 1

Main amendments of the Corporations Act 2001 Part 1

1 Subdivision C—Safe harbour from breach of duties

2 27 Subsection 588GA(1)

3 After “a debt”, insert “, and subsections 588GAA(1) and (2) and
4 588GAB(1) and (2) do not apply in relation to a person and a
5 disposition,”.

6 28 Paragraph 588GA(1)(b)

7 After “the debt is incurred”, insert “, or the disposition is made,”.

8 29 Subsection 588GA(3)

9 After “subsection 588G(2)”, insert “, 588GAA(1) or (2) or 588GAB(1)
10 or (2)”.

11 30 Subsection 588GA(4)

12 Omit “a debt”, substitute “either a debt or a disposition”.

13 31 Paragraph 588GA(4)(a)

14 After “when the debt is incurred”, insert “or the disposition is made,”.

15 32 Subsection 588GA(5)

16 Omit “a debt”, substitute “either a debt or a disposition”.

17 33 Paragraph 588GA(5)(a)

18 After “after the debt is incurred”, insert “or after the disposition is
19 made,”.

20 34 Subsection 588GB(7) (paragraph (a) of the definition of 21 *relevant proceeding*)

22 After “subsection 588G(2)”, insert “or 588GAA(1) or (2) or
23 588GAB(1) or (2)”.

24 35 Subsection 588H(1)

25 Repeal the subsection, substitute:

26 *Application*

27 (1) This section has effect for the purposes of:

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- 1 (a) proceedings for a contravention of subsection 588G(2)
2 relating to the incurring of a debt at a time (the *key time*); and
3 (b) proceedings for a contravention of subsection 588GAA(2) or
4 588GAB(2) relating to the disposition of a company's
5 property at a time (the *key time*); and
6 (c) proceedings under section 588M relating to the incurring of
7 the debt or the disposition of the property.

8 *Expectations and belief about company's solvency*

9 **36 Subsection 588H(2)**

10 Omit "time when the debt was incurred", substitute "key time".

11 **37 Subsection 588H(2)**

12 Omit "even if it incurred that debt and any other debts that it incurred at
13 that time", substitute "despite all its debts incurred, and dispositions of
14 its property made, at that time".

15 **38 Subsection 588H(3)**

16 Omit "time when the debt was incurred", substitute "key time".

17 **39 Paragraph 588H(3)(b)**

18 Omit "even if it incurred that debt and any other debts that it incurred at
19 that time", substitute "despite all its debts incurred, and dispositions of
20 its property made, at that time".

21 **40 After subsection 588H(3)**

22 Insert:

23 (3A) Subsections (2) and (3) do not apply for the purposes of
24 proceedings relating to the disposition of the company's property if
25 the key time was less than 12 months before the start of an external
26 administration (as defined in Schedule 2) of the company.

27 *Director who did not take part in management*

28 **41 Subsection 588H(4)**

29 Omit "time when the debt was incurred", substitute "key time".

EXPOSURE DRAFT

Phoenixing offences and other rules about property transfers to defeat creditors

Schedule 1

Main amendments of the Corporations Act 2001 Part 1

1 **42 Before subsection 588H(5)**

2 Insert:

3 *Reasonable steps taken to prevent debt or disposition*

4 **43 At the end of subsection 588H(5)**

5 Add “or making the disposition of its property”.

6 **44 At the end of subsection 588H(6)**

7 Add “This subsection does not apply to a defence in proceedings
8 relating to a disposition of the company’s property.”.

9 **45 After subsection 588J(1)**

10 Insert:

11 (1A) If, on an application for a civil penalty order against a person for a
12 contravention of subsection 588GAA(2) or 588GAB(2) relating to
13 a disposition of property of a company, the Court is satisfied that:

14 (a) the person contravened the subsection; and

15 (b) one or more creditors of the company suffered loss or
16 damage because of the disposition and the company’s
17 insolvency;

18 the Court may order the person to pay the company compensation
19 equal to the loss or damage (whether or not the Court makes a
20 pecuniary penalty order under section 1317G or an order under
21 section 206C disqualifying the person from managing
22 corporations).

23 **46 At the end of subsection 588J(2)**

24 Add “, 588GAA(2) or 588GAB(2) relating to the company”.

25 **47 Paragraph 588J(3)(a)**

26 Omit “in relation to the incurring of a debt by that company”.

27 **48 Section 588K**

28 Before “If:”, insert “(1)”.

EXPOSURE DRAFT

Schedule 1 Phoenixing offences and other rules about property transfers to defeat creditors

Part 1 Main amendments of the Corporations Act 2001

1 **49 At the end of section 588K**

2 Add:

3 (2) If:

4 (a) a court finds a person guilty of an offence based on
5 subsection 588GAA(1) or 588GAB(1) relating to disposition
6 of property by a company; and

7 (b) the court is satisfied that one or more creditors of the
8 company suffered loss or damage because of the disposition
9 and the company's insolvency;

10 the court may order the person to pay the company compensation
11 equal to the loss or damage (whether or not the court imposes a
12 penalty for the offence).

13 **50 After subsection 588M(1)**

14 Insert:

15 (1A) This section also applies if:

16 (a) a person (the *director*) has contravened
17 subsection 588GAA(1) or (2) or 588GAB(1) or (2) relating to
18 disposition of property by a company; and

19 (b) one or more creditors of the company have suffered loss or
20 damage because of the disposition and the company's
21 insolvency; and

22 (c) the company is being wound up.

23 This section applies whether or not the director has been convicted
24 of an offence relating to the contravention or a civil penalty order
25 has been made against the director for the contravention.

26 **51 Section 588N**

27 After "the incurring of a debt", insert ", or the disposition of property,".

28 **52 Paragraph 588N(a)**

29 After "the incurring of the debt", insert "or the disposition of the
30 property".

31 **53 At the end of paragraph 588N(b)**

32 Add "or the disposition of the property".

EXPOSURE DRAFT

Phoenixing offences and other rules about property transfers to defeat creditors

Schedule 1

Main amendments of the Corporations Act 2001 **Part 1**

1 **54 After subparagraph 588Q(b)(iii)**

2 Insert:

- 3 or (iv) that that court has declared that a specified person has
4 contravened subsection 588GAA(2) or
5 subsection 588GAB(2) in relation to a specified
6 disposition of property by a specified company; or
7 (v) that a specified person was convicted by that court for
8 an offence constituted by a contravention of
9 subsection 588GAA(1) or 588GAB(1) in relation to a
10 specified disposition of property by a specified
11 company; or
12 (vi) that a specified person charged before that court with an
13 offence described in subparagraph (v) was found in that
14 court to have committed the offence but that the court
15 did not proceed to convict the person of the offence;

16 **55 After subsection 588R(1)**

17 Insert:

- 18 (1A) If section 588M applies in relation to a company because of
19 subsection 588M(1A), a creditor described in that subsection may
20 begin proceedings under that section with the written consent of
21 the company's liquidator.

22 **56 Subsection 588R(2)**

23 Omit "Subsection (1) has", substitute "Subsections (1) and (1A) have".

24 **57 Paragraph 588S(a)**

25 Repeal the paragraph, substitute:

- 26 (a) stating that the creditor intends to begin proceedings under
27 section 588M relating to:
28 (i) the incurring by the company of a specified debt that is
29 owed to the creditor; or
30 (ii) a specified disposition by the company of property,
31 because of which (and the company's insolvency) the
32 creditor has suffered loss or damage; and

EXPOSURE DRAFT

Schedule 1 Phoenixing offences and other rules about property transfers to defeat creditors

Part 1 Main amendments of the Corporations Act 2001

1 **58 Subparagraph 588S(b)(ii)**

2 After “the incurring of that debt”, insert “, or the making of that
3 disposition,”.

4 **59 Subsection 588T(2)**

5 After “the incurring by the company of the debt”, insert “, or the
6 making by the company of the disposition,”.

7 **60 Subsection 588U(1)**

8 After “the incurring of a debt”, insert “, or the making of a disposition,”.

9 **61 Paragraph 588U(1)(a)**

10 After “in relation to the debt”, insert “or disposition”.

11 **62 Paragraph 588U(1)(b)**

12 After “the debt”, insert “or the making of the disposition”.

13 **63 Paragraph 588U(1)(c)**

14 Repeal the paragraph, substitute:

15 (c) the company’s liquidator has intervened in an application for
16 a civil penalty order against a person relating to:

17 (i) a contravention of subsection 588G(2) relating to the
18 incurring of the debt; or

19 (ii) a contravention of subsection 588GAA(2) or
20 588GAB(2) relating to the disposition; or

21 (d) the company’s liquidator has requested ASIC to make an
22 order under subsection 588FGAA(3) relating to the
23 disposition; or

24 (e) ASIC has made an order under subsection 588FGAA(3)
25 relating to the disposition.

26 **64 At the end of section 596AB**

27 Add:

28 (5) If the company contravenes this section by making a disposition of
29 its property that is voidable under subsection 588FE(6B), the
30 disposition and the contravention are *linked* for the purposes of this
31 Act.

EXPOSURE DRAFT

Phoenixing offences and other rules about property transfers to defeat creditors

Schedule 1

Main amendments of the Corporations Act 2001 **Part 1**

1 **65 Paragraph 596AD(b)**

2 After “the incurring of a debt”, insert “, or the making of a disposition,”.

3 **66 Subsection 1317E(1) (after table item 6)**

4 Insert:

6A Subsection 588GAA(2) preventing creditor-defeating dispositions

6B Subsection 588GAB(2) procuring creditor-defeating dispositions

5 **67 Schedule 3 (after table item 137)**

6 Insert:

137A Section 588FGAC 30 penalty units or imprisonment for 6
months, or both

7 **68 Schedule 3 (after table item 138)**

8 Insert:

138A Subsection 588GAA(1) Imprisonment for 10 years or a fine of the
greater of the following:
(a) 4,500 penalty units;
(b) if the court can determine the total value of
the benefits that have been obtained by one
or more persons and are reasonably
attributable to the commission of the
offence—3 times that total value;
or both.

138B Subsection 588GAB(1) In the case of an individual, imprisonment for
10 years or a fine of the greater of the
following:
(a) 4,500 penalty units;
(b) if the court can determine the total value of
the benefits that have been obtained by one
or more persons and are reasonably
attributable to the commission of the
offence—3 times that total value;
or both.

In the case of a body corporate, a fine of the
greatest of the following:

- (a) 45,000 penalty units;
(b) if the court can determine the total value of
-

EXPOSURE DRAFT

Schedule 1 Phoenixing offences and other rules about property transfers to defeat creditors

Part 1 Main amendments of the Corporations Act 2001

the benefits that have been obtained by one or more persons and are reasonably attributable to the commission of the offence—3 times that total value;

- (c) 10% of the body corporate's annual turnover (as defined in section 761A) during the 12-month period ending at the end of the month in which the body corporate committed, or began committing, the offence.

EXPOSURE DRAFT

Phoenixing offences and other rules about property transfers to defeat creditors

Schedule 1

Consequential amendments of other Acts **Part 2**

1 **Part 2—Consequential amendments of other Acts**

2 ***Banking Act 1959***

3 **69 Subsection 14C(3)**

4 After “588G”, insert “, 588GAA or 588GAB”.

5 **70 At the end of paragraph 14CA(b)**

6 Add:

7 ; or (iv) a creditor-defeating disposition (within the meaning of
8 that Act) by the body corporate.

9 ***Insurance Act 1973***

10 **71 Subsections 62ZM(3) and 62ZOK(3)**

11 After “588G”, insert “, 588GAA or 588GAB”.

12 **72 At the end of paragraph 62ZOL(b)**

13 Add:

14 ; or (iv) a creditor-defeating disposition (within the meaning of
15 that Act) by the body corporate.

16 ***Life Insurance Act 1995***

17 **73 Subsections 179(3) and 179AK(3)**

18 After “588G”, insert “, 588GAA or 588GAB”.

19 **74 At the end of paragraph 179AL(b)**

20 Add:

21 ; or (iv) a creditor-defeating disposition (within the meaning of
22 that Act) by the body corporate.

EXPOSURE DRAFT

Schedule 1 Phoenixing offences and other rules about property transfers to defeat creditors

Part 3 Amendments with contingent commencement

1 **Part 3—Amendments with contingent**
2 **commencement**

3 **Division 1—Amendments that do not commence if the**
4 **Corporations Amendment (Strengthening**
5 **Protections for Employee Entitlements) Act**
6 **2018 has commenced**

7 *Corporations Act 2001*

8 **75 Paragraph 596A(1)(c)**

9 After “the incurring of the debt”, insert “, or the making of the
10 disposition,”.

11 **76 Paragraph 596A(1)(d)**

12 Repeal the paragraph, substitute:

13 (d) the company’s liquidator has intervened in an application for
14 a civil penalty order against a person relating to:

15 (i) a contravention of subsection 588G(2) relating to the
16 incurring of the debt that is linked to the contravention
17 of section 596AB; or

18 (ii) a contravention of subsection 588GAA(2) or
19 588GAB(2) relating to the disposition that is linked to
20 the contravention of section 596AB; or

21 (e) the contravention of section 596AB is linked to a disposition
22 of the company’s property and the company’s liquidator has
23 requested ASIC to make an order under
24 subsection 588FGAA(3) relating to the disposition; or

25 (f) the contravention of section 596AB is linked to a disposition
26 of the company’s property and ASIC has made an order
27 under subsection 588FGAA(3) relating to the disposition.

EXPOSURE DRAFT

Phoenixing offences and other rules about property transfers to defeat creditors

Schedule 1

Amendments with contingent commencement Part 3

1 **Division 2—Amendments commencing after the**
2 **Corporations Amendment (Strengthening**
3 **Protections for Employee Entitlements) Act**
4 **2018 commences**

5 *Corporations Act 2001*

6 **77 Section 9 (definition of *linked*)**

7 Repeal the definition, substitute:

8 *linked*:

- 9 (a) the incurring of a debt and a contravention of
10 subsection 596AC(1) are *linked* if they are linked under
11 subsection 596AC(4); and
12 (b) the disposition of a company's property and a contravention
13 of subsection 596AC(1) are *linked* if they are linked under
14 subsection 596AC(5).

15 **78 Subsection 596AB(5)**

16 Repeal the subsection.

17 **79 At the end of section 596AC**

18 Add:

- 19 (5) If the company contravenes subsection (1) of this section by
20 making a disposition of its property that is voidable under
21 subsection 588FE(6B), the disposition and the contravention are
22 *linked* for the purposes of this Act.

23 **80 Paragraph 596AG(1)(b)**

24 Repeal the paragraph, substitute:

- 25 (b) the company's liquidator has intervened in an application for
26 a civil penalty order against a person relating to:
27 (i) a contravention of subsection 588G(2) relating to the
28 incurring of the debt that is linked to the contravention
29 of subsection 596AC(1); or
30 (ii) a contravention of subsection 588GAA(2) or
31 588GAB(2) relating to the disposition of the company's
-

EXPOSURE DRAFT

Schedule 1 Phoenixing offences and other rules about property transfers to defeat creditors

Part 3 Amendments with contingent commencement

- 1 property that is linked to the contravention of
2 subsection 596AC(1); or
- 3 (ba) the contravention of subsection 596AC(1) is linked to a
4 disposition of the company's property and the company's
5 liquidator has requested ASIC to make an order under
6 subsection 588FGAA(3) relating to the disposition; or
- 7 (bb) the contravention of subsection 596AC(1) is linked to a
8 disposition of the company's property and ASIC has made an
9 order under subsection 588FGAA(3) relating to the
10 disposition; or

11 **81 Paragraph 596AG(1)(c)**

- 12 After “the incurring of the debt”, insert “, or the disposition of the
13 company's property,”.

EXPOSURE DRAFT

Improving the accountability of resigning directors **Schedule 2**

1 **Schedule 2—Improving the accountability of**
2 **resigning directors**
3

4 *Corporations Act 2001*

5 **1 After paragraph 188(1)(e)**

6 Insert:

7 (ea) subsection 203AA(6) (notification of resignation day);

8 **2 After section 203A**

9 Insert:

10 **203AA Resignation of directors—when resignation takes effect**

11 *When resignation takes effect*

12 (1) A person's resignation as a director of a company takes effect on:

- 13 (a) if, within 28 days after the day the person stopped being a
14 director of the company, ASIC is notified of that fact under
15 subsection 205A(1) or 205B(5)—the day the person stopped
16 being a director of the company; or
17 (b) in any other case—the day written notice is lodged with
18 ASIC stating that the person has stopped being a director of
19 the company.

20 Note: A director includes a person appointed to the position of alternate
21 director, see the definition of *director* in section 9.

22 (2) However, if:

- 23 (a) because of paragraph (1)(b), the person's resignation takes
24 effect on a day that is not the day the person stopped being a
25 director of the company; and
26 (b) the person or the company applies to ASIC or the Court for it
27 to fix, as the day the person's resignation takes effect, the day
28 (the *resignation day*) that the person stopped being a director
29 of the company; and
30 (c) the application is made in accordance with subsection (5);
31 and

EXPOSURE DRAFT

Schedule 2 Improving the accountability of resigning directors

- 1 (d) the applicant satisfies ASIC or the Court that the person
2 stopped being a director of the company on the resignation
3 day;
4 ASIC or the Court may fix the resignation day as the day the
5 person's resignation takes effect.
- 6 (3) The Court must not fix the resignation day as the day the person's
7 resignation takes effect unless it is satisfied that it is just and
8 equitable to do so.
- 9 (4) ASIC must not fix the resignation day as the day the person's
10 resignation takes effect unless it has had regard to:
11 (a) any conduct, act, omission or representation of the applicant
12 in relation to notifying ASIC of the resignation; and
13 (b) the reasons for any delay in notifying ASIC of the
14 resignation.

Application to ASIC or the Court

- 15
- 16 (5) For the purposes of paragraph (2)(c), the application:
17 (a) if made to ASIC—must:
18 (i) be made within 56 days after the day the person stopped
19 being a director of the company; and
20 (ii) be lodged in the prescribed form; or
21 (b) if made to the Court—must be made within 12 months after
22 the day the person stopped being a director of the company.

Notification to ASIC

- 23
- 24 (6) If the Court fixes the resignation day as the day the person's
25 resignation takes effect, the applicant must, within 2 business days
26 after the Court fixes the resignation day, lodge with ASIC a copy
27 of the order made by the Court that fixes the day.
- 28 (7) An offence based on subsection (6) is an offence of strict liability.
29 Note: For strict liability, see section 6.1 of the *Criminal Code*.

Company must be left with at least 1 director

- 30
- 31 (8) This section has effect subject to section 203AB.
-

EXPOSURE DRAFT

Improving the accountability of resigning directors **Schedule 2**

1 **203AB Resignation of directors—resignation has no effect if**
2 **company has no other directors**

- 3 (1) The resignation of a director of a company does not take effect if,
4 at the end of the day that the resignation is to take effect, the
5 company does not have at least one director.
- 6 (2) However, subsection (1) does not prevent the resignation of a
7 director of a company taking effect if the resignation is to take
8 effect on or after the day that the winding up of the company is
9 taken, because of Division 1A of Part 5.6, to have begun.

10 **3 After section 203C**

11 Insert:

12 **203CA Resolution to remove directors—resolution is void if**
13 **proprietary company has no other directors**

- 14 (1) A resolution by members of a proprietary company to remove a
15 director of the company is void if, at the end of the day that the
16 resolution is to take effect, the company does not have at least one
17 director.
- 18 (2) However, subsection (1) does not affect the validity of a resolution
19 by members of a proprietary company to remove a director of the
20 company if the resolution is to take effect on or after the day that
21 the winding up of the company is taken, because of Division 1A of
22 Part 5.6, to have begun.

23 **4 Schedule 3 (after table item 40)**

24 Insert:

40A	Subsection 203AA(6)	60 penalty units or imprisonment for 1 year, or both.
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25 **5 In the appropriate position in Chapter 10**

26 Insert:

EXPOSURE DRAFT

Schedule 2 Improving the accountability of resigning directors

1 **Part 10.35—Transitional provisions relating to the**
2 **Treasury Laws Amendment (Combating**
3 **Illegal Phoenixing) Act 2018**
4

5 **1650 Application of amendments**

- 6 (1) The amendments of section 588H by Schedule 1 to the *Treasury*
7 *Laws Amendment (Combating Illegal Phoenixing) Act 2018* apply
8 in relation to debts incurred, and dispositions made, after the
9 commencement of those amendments.
- 10 (2) The amendments made by items 1, 2 and 4 of Schedule 2 to the
11 *Treasury Laws Amendment (Combating Illegal Phoenixing) Act*
12 *2018* apply in relation to a person's resignation as a director of a
13 company if the person stopped being a director of the company on
14 or after the commencement of those items.
- 15 (3) The amendment made by item 3 of Schedule 2 to the *Treasury*
16 *Laws Amendment (Combating Illegal Phoenixing) Act 2018* applies
17 in relation to a resolution that is to take effect on or after the
18 commencement of that item.

EXPOSURE DRAFT

GST estimates and director penalties **Schedule 3**

1 **Schedule 3—GST estimates and director**
2 **penalties**
3

4 *A New Tax System (Goods and Services Tax) Act 1999*

5 **1 Subsection 35-5(2) (Note)**

6 After “Part 3-10”, insert “and Divisions 268 and 269”.

7 *Taxation Administration Act 1953*

8 **2 Section 268-1 in Schedule 1**

9 Omit:

10 (b) unpaid superannuation guarantee charge;

11 substitute:

12 (b) unpaid superannuation guarantee charge; or
13 (c) net amounts in respect of GST, wine equalisation tax and
14 luxury car tax;

15 **3 Section 268-1 in Schedule 1**

16 Omit:

17 If you are given an estimate, you are liable to pay the amount of
18 the estimate. That liability is distinct from your liability to pay the
19 amounts required by Part 2-5 or the *Superannuation Guarantee*
20 *(Administration) Act 1992*. However, you can ensure that the
21 Commissioner does not require you to pay more than the amounts
22 not paid under that Part or Act.

23 substitute:

EXPOSURE DRAFT

Schedule 3 GST estimates and director penalties

1 If you are given an estimate, you are liable to pay the amount of
2 the estimate. That liability is distinct from your liability to pay the
3 amounts required by Part 2-5 or the *Superannuation Guarantee*
4 *(Administration) Act 1992*. In the case of an estimate of a net
5 amount that has been assessed by the Commissioner, that liability
6 is distinct from your liability to pay the amount of the assessment.
7 However, you can ensure that the Commissioner does not require
8 you to pay more than the relevant unpaid amounts.

9 **4 At the end of section 268-5 in Schedule 1**

10 Add:

11 ; or (c) *net amounts under the *GST Act.

12 **5 At the end of subsection 268-10(1) in Schedule 1**

13 Add:

14 ; or (c) to pay a *net amount for a *tax period, to the extent that the
15 net amount has not been assessed before the Commissioner
16 makes the estimate.

17 **6 After subsection 268-10(1A) in Schedule 1**

18 Insert:

19 (1B) For the purposes of this Division, if you have a *net amount for a
20 *tax period:

- 21 (a) you are treated as being liable to pay that net amount; and
22 (b) that liability is treated as having arisen on the day by which
23 you must give your *GST return for the tax period to the
24 Commissioner in accordance with Division 31 of the *GST
25 Act; and
26 (c) that liability is treated as being payable on that day; and
27 (d) the entire amount of that liability is treated as being unpaid.

28 **7 Subsection 268-20(2) in Schedule 1 (example)**

29 Omit “The Commissioner”, substitute “In a case covered by
30 paragraph 268-10(1)(a) or (b), the Commissioner”.

EXPOSURE DRAFT

GST estimates and director penalties **Schedule 3**

1 **8 After subsection 268-20(4) in Schedule 1**

2 Insert:

3 (4A) In a case covered by paragraph 268-10(1)(c) (estimate of liability
4 in relation to net amount under GST Act), treat the reference in
5 paragraph (4)(b) to the underlying liability as being a reference to a
6 liability under Division 33 or 35 of the *GST Act for an *assessed
7 net amount in respect of the underlying liability.

8 **9 After subsection 268-30(4) in Schedule 1**

9 Insert:

10 (4A) In a case covered by paragraph 268-10(1)(c) (estimate of liability
11 in relation to net amount under GST Act), treat the references in
12 paragraph (3)(a) and subsection (4) to the underlying liability as
13 being references to a liability under Division 33 or 35 of the *GST
14 Act for an *assessed net amount in respect of the underlying
15 liability.

16 **10 After subsection 268-80(1) in Schedule 1**

17 Insert:

18 (1A) In a case covered by paragraph 268-10(1)(c) (estimate of liability
19 in relation to net amount under GST Act), treat the reference in
20 paragraph (1)(b) to the underlying liability as being a reference to a
21 liability under Division 33 or 35 of the *GST Act for an *assessed
22 net amount in respect of the underlying liability.

23 **11 After subsection 268-90(2A) in Schedule 1**

24 Insert:

25 (2B) In a case covered by paragraph 268-10(1)(c) (estimate of liability
26 in relation to net amount under GST Act), the statutory declaration
27 or affidavit must verify the following facts:
28 (a) your *net amount for the *tax period;
29 (b) what has been done to comply with Division 31 and 33 of the
30 *GST Act (obligation to give GST return and liability in
31 respect of assessed net amounts) in relation to that tax period;
32 (c) your *taxable supplies and *creditable acquisitions that are
33 attributable to that tax period;

EXPOSURE DRAFT

Schedule 3 GST estimates and director penalties

- 1 (d) your assessable dealings (within the meaning of the *Wine
2 Tax Act) and *wine tax credits that are attributable to that tax
3 period.

4 **12 Section 269-1 in Schedule 1**

5 Omit:

6 (a) meets its obligations under Subdivision 16-B (obligation to pay
7 withheld amounts to the Commissioner) and Division 268 in this
8 Schedule and Part 3 of the *Superannuation Guarantee*
9 *(Administration) Act 1992* (obligation to pay superannuation
10 guarantee charge); or

11 substitute:

12 (a) meets its obligations under Subdivision 16-B (obligation to pay
13 withheld amounts to the Commissioner), Division 268 in this
14 Schedule (obligation to pay estimates) and Part 3 of the
15 *Superannuation Guarantee (Administration) Act 1992* (obligation
16 to pay superannuation guarantee charge), and obligations under
17 Divisions 33 and 35 of the GST Act in respect of assessed net
18 amounts; or

19 **13 Subparagraph 269-5(a)(iii) in Schedule 1**

20 Repeal the subparagraph, substitute:

- 21 (iii) Part 3 of the *Superannuation Guarantee*
22 *(Administration) Act 1992* (obligation to pay
23 superannuation guarantee charge); and
24 (iv) Divisions 33 and 35 of the *GST Act in respect of
25 *assessed net amounts; or

26 **14 Subsection 269-10(1) in Schedule 1 (at the end of the** 27 **table)**

28 Add:

- 29
- 6 a *tax period ends an *assessed net amount for the tax
period in accordance with the *GST
Act.
-

EXPOSURE DRAFT

GST estimates and director penalties **Schedule 3**

15 After paragraph 269-10(5)(b) in Schedule 1

Insert:

(ba) in the case of an estimate of an underlying liability referred to in paragraph 268-10(1)(c) (net amount under GST Act)—the *initial day* is the last day of the *tax period to which the estimate relates; and

16 Subsection 269-30(2) in Schedule 1 (at the end of the table)

Add:

5	an *assessed net amount for a *tax period	the last day of the 3 months after the due day,	(a) if the company, on or before the last day mentioned in column 2, lodges its *GST return, for the tax period for the relevant *net amount—the extent (if any) to which the amount stated in the GST return as being the net amount is less than the company's assessed net amount for the tax period; or (b) otherwise—to any extent.
6	the amount of an estimate under Division 268 of a liability referred to in paragraph 268-10(1)(c) (net amount under GST Act),	the last day of the 3 months after the day by which the company was obliged to give its *GST return, for the tax period for the relevant *net amount, to the Commissioner in accordance with Division 31 of the *GST Act,	to any extent.

EXPOSURE DRAFT

Schedule 3 GST estimates and director penalties

1 **17 Subsection 269-30(3) in Schedule 1**

2 Omit “item 1 or 2”, substitute “item 1, 2, 5 or 6”.

3 **18 Subsection 269-35(3A) in Schedule 1 (heading)**

4 Repeal the heading, substitute:

5 *Superannuation guarantee charge and assessed net amounts—*
6 *reasonably arguable position*

7 **19 Subsection 269-35(3A) in Schedule 1**

8 After “the *Superannuation Guarantee (Administration) Act 1992*”,
9 insert “or the *GST Act”.

10 **20 Application**

11 The amendments made by this Schedule apply in relation to net
12 amounts and assessed net amounts for tax periods that start on or after
13 the commencement of this Schedule.

EXPOSURE DRAFT

Retention of tax refunds **Schedule 4**

1
2

Schedule 4—Retention of tax refunds

3

Taxation Administration Act 1953

4

1 At the end of paragraph 8AAZLG(1)(b)

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Add:

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; or (iii) any provision of a *taxation law (other than a provision mentioned in subparagraph (i) or (ii)).

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2 Application

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The amendments made by this Schedule apply to amounts that the Commissioner would have to refund, on or after the commencement of this Schedule, to an entity under section 8AAZLF of the *Taxation Administration Act 1953* (if those amendments were disregarded).

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