

EXPOSURE DRAFT

2010-2011-2012

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT (20/12/2011)

Corporations Amendment (Phoenixing and Other Measures) Bill 2012

No. , 2012

(Treasury)

A Bill for an Act to amend the *Corporations Act 2001*, and for other purposes

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1 **A Bill for an Act to amend the *Corporations Act***
2 ***2001*, and for other purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Corporations Amendment*
6 *(Phoenixing and Other Measures) Act 2012*.

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
Provision(s)	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.	
2. Schedules 1 and 2	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

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.

7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.
12

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Amendments **Schedule 1**
Winding up by ASIC **Part 1**

1 **Schedule 1—Amendments**

2 **Part 1—Winding up by ASIC**

3 *Corporations Act 2001*

4 **2 After Part 5.4B**

5 Insert:

6 **Part 5.4C—Winding up by ASIC**

7

8 **489F ASIC may order the winding up of a company**

- 9 (1) ASIC may order the winding up of a company if:
- 10 (a) the response to a return of particulars given to the company is
11 at least 6 months late; and
- 12 (b) the company has not lodged any other documents under this
13 Act in the last 18 months; and
- 14 (c) ASIC has reason to believe that the company is not carrying
15 on business.
- 16 (2) ASIC may order the winding up of a company if the company's
17 review fee in respect of a review date has not been paid in full at
18 least 12 months after the due date for payment.
- 19 (3) ASIC may order the winding up of a company if ASIC has
20 reinstated the registration of the company under subsection
21 601AH(1).
- 22 (4) ASIC may order the winding up of a company if:
- 23 (a) the company is not carrying on business; and
- 24 (b) at least 28 days before making the order, ASIC gives:
- 25 (i) to the company; and
- 26 (ii) each director of the company;
27 a notice:
- 28 (iii) stating ASIC's intention to make the order; and
- 29 (iv) informing the company or the director, as the case may
30 be, that the company or the director may, within 14 days

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Schedule 1 Amendments

Part 1 Winding up by ASIC

- 1 after the receipt of the notice, give ASIC a written
2 objection to the making of the order; and
- 3 (c) neither the company, nor any of its directors, has given ASIC
4 such an objection within the time limit specified in the notice.
- 5 (5) Before making an order under subsection (4), ASIC must:
- 6 (a) give notice of its intention to make the order on ASIC
7 database; and
- 8 (b) both:
- 9 (i) publish notice of its intention to make the order; and
10 (ii) do so in the prescribed manner.
- 11 (6) Paragraph (b) of the definition of *director* in section 9 does not
12 apply to subsection (4) of this section.

13 **489G Deemed resolution that company be wound up voluntarily**

- 14 If ASIC orders under section 489F that a company be wound up:
- 15 (a) the company is taken to have passed a special resolution
16 under section 491 that the company be wound up voluntarily;
17 and
- 18 (b) the company is taken to have passed the special resolution:
- 19 (i) at the time when ASIC made the order under
20 section 489F; and
- 21 (ii) without a declaration having being made and lodged
22 under section 494; and
- 23 (c) section 496 has effect as if:
- 24 (i) a declaration had been made under section 494; and
25 (ii) the reference in subsection 496(1) to the period stated in
26 the declaration were a reference to the 12-month period
27 beginning when ASIC made the order under
28 section 489F; and
- 29 (d) section 497 is taken to have been complied with in relation to
30 the winding up.

31 **489H Appointment of liquidator**

- 32 (1) If ASIC orders under section 489F that a company be wound up,
33 ASIC may:
-

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Amendments **Schedule 1**
Winding up by ASIC **Part 1**

- 1 (a) appoint a liquidator for the purpose of winding up the affairs
2 and distributing the property of the company; and
3 (b) fix the remuneration to be paid to the liquidator.
- 4 (2) An appointment of a liquidator by ASIC must not be made without
5 the consent of the liquidator.
- 6 (3) A vacancy in the office of a liquidator appointed by ASIC is to be
7 filled by ASIC.

8 **3 At the end of section 601AA**

9 Add:

- 10 (6) ASIC may refuse to deregister a company under this section if
11 ASIC decides to order under section 489F that the company be
12 wound up.
- 13 (7) Subsection (6) does not limit ASIC's power to refuse to deregister
14 the company.

15 **4 At the end of section 601AB**

16 Add:

- 17 (6) ASIC may refuse to deregister a company under this section if
18 ASIC decides to order under section 489F that the company be
19 wound up.
- 20 (7) Subsection (6) does not limit ASIC's power to refuse to deregister
21 the company.
22

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Schedule 1 Amendments

Part 2 Publication requirements

1 **Part 2—Publication requirements**

2 ***Corporations Act 2001***

3 **5 Paragraph 412(1)(b)**

4 After “given by advertisement”, insert “or that is published in the
5 prescribed manner”.

6 **6 Subsection 412(4)**

7 After “given by advertisement”, insert “, or published in the prescribed
8 manner,”.

9 **7 Paragraph 436E(3)(b)**

10 Repeal the paragraph, substitute:

11 (b) causing a notice setting out the prescribed information about
12 the meeting to be published in the prescribed manner;

13 **8 Paragraph 439A(3)(b)**

14 Repeal the paragraph, substitute:

15 (b) causing a notice setting out the prescribed information about
16 the meeting to be published in the prescribed manner;

17 **9 Paragraph 446A(5)(b)**

18 Repeal the paragraph, substitute:

19 (b) cause the notice to be published, within the period
20 ascertained in accordance with the regulations, in the
21 prescribed manner.

22 **10 Paragraph 449C(5)(b)**

23 Repeal the paragraph, substitute:

24 (b) causing a notice setting out the prescribed information about
25 the meeting to be published in the prescribed manner;

26 **11 Paragraph 450A(1)(b)**

27 Repeal the paragraph, substitute:

28 (b) cause a notice setting out the prescribed information about
29 the appointment to be published, within the period

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Amendments **Schedule 1**
Publication requirements **Part 2**

1 ascertained in accordance with the regulations, in the
2 prescribed manner.

3 **12 Paragraph 465A(c)**

4 Repeal the paragraph, substitute:

5 (c) cause a notice setting out the prescribed information about
6 the application to be published in the prescribed manner.

7 **13 Paragraph 491(2)(b)**

8 Repeal the paragraph, substitute:

9 (b) within the period ascertained in accordance with the
10 regulations, cause a notice setting out the prescribed
11 information about the resolution to be published in the
12 prescribed manner.

13 **14 Paragraph 497(2)(d)**

14 Repeal the paragraph, substitute:

15 (d) both:

16 (i) publish in the prescribed manner a copy of the notice
17 given or to be given under paragraph (a); and
18 (ii) do so within the period ascertained in accordance with
19 the regulations.

20 **15 Subsection 498(3)**

21 Omit “to be published, in a daily newspaper circulating generally in the
22 State or Territory in which the resumed meeting is to be held,”,
23 substitute “to be published in the prescribed manner”.

24 **16 Subsection 509(2)**

25 Omit “an advertisement published in the *Gazette*”, substitute “a notice
26 published in the prescribed manner”.

27 **17 Subsection 568A(2)**

28 Repeal the subsection, substitute:

29 (2) If paragraph (1)(c) applies, the liquidator must cause a notice
30 setting out the prescribed information about the disclaimer to be
31 published in the prescribed manner.

32 **18 Paragraph 589(3)(a)**

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Schedule 1 Amendments

Part 2 Publication requirements

1 Omit “in the *Gazette*”.

2 **19 Subsection 601AA(4)**

3 Repeal the subsection, substitute:

4 *Deregistration procedure*

5 (4) If:

6 (a) ASIC decides to deregister the company under this section;
7 and

8 (b) ASIC is not aware of any failure to comply with
9 subsections (1) to (3);

10 ASIC must:

11 (c) give notice of the proposed deregistration on ASIC database;
12 and

13 (d) publish notice of the proposed deregistration in the
14 prescribed manner.

15 (4A) When 2 months have passed since the publication of the notice
16 under paragraph (4)(d), ASIC may deregister the company.

17 **20 Subsection 601AB(1) (heading)**

18 Repeal the heading, substitute:

19 *Circumstances in which ASIC may deregister*

20 **21 Subsection 601AB(3)**

21 Repeal the subsection, substitute:

22 *Deregistration procedure*

23 (3) If ASIC decides to deregister a company under this section, it
24 must:

25 (a) give notice of the proposed deregistration:

26 (i) to the company; and

27 (ii) to the company’s liquidator (if any); and

28 (iii) to the company’s directors; and

29 (iv) on ASIC database; and

30 (b) publish notice of the proposed deregistration in the
31 prescribed manner.

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Amendments **Schedule 1**
Publication requirements **Part 2**

1 (3A) When 2 months have passed since the publication of the notice
2 under paragraph (3)(b), ASIC may deregister the company.

3 **22 Subsection 601AB(4)**

4 Omit “subsection (3)”, substitute “paragraph (3)(a)”.

5 **23 Subsection 601AB(5)**

6 Omit “paragraph (3)(b) or (c)”, substitute “subparagraph (3)(a)(ii) or
7 (iii)”.

8 **24 Subparagraph 1351(4)(a)(i)**

9 Omit “subsection 601AA(4)”, substitute “paragraph 601AA(4)(c), and
10 published notice of the proposed deregistration of the company in
11 accordance with paragraph 601AA(4)(d)”.

12 **25 Subparagraph 1351(4)(a)(ii)**

13 Omit “relevant *Gazette* notice”, substitute “notice published in
14 accordance with paragraph 601AA(4)(d)”.

15 **26 After section 1367**

16 Insert:

17 **1367A Publication in the prescribed manner**

18 (1) If a particular provision of this Act requires a person (other than
19 ASIC) to:

20 (a) publish a notice, or a copy of a notice, in the prescribed
21 manner; or

22 (b) cause a notice, or a copy of a notice, to be published in the
23 prescribed manner;

24 the regulations may provide that:

25 (c) the person is taken to have complied with that requirement if,
26 and only if, the person lodges the notice or copy under
27 subsection (2); and

28 (d) if the person lodges the notice or copy under subsection (2),
29 ASIC must publish the notice or copy in the manner specified
30 in the regulations.

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Schedule 1 Amendments

Part 2 Publication requirements

- 1 (2) A person may lodge a notice, or a copy of a notice, under this
2 subsection if the notice or copy is covered by regulations made for
3 the purposes of subsection (1).
4

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2012

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Amendments **Schedule 1**
Miscellaneous amendments **Part 3**

1 **Part 3—Miscellaneous amendments**

2 ***Corporations Act 2001***

3 **27 Section 9**

4 Insert:

5 *paid parental leave employer* has the meaning given by subsection
6 600AA(2).

7 **28 Subsection 497(1)**

8 Omit “convened”, substitute “held”.

9 **29 Before section 600A**

10 Insert:

11 **600AA Duty of receiver, administrator or liquidator—parental leave**
12 **pay**

13 (1) A person who:

14 (a) is appointed (whether or not by a court), and acts, as a
15 receiver and manager in respect of property of a body
16 corporate; or

17 (b) is appointed as the administrator of a body corporate under
18 Division 2 of Part 5.3A; or

19 (c) is appointed as the liquidator or provisional liquidator of a
20 body corporate;

21 must, as soon as possible, notify the Secretary (within the meaning
22 of the *Paid Parental Leave Act 2010*) of the person’s appointment,
23 if the body corporate was a paid parental leave employer just
24 before the appointment.

25 (2) A person is a *paid parental leave employer* at a particular time if:

26 (a) the person must pay an instalment under section 72 of the
27 *Paid Parental Leave Act 2010*; and

28 (b) either:

29 (i) that time occurs during the instalment period (within the
30 meaning of that Act) to which the instalment relates; or

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Schedule 1 Amendments

Part 3 Miscellaneous amendments

- 1 (ii) that time occurs after the end of the instalment period to
2 which the instalment relates, but the person has not paid
3 the instalment by that time.

4 **30 Subsection 601AH(3)**

5 Repeal the subsection, substitute:

- 6 (3) If:
- 7 (a) ASIC reinstates the registration of a company under
 - 8 subsection (1); or
 - 9 (b) the Court makes an order under subsection (2);
- 10 the Court may:
- 11 (c) validate anything done during the period:
 - 12 (i) beginning when the company was deregistered; and
 - 13 (ii) ending when the company's registration was reinstated;
 - 14 and
 - 15 (d) make any other order it considers appropriate.

16 Note: For example, the Court may direct ASIC to transfer to another person
17 property vested in ASIC under subsection 601AD(2).
18

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Application of amendments **Schedule 2**

1
2

Schedule 2—Application of amendments

3

Corporations Act 2001

4

1 At the end of Chapter 10

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Add:

6

Part 10.19—Transitional provisions relating to the Corporations Amendment (Phoenixing and Other Measures) Act 2012

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10

1532 Definition

11

In this Part:

12

amending Act means the *Corporations Amendment (Phoenixing
and Other Measures) Act 2012*.

13

14

1533 Part 1 of Schedule 1 to the amending Act (winding up by ASIC)

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16

(1) Paragraph 489F(1)(a) of the *Corporations Act 2001* as amended by
the amending Act applies in relation to a return of particulars given
to a company before, at or after the commencement of Schedule 1
to the amending Act.

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(2) Subsection 489F(2) of the *Corporations Act 2001* as amended by
the amending Act applies in relation to a review fee, if the due date
for payment occurs before, on or after the day on which Schedule 1
to the amending Act commences.

21

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24

(3) Subsection 489F(3) of the *Corporations Act 2001* as amended by
the amending Act applies in relation to a reinstatement that occurs
before, at or after the commencement of Schedule 1 to the
amending Act.

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13

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Schedule 2 Application of amendments

1 **1534 Part 2 of Schedule 1 to the amending Act (publication**
2 **requirements)**

3 (1) The amendment of subsection 412(1) of the *Corporations Act 2001*
4 made by Part 3 of Schedule 1 to the amending Act applies in
5 relation to a notice published after the commencement of
6 Schedule 1 to the amending Act.

7 (2) The amendment of subsection 436E(3) of the *Corporations Act*
8 *2001* made by Part 3 of Schedule 1 to the amending Act applies in
9 relation to a meeting convened after the commencement of
10 Schedule 1 to the amending Act.

11 (3) The amendment of subsection 439A(3) of the *Corporations Act*
12 *2001* made by Part 3 of Schedule 1 to the amending Act applies in
13 relation to a meeting convened after the commencement of
14 Schedule 1 to the amending Act.

15 (4) The amendment of subsection 446A(5) of the *Corporations Act*
16 *2001* made by Part 3 of Schedule 1 to the amending Act applies in
17 relation to a resolution that is taken, because of section 446A of the
18 *Corporations Act 2001*, to have been passed by a company after
19 the commencement of Schedule 1 to the amending Act.

20 (5) The amendment of subsection 449C(5) of the *Corporations Act*
21 *2001* made by Part 3 of Schedule 1 to the amending Act applies in
22 relation to a meeting convened after the commencement of
23 Schedule 1 to the amending Act.

24 (6) The amendment of subsection 450A(1) of the *Corporations Act*
25 *2001* made by the amending Act applies in relation to an
26 appointment of an administrator that occurs after the
27 commencement of Schedule 1 to the amending Act.

28 (7) The amendment of section 465A of the *Corporations Act 2001*
29 made by Part 3 of Schedule 1 to the amending Act applies in
30 relation to an application made under section 459P, 462 or 464 of
31 that Act after the commencement of Schedule 1 to the amending
32 Act.

33 (8) The amendment of subsection 491(2) of the *Corporations Act 2001*
34 made by Part 3 of Schedule 1 to the amending Act applies in
35 relation to a resolution passed after the commencement of
36 Schedule 1 to the amending Act.

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Application of amendments **Schedule 2**

- 1 (9) The amendment of subsection 497(2) of the *Corporations Act 2001*
2 made by Part 3 of Schedule 1 to the amending Act applies in
3 relation to a meeting convened after the commencement of
4 Schedule 1 to the amending Act.
- 5 (10) The amendment of subsection 498(3) of the *Corporations Act 2001*
6 made by Part 3 of Schedule 1 to the amending Act applies in
7 relation to an adjournment that occurs after the commencement of
8 Schedule 1 to the amending Act.
- 9 (11) The amendment of subsection 509(2) of the *Corporations Act 2001*
10 made by Part 3 of Schedule 1 to the amending Act applies in
11 relation to a meeting convened after the commencement of
12 Schedule 1 to the amending Act.
- 13 (12) The amendment of subsection 568A(2) of the *Corporations Act*
14 *2001* made by Part 3 of Schedule 1 to the amending Act applies in
15 relation to a disclaimer of property, if the disclaimer occurs after
16 the commencement of Schedule 1 to the amending Act.
- 17 (13) Despite the amendments of sections 589, 601AA, 601AB and 1351
18 of the *Corporations Act 2001* made by Part 3 of Schedule 1 to the
19 amending Act, if, before the commencement of Schedule 1 to the
20 amending Act, ASIC gave notice of the proposed deregistration of
21 a company in accordance with subsection 601AA(4) or 601AB(3)
22 of the *Corporations Act 2001*, that Act continues to apply, in
23 relation to the deregistration of the company, as if those
24 amendments had not been made.

25 **1535 Part 3 of Schedule 1 to the amending Act (miscellaneous**
26 **amendments)**

- 27 (1) The amendment of subsection 497(1) of the *Corporations Act 2001*
28 made by Part 4 of Schedule 1 to the amending Act applies in
29 relation to the winding up of a company, if the resolution for
30 voluntary winding up is passed after the commencement of
31 Schedule 1 to the amending Act.
- 32 (2) Section 600AA of the *Corporations Act 2001* as amended by the
33 amending Act applies in relation to an appointment, if the
34 appointment occurs after the commencement of Schedule 1 to the
35 amending Act.