



**Association of Independent Insolvency Practitioners**

*By the practitioner, For the practitioner*

27 September 2018

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Consumer and Corporations Division  
The Treasury  
Level 5, 100 Market Street  
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***Via email: [phoenixing@treasury.gov.au](mailto:phoenixing@treasury.gov.au)***

Dear Mr Nero

**Re: Treasury Laws Amendments (Combatting Illegal Phoenixing) Bill 2018**

We are pleased to make this submission on the Treasury Laws Amendments (Combatting Illegal Phoenixing) Bill 2018.

The Association of Independent Insolvency Practitioners (AIP) is a non-profit organisations established by insolvency practitioners to assist fellow practitioners meet the challenges prevailing in the profession. AIP was formed in 2016 and it now has over 100 members. It is only professional insolvency practitioner association which requires its members to be either registered liquidators or registered trustees in bankruptcy. Its members primarily practise in the small to medium enterprise market.

**Submissions**

We note that whilst we have not adopted the numbering of the Exposure Draft and will base our responses on the proposed new and/or amended sections of the relevant legislations.

**11- After Section 588FDA**

We note that the proposed legislation bring in the idea of a creditor defeating disposition. This creates a new class of voidable transaction which may be recovered by an external administrator. They key element of this new section would

We believe that an increase of the powers available to ASIC to grant an order requiring the repayment of funds is a welcome introduction. We have concerns of ASIC's ability to undertake this task in a cost effective manner. We note the AFSA has similar powers available to it under the Bankruptcy Act 1966 and charges a relatively modest fee for reviewing these types of request.

We also hold concern in relation to the amendment at (6) which would allow ASIC to revoke an order at any time. There may be significant consequences for a liquidator whom has made a recovery under the ASIC order which is then revoked. There are no details about what is to happen in this circumstance.

The ability to recover an ASIC ordered amount as a debt due to the company greatly increases the ability for an external administrator to recover the amount, this is a welcome amendment.

We note that the proposed amendments give the recipient of the ASIC order 60 days to apply to the Court to set aside the ASIC order. It is our opinion that this length of time would appear to be too generous and should be limited to the same as dealing with statutory demand for payment of 21 Days.

## **26 After Section 588G**

588 GAA - The addition of further duties of company officers to prevent certain transaction is welcome, however there to date has been a lack of prosecution against directors for offence under the corporations act to date, adding an additional offence may not have the impact that the is really needed, that might be better seen through increasing ASIC funding to bring more prosecution of directors under the current legislative offences.

Further there is a need to educate director about their obligations they have upon becoming a director. (this is a good point, but not sure where to make it)

588GAB – The introduction of an offence for seeking out advice on how to procure a creditor defeating disposition if a step in the right direction, however we do not believe that ASIC is currently sufficiently funded to make any meaningful diffidence with this new offence. Further this may still be undertaken under the guise of a safe harbour plan.

**Schedule 2 – Improving the Accountability of resigning directors****2 After Section 203A**

We believe that this is a significant improvement over the current system as the date of a director resignation is easily backdated to a date that the directors believe is more suitable. It is also appropriate that should a director believe they have resigned but not lodged with ASCI that an appropriate Court can alter the date of registration, however there will need to be some guidance so that these applications are not simply rubberstamped

**Insolvency Practice Rules (Corporations) Amendment (Restricting Related Creditor Voting Rights)**

We generally believe that these changes are a welcome amendment to the Insolvency Practice rules and mirror changes that were introduced into the Bankruptcy act a number of years ago.

**C. Contact**

Should you seek further clarification for the above, please contact Stephen Hathway on email at [Stephen.hathway@helmadvisory.com.au](mailto:Stephen.hathway@helmadvisory.com.au) or phone (02) 9194 4000.

Yours faithfully



Stephen Hathway

**President**

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