

# LIMITED CIRCULATION

2016-2017

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

## EXPOSURE DRAFT

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# Insolvency Laws Amendment Bill 2017

No. , 2017

*(Treasury)*

**A Bill for an Act to amend the law in relation to  
personal and corporate insolvency, and for related  
purposes**

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# LIMITED CIRCULATION

1  
2 **A Bill for an Act to amend the law in relation to**  
3 **personal and corporate insolvency, and for related**  
4 **purposes**

5 The Parliament of Australia enacts:

6 **1 Short title**

7 This Act is the *Insolvency Laws Amendment Act 2017*.

8 **2 Commencement**

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

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**Commencement information**

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

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

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

20 **3 Schedules**

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22 repealed as set out in the applicable items in the Schedule  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

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## Schedule 1 Amendments

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### Schedule 1—Amendments

#### *Bankruptcy Act 1966*

##### **1 Paragraphs 60-20(4)(a) to (c) of Schedule 2**

Repeal the paragraphs, substitute:

- (a) the trustee employs or engages a person to provide services in connection with the administration of the estate; and
- (b) a related entity of the trustee directly or indirectly derives a profit or advantage as a result of that employment or engagement; and
- (c) one of the following is satisfied:
  - (i) the trustee does not know, and could not reasonably be expected to know, that the related entity would derive that profit or advantage;
  - (ii) the creditors, by resolution, agree to the related entity deriving the profit or advantage;
  - (iii) it is not reasonably practicable in all the circumstances to obtain the agreement, by resolution, of the creditors to the related entity deriving the profit or advantage and the cost of employing or engaging the person to provide the services is reasonable in all the circumstances.

##### **2 After subsection 60-20(4) of Schedule 2**

Insert:

- (4A) Despite paragraph (2)(c), subsection (1) does not apply to the extent that a related entity of the trustee directly or indirectly derives a profit or advantage:
  - (a) from remuneration paid to the trustee in accordance with section 60-5 of this Schedule; or
  - (b) from a profit or advantage covered by subsection (4).

#### *Corporations Act 2001*

##### **3 Paragraph 411(9)(a)**

Omit “section 425,”, substitute “sections 422A, 422B and 425,”.

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1 **4 Subparagraph 1274(2)(a)(iab)**

2 Repeal the subparagraph.

3 **5 Section 40-110 of Schedule 2**

4 Omit “this section”, substitute “this Subdivision”.

5 **6 Paragraphs 60-20(4)(a) to (c) of Schedule 2**

6 Repeal the paragraphs, substitute:

- 7 (a) the external administrator employs or engages a person to  
8 provide services in connection with the external  
9 administration of the company; and
- 10 (b) a related entity of the external administrator directly or  
11 indirectly derives a profit or advantage as a result of that  
12 employment or engagement; and
- 13 (c) one of the following is satisfied:
- 14 (i) the external administrator does not know, and could not  
15 reasonably be expected to know, that the related entity  
16 would derive that profit or advantage;
- 17 (ii) the creditors, by resolution, agree to the related entity  
18 deriving the profit or advantage;
- 19 (iii) it is not reasonably practicable in all the circumstances  
20 to obtain the agreement, by resolution, of the creditors  
21 to the related entity deriving the profit or advantage and  
22 the cost of employing or engaging the person to provide  
23 the services is reasonable in all the circumstances.

24 **7 After subsection 60-20(4) of Schedule 2**

25 Insert:

- 26 (4A) Despite paragraph (2)(c), subsection (1) does not apply to the  
27 extent that a related entity of the external administrator directly or  
28 indirectly derives a profit or advantage:
- 29 (a) from remuneration paid to the external administrator in  
30 accordance with section 60-5 of this Schedule; or
- 31 (b) from a profit or advantage covered by subsection (4).

32 **8 Subsection 70-6(4) of Schedule 2**

33 Omit “subsection (6)”, substitute “subsection (5)”.

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