EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer

Corporations Act 2001

Insolvency Practice Rules (Corporations) Amendment (Restricting Related Creditor Voting Rights) Rules 2018

Schedule 2 to the *Corporations Act 2001* (the Act) regulates the external administration of companies to give greater control to creditors. Section 105–1 in Schedule 2 to the Act provides that the Minister may make rules providing for matters required or permitted by the Schedule to be provided, or necessary or convenient to be provided for carrying out or giving effect to the Schedule. These rules are contained in the *Insolvency Practice Rules (Corporations) 2016* (the Rules).

The purpose of these amendments is to prevent related creditors facilitating illegal phoenix activity by unduly influencing an external administration. This will reduce the incidence of illegal phoenix activity and its effect on creditors, and help ensure external administrations are conducted independently and in the best interests of creditors generally.

The amendments commenced on the day after they were registered and apply in relation to creditors' meetings convened on or after commencement.

Context for the amendments: external administration and creditors' meetings

A company is under external administration if the company is under administration, is the subject of a deed of company arrangement or has had a liquidator or provisional liquidator appointed.

The external administrator of a company may convene creditor or company meetings at any time (section 75–10 in Schedule 2 to the Act) and must convene them in particular circumstances (sections 75–15 and 75–20), for example when directed to do so by certain creditors or by the Australian Securities and Investments Commission (ASIC). Under Chapter 5 of the Act, there are other instances in which an external administrator must hold a meeting.

The external administrator of a company must have regard to directions given to the administrator by a creditors' meeting but is not obliged to comply with those directions (section 85–5 in Schedule 2 to the Act).

Creditors may replace the external administrator of the company (section 90–35 in Schedule 2 to the Act). Creditors may use this mechanism if they are concerned about an external administrator's independence.

Requirements for convening and holding meetings (including notice, agenda, quorum, voting on proposals and costs) are set out in the Rules. Voting entitlements are outlined in sections 75–85 to 75–100 of the Rules. A creditor who has a debt admitted

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by the administrator or who has provided particulars of their claim to the meeting is generally entitled to vote.

The Rules do not prescribe the level of proof required before the person presiding at the meeting may admit a claim for voting purposes. As a result, claims are not scrutinised to the same extent as when the external administrator pays a dividend.

Resolutions can pass at a creditors' meeting on the voices (section 75–110 of the Rules) or by a poll (section 75–115). To pass by poll, a resolution to remove an external administrator generally requires a majority vote of the creditors voting and a majority in value of creditors voting.

Related creditors

A related creditor is a related entity and also a creditor of the company under administration (subsection 75–41(4) in Schedule 2 to the Act). A related entity includes company directors and members and their relatives.

The current law recognises related creditors may have an incentive to control the external administration in a way that is personally beneficial but detrimental to unsecured creditors as a whole. Another creditor may apply to the Court to overturn a decision of a creditors' meeting if related creditor votes were determinative (section 75–41 in Schedule 2 and section 415A of the Act). The Court must consider whether the decision was contrary to the interests of creditors generally or a class of creditors, or has unreasonably prejudiced the interests of other creditors before setting the decision aside.

This court process may not prevent related creditors who are colluding with illegal phoenix operators from influencing the external administration process and frustrating the interests of other legitimate creditors (including other related creditors) who are not colluding. It may also be costly for unrelated creditors to pursue court action in relation to an improper vote. This is a particular concern to the Government in the context of illegal phoenix activity as a related creditor may use their influence to keep in place an external administrator who is complicit in the illegal phoenix activity, replace an independent administrator with a complicit administrator or otherwise frustrate the proper conduct of the administration.

Stacking of related creditor votes

A company and its related creditors may enter into arrangements designed to increase the value of related creditors' voting rights. An example of such an arrangement is where a related creditor accepts an assignment of a debt for less than its face value. This is a strategy sometimes used by phoenix operators. In the context of illegal phoenix activity, having obtained an ability to vote for the value of the entire debt, these creditors can collude with an external administrator and the directors of a company. Alternatively, these creditors may seek to remove an independent external administrator or otherwise frustrate the administration when voting on certain resolutions to achieve an outcome that facilitates the illegal activity and disadvantages legitimate creditors.

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The amendments

Item 3 in Schedule 1 limits related creditors' voting rights to the value of the consideration they paid for an assigned debt. To support this amendment, items 1 and 2 require external administrators to ask creditors (whether the creditors are related creditors or not) to provide evidence in writing in relation to any assigned debt and the consideration provided for the assignment.

The amendments commenced on the day after registration. Item 4 provides that the amendments apply in relation to creditors' meetings convened on or after commencement.

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Regulation Impact Statement

1. The problem

Illegal phoenixing – the stripping and transfer of assets from one company to another by individuals or entities to avoid paying liabilities – has been a problem for successive governments over many decades.

Those affected by illegal phoenix activity include employees of the original failed company, other businesses and contractors who are owed money because they have supplied goods and services and statutory bodies like the Australian Taxation Office (ATO). Non-payment of employee entitlements and company tax hurts not only the affected employees, but all Australian taxpayers via resulting Fair Entitlement Guarantee payouts and increased taxes for the general population. It also gives phoenix companies an unfair advantage over their competitors who are not deliberately avoiding their liabilities, particularly if phoenixing becomes a business model and the avoidance of liabilities is priced into the cost of the goods or services offered by the phoenix operator.

One of the techniques employed by phoenix operators is to appoint an insolvency practitioner to undertake a formal insolvency process who will either facilitate or turn a blind eye to illegal phoenix activity. To prevent their chosen insolvency practitioner from being voted out, or to replace an existing practitioner with one of their choosing, the phoenix operator may attempt to 'stack' votes on resolutions in creditors' meetings.

Illegal phoenixing

Phoenixing occurs when the controllers of a company deliberately avoid paying liabilities by shutting down an indebted company and transferring its assets to another company. It may be contrasted to legitimate business rescue, which occurs when the previous controllers create a new company when their earlier company fails in order to rescue the business, but there is no intention to exploit the corporate form to the detriment of creditors.

Historically, quantifying the impact of phoenixing has been problematic. The 'Phoenix Project' led by Professor Helen Anderson as a joint research project of the University of Melbourne and the Monash Business School has noted that "[i]llegal phoenix activity is not subject to precise modelling…"[1] and that "…at present, the inconsistencies and gaps in datasets relating to the incidence, cost, and enforcement of laws tackling illegal phoenix activity render its accurate quantification impossible."[2]

While it is difficult to quantify its impact, according to a July 2018 report by PwC prepared for members of the Government's Phoenix Taskforce, for 2015-16, the

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1 "Defining and Profiling Phoenix Activity", Helen Anderson, Ann O'Connell, Ian Ramsay, Michelle Welsh and Hannah Withers, (Research Report, Centre for Corporate Law and Securities Regulation, The University of Melbourne, December 2014, p. 2).

2 Helen Anderson, Ann O'Connell, Ian Ramsay, Michelle Welsh and Hannah Withers, *Quantifying Phoenix Activity: Incidence, Cost, Enforcement* (Melbourne Law School and Monash Business School, October 2015), p. 84.

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direct cost of illegal phoenix activity was estimated to be in the range of $2.85 to $5.13 billion.[3]

Appointing collusive external administrators

Having an independent and professional external administrator is fundamental to the proper administration of a company's affairs during a formal insolvency process and supports both the prevention and detection of illegal phoenix activity.

When a company is placed under external administration, an external administrator is appointed to supervise and undertake the process. In a voluntary administration, it is usually the company's directors who appoint the external administrator.

Phoenix operators may seek to appoint an external administrator who will collude with them to shift assets out of the company or who will not conduct a proper and thorough investigation into the company's affairs as they are legally required to do. This makes it easier to 'phoenix' the company by shifting assets to another company. There is insufficient data to support a reliable estimate of how widespread this practice is.

'Stacking' votes in creditors' meetings

It is important that the company's creditors have the ability to remove and replace an external administrator if they are concerned that the administrator will not act in their interests.

Where creditors are concerned about the external administrator's independence, they may pass a resolution to remove and replace the external administrator. Votes are linked to both the number of creditors and the quantum of the debt owed to them, with the majority of votes by both number and value required to pass a resolution.

However, the current regime allows phoenix operators to 'stack' votes in a creditors' meeting so that they are able to exert their influence through the voting power of related creditors. Related creditors are creditors of the company who are related entities. 'Related entity' is defined in the Act and includes related companies (e.g. subsidiaries or holding companies), directors and shareholders of a company (or related company) as well as the relatives of such directors and shareholders.

A phoenix operator may arrange for related entities to become creditors just before a company is placed under external administration to try to keep a colluding external administrator in place, to replace an existing administrator with one of their choice or to otherwise frustrate the proper conduct of the external administration by an independent administrator. Often a substantial debt will be assigned to a related entity which might pay only a nominal amount for the assignment rather than the full value of the debts and who will then attempt to vote the full value of the debt.

Current settings

Currently, where the outcome of a vote is determined by the votes of related creditors, the other creditors may apply to the court for an order that the related creditors are not entitled to vote on the proposal. Before granting such an order, the court must be satisfied that the outcome is contrary to the interests of the creditors as a group or is

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[3] "The Economic Impacts of Potential Illegal Phoenix Activity" PwC and Fair Work Ombudsman, p. 9, July 2018

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prejudicial to the interests of unrelated creditors (i.e. creditors who are not related creditors) to an extent that is 'unreasonable'.

The power to apply to the court does not prevent related creditors influencing the conduct of the external administration and frustrating the interests of creditors not related to the director or the company. This is because satisfying the court that a proposal is sufficiently prejudicial to the interests of unrelated creditors can be a high bar. Unrelated creditors may be reluctant to pursue court action due to the expense and complexity of such proceedings and a desire on their part not to 'throw good money after bad'.

2. The objective of reform

On 12 September 2017, the Government announced its commitment to implementing a comprehensive package of reforms to address illegal phoenixing. The objective of the reforms is to deter and disrupt illegal phoenix activity and remove the unfair competitive advantage that flows from it, while minimising any unintended impacts on legitimate businesses and honest restructuring.

One of the legislative reforms considered by Government and consulted on as part of a proposal paper released in September 2017[4], was to restrict the rights of related creditors to vote at creditors' meetings on resolutions to remove and replace an external administrator.

The proper administration of formal insolvency processes and the prevention of illegal phoenix activity are both reliant on the appointment of a properly independent and professional insolvency practitioner to supervise and undertake the external administration process.

Phoenix operators sometimes appoint collusive insolvency practitioners that will either facilitate or turn a blind eye to illegal phoenix activity. 'Stacking' the votes in creditors' meetings is a way for phoenix operators to keep a chosen insolvency practitioner in place or to replace an existing practitioner with one of their choosing, or otherwise frustrate the proper conduct of the administration by an external administrator.

The objective of this reform is to minimise the risk that related creditors complicit in illegal phoenix activity, with or without the assistance of the external administrator, can frustrate the interests of unrelated creditors or unduly influence the conduct of the external administration.

3. Policy options

As the current voting mechanisms can be misused to facilitate illegal phoenixing, it is not desirable to maintain the status quo. Accordingly, three policy options have been identified.

Option 1 – Restriction of Voting Rights

Amend the Act to restrict the voting rights of certain related creditors in external administration meetings when voting to appoint a external administrator.

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[4] *Reforms to address illegal phoenix activity*, 28 September 2017

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The Act would be amended to either prevent certain related creditors from voting on proposals to appoint or replace an external administrator or to disregard their votes in determining whether the proposals are passed.

This option has the risk of excluding legitimate related creditors. Legitimate related creditors are related creditors that are interested in either the recovery of the money owed to them or the preservation of commercial value in a company, rather than the facilitation of illegal phoenix activity. Since the interests of legitimate related creditors will usually align with the interests of unrelated creditors, the absence of a vote would not necessarily present a financial disadvantage.

This risk could be mitigated by providing for statutory criteria by which related creditors would be exempted from the restriction on voting rights. For example, one of the criteria could be the length of time that a related entity has been a creditor of the company.

Option 2 – Restricting value of assigned debts

Amend the Act so that, for assigned debts to related creditors, voting is only allowed up to the value of the amount paid for the debt on all resolutions in external administration.

This would prevent debts of substantial value being assigned for a token amount so that related creditors control the majority (by value) of the debt of the company. Related creditors controlling the majority of debt in a company can lead to the 'stacking' of votes in favour of collusive external administrators or against an administrator acting in accordance with their duties.

Creditors who have been assigned debts would be required to provide proof of the value paid for the debt, for the purposes of determining their voting rights.

Allowing voting only for the amount paid for a debt would align the corporate insolvency regime more closely with the personal insolvency regime (*Bankruptcy Act 1966*). While not deterring illegal phoenixing in itself, removing unnecessary divergence between the two regimes helps reduce legal complexity and facilitates insolvency practitioners moving more easily between practicing in personal and corporate insolvency. Greater alignment between the two regimes was one of the aims of the *Insolvency Law Reform Act 2016.*

The application to all resolutions reflects that the issue of related creditors unduly influencing the outcome of resolutions by stacking votes occurs not only in relation to the appointment or replacement of an external administrator, but can also have the effect of hindering the efforts of independent external administrators acting in accordance with their duties and in the best interests of creditors. For example, a related creditor may frustrate an external administration by blocking resolutions to approve funding for certain investigations or by approving a deed of company arrangement that unfairly prejudices the interests of unrelated creditors. This extension would strengthen the effectiveness of the measure in combatting illegal phoenix activity.

A requirement could be included for external administrators to require any creditor who has been assigned a debt (not just a related creditor) to provide evidence of the consideration paid for the debt for voting purposes. This anti-avoidance provision would ensure that the voting restriction could not be easily avoided by parties simply

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assigning a debt to an unrelated but complicit party or claiming they paid more than they actually did.

Option 3 – ASIC Consent

Amend the Act so that ASIC must provide consent where related creditors outvote unrelated creditors on a resolution to remove and replace an external administrator.

The requirement could be triggered on the application of a creditor, the external administrator or ASIC.

For example, an unrelated creditor concerned about the outcome of a vote on a external administrator's appointment would apply to ASIC for its consideration. If ASIC determines that related creditors have outvoted unrelated creditors, ASIC would decide whether or not to provide its consent to the outcome of the vote. If ASIC decides not to provide its consent, it may require that a new vote be conducted with certain related creditors being excluded from voting (as under Option 1).

Similarly to Option 1, this option has the risk of excluding legitimate related creditors from voting, though usually the interests of legitimate related creditors will be aligned with unrelated creditors, so the absence of a vote may be no financial disadvantage.

This risk could be mitigated by requiring ASIC to take a number of matters into account in deciding whether or not to provide consent. For example, one of the matters that ASIC could take into account is the length of time that a related entity has been a creditor of the company.

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4. Impact analysis

Failure to address the problem would allow unscrupulous directors to continue to stack votes at creditor's meetings for their own advantage which would deprive the Commonwealth, and other creditors (including employees), of substantial entitlements.

Illegal activity undermines market trust and confidence in regulators at a time when the market is acutely aware of the modus operandi underpinning the illegal activity and media continues to highlight it.

Option	Cost	Benefit
Option 1 – Restricting voting rights	• Risk that legitimate related creditors' voting rights are curtailed. • Particular related creditors may incur minor costs in providing additional information to the external administrator, if they are requested to do so by the external administrator. – The external administrator may request this additional information where it is needed to determine if a creditor is a related creditor. • Insolvency practitioners will have a small one-off education cost to become acquainted with the changes.	• Prevents stacking of meetings to facilitate phoenixing. This reduces the risk of collusive external administrators being appointed. • The regulator will have greater confidence that independent external administrators are appointed. This reduces the need for the regulator to monitor the administration, leading to a reduction in the regulator's monitoring costs. • A lower likelihood of collusive external administrators being appointed may improve the governance of insolvency administrations, with consequential improvements of administration efficiency.

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Option	Cost	Benefit
Option 2 – Restricting voting to value of assigned debts for related creditor assignees	• Insolvency practitioners will have a small one-off education cost to become acquainted with the changes. • Particular related creditors that are assignees may incur minor costs in providing additional information to the external administrator, if they are requested to do so by the external administrator. – The external administrator may request this additional information where it is needed to determine if a creditor is a related creditor.	• Impedes stacking of meetings to facilitate phoenixing. • The regulator will have greater confidence that independent external administrators are appointed. This reduces the need for the regulator to monitor the administration, leading to a reduction in the regulator's monitoring costs. • A lower likelihood of collusive external administrators being appointed may improve the governance of insolvency administrations, with consequential improvements of administration efficiency. • Reduces the ability of collusive related creditors to obstruct external administrators acting in accordance with their duties to properly carry out the administration, including investigating any misconduct. • Aligns the corporate insolvency and personal bankruptcy regimes more closely. While not deterring illegal phoenixing in itself, removing unnecessary divergence between the two regimes helps reduce legal complexity and facilitates insolvency practitioners moving more easily between practicing in personal and corporate insolvency. • No material increase in compliance burden for affected assignee creditors required to produce evidence of their assignment, due to existing obligations to provide evidence of their debt, including for voting purposes.

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Option	Cost	Benefit
Option 3 – ASIC Consent	• Risk that legitimate related creditors' voting rights are curtailed. • Minor costs may be borne by the regulator in providing consent. • Particular related creditors may incur minor costs in providing additional information to the regulator, if they are requested to do so by the regulator. – The regulator may request this additional information where it will assist in the determination of whether to grant consent to the outcome of a vote. • Insolvency practitioners will have a small one-off education cost to become acquainted with the changes.	• Impedes stacking of meetings to facilitate phoenixing. • Increase chance of identifying misconduct that might not otherwise be detectable to creditors or other stakeholders. – The regulator may have access to information about relationships between phoenix operators and external administrators that creditors and other stakeholders would not have access to. • Reduces the need for the regulator to monitor the administration, leading to a reduction in monitoring costs that may improve governance of insolvency administrations, with consequential improvements of administration efficiency.

Regulatory burden estimate table

In calculating the annual average regulatory costs below, it is assumed that 6000 external administrations per year will be affected under Options 1 and 3 and that there are three related creditors per external administration (with 50 per cent of related creditors being individuals and the remainder being businesses). The ongoing cost under Options 1, 2 and 3 is from the regulator (under Option 3) or the external administrator (under Options 1 and 2) requesting additional information from creditors. It is assumed that the regulator or external administrator would only make this request of 25 per cent of related creditors (under Options 1 and 3) and 25 per cent of related creditor assignees (under Option 2).

The application of the voting restriction under Option 2 to all resolutions (not just resolutions to vote on the removal and replacement of administrators) does not impact the compliance burden of this option, as in practice, the external administrator would request evidence from all assignees and make the assessment as to the value for which related creditor assignees can vote only once at the beginning of an external administration process. It would not need to do so before each resolution.

Under each option, it is assumed that registered external administrators (of which there are an estimated 667) will incur a one-off education cost in the first year to become acquainted with the changes. Due to the minor nature of the changes, it is assumed that a one hour training course or self-guided research time would be sufficient.

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Option 2 is not expected to involve any material increase in compliance burden for the assignee creditors affected by the evidence requirement as an external administrator already has an obligation to make a determination about a creditor's entitlement to vote at creditors' meetings and information is already collected from creditors in order to discharge that statutory obligation.

Average annual regulatory costs (from business as usual)				
Change in costs	**Business**	**Community organisations**	**Individuals**	**Total change in cost**
Option 1	$81,977.04	Nil	$77,388.75	$159,365.79
Option 2	$30,384.54	Nil	$25,796.25	$56,180.79.29
Option 3	$81,977.04	Nil	$77,388.75	$159,365.79

5. Consultation plan

Public consultation

On 28 September 2017, the Government released for public consultation a paper entitled 'Combatting Illegal Phoenixing'.

The consultation paper sought views on proposed reforms to corporations and tax laws to deter and disrupt the core behaviours of phoenix operators, while minimising any unintended impacts on legitimate businesses and honest restructuring.

One of the measures outlined in the paper is restricting voting rights for related creditors. The paper asks 13 questions in relation to the reform, including about the effectiveness of the measure in deterring and disrupting illegal phoenix activity and the benefits and risks of the approach, as well as a number of more technical questions.

The public was invited to comment on the consultation paper by lodging submissions online on the Treasury website. Submissions closed on 27 October 2017.

Of the 49 submissions received, 36 provided feedback in relation to this proposal. Almost all of these respondents were groups rather than individuals, including groups representing insolvency practitioners, accountants, corporate lawyers and company directors.

Respondents were asked to rate the proposal from one to ten as to how effective it would be in operating to deter and disrupt illegal phoenix activity (where 1 is ineffective and 10 is highly effective). This measure received a high average rating of eight out of ten in terms of its effectiveness.

The consultation paper asked whether the restrictions under Option 1 should be extended to all resolutions proposed in an external administration. A large number of those who commented supported limiting the application of the restriction under Option 1 to resolutions relating to external administrator appointments (i.e. should not extend more broadly to other voting).

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A number of stakeholders raised concerns about the potential exclusion of legitimate or innocent related creditors. A small number also raised difficulties practitioners may face under Options 1 and 3 in making an assessment of who is a related creditor.

A small number of submissions also raised the issue of the assignment of debts and how this could be used to circumvent Option 1.

Public exposure of draft legislation and explanatory materials

Legislation is required to implement this proposal.

Treasury worked closely with the Office of Parliamentary Counsel to prepare an exposure draft of the legislation and explanatory materials which implemented Option 2 as outlined above.

Consultation on the draft legislation was conducted between 16 August 2018 and 27 September 2018. Thirty-eight submissions were received.

This measure received strong support from the stakeholders that commented on it, with only two of the 15 stakeholders expressing concerns.

A number of stakeholders supported *extending* the measure in various ways which has led to the revision of the measure as set out under Option 2 above.

Consultation meetings were also held in Sydney on 3 September 2018 and Melbourne on 5 September 2018.

6. Recommendation

As outlined in section 2, the objective of this reform is to minimise the risk that related creditors, with or without the assistance of the external administrator, can frustrate unrelated creditors where a resolution is proposed to remove and replace an external administrator or otherwise frustrate the conduct of the external administration.

Option 2 is the recommended option to achieve this objective. Under this option, the Government would amend the Act so that, for assigned debts, creditors may only vote up to the value of the amount paid for the debt.

While each option would achieve the objective, Option 2 has a number of advantages over the other options:

There is less risk than under Options 1 and 3 that legitimate related creditors' voting rights will be curtailed.

It has the lowest estimated regulatory burden cost of the three options, consisting of a small once-off education cost for insolvency practitioners to become acquainted with the change, and an ongoing cost for related creditors which are assignees, which is smaller group than all related creditors under the other options.

It aligns the corporate insolvency and personal bankruptcy regimes more closely.

Option 1 (restricting voting rights) is not recommended:

The consultation process revealed mixed views on the efficacy of Option 1. A number of stakeholders raised concerns about the potential exclusion of legitimate or innocent related creditors.

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The estimated regulatory cost of this option is significantly higher than the estimated cost of Option 2 and consists of an ongoing cost to related creditors and a once-off education cost for insolvency practitioners to become acquainted with the change.

Option 3 (ASIC consent) is also not recommended:

It has a similar level of risk as Option 1 that legitimate related creditors' voting rights would be curtailed (if ASIC decides to deny its consent).

It is estimated to have a regulatory burden of the same magnitude as Option 1, consisting of an ongoing cost to related creditors and a once-off education cost for insolvency practitioners to become acquainted with the change.

7. Implementation and evaluation of chosen option

For the reasons explained in section 1, it is unlikely to be possible to make a quantitative assessment of the impact of the reform. However, the Treasury gathers anecdotal evidence of illegal phoenixing activity from its engagement with the Phoenix Taskforce, ASIC, and stakeholder groups such as the Australian Restructuring Insolvency & Turnaround Association. Success may be identified through:

- fewer instances of related creditors frustrating unrelated creditors on resolutions proposed to remove and replace an external administrator or other resolutions relating to the external administration (for example, voting on Deed of Company Arrangement or external administrator funding for certain investigations); and
- a corresponding decrease in instances of illegal phoenix activity facilitated by collusive external administrators.

This evidence will inform future government policy targeted at reducing the cost of illegal phoenixing to the Australian community.

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Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Insolvency Practice Rules (Corporations) Amendment (Restricting Related Creditor Voting Rights) Rules 2018

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Legislative Instrument limits related creditors' voting rights to the value of the consideration they paid for an assigned debt and require external administrators to ask creditors to provide evidence in writing in relation to any assigned debt and the consideration provided for the assignment.

The Legislative Instrument prevents related creditors facilitating illegal phoenix activity by unduly influencing an external administration. This will reduce the incidence of illegal phoenix activity and its effect on creditors, and help ensure external administrations are conducted independently and in the best interests of creditors generally.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

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