



# **Corporations Amendment (Phoenixing and Other Measures) Act 2012**

**No. 48, 2012**

**An Act to amend the *Corporations Act 2001*, and for  
other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



---

## Contents

1	Short title .....	1
2	Commencement .....	2
3	Schedule(s) .....	2
<b>Schedule 1—Amendments</b>		3
Part 1—Winding up by ASIC		3
<i>Corporations Act 2001</i>		3
Part 2—Publication requirements		7
<i>Corporations Act 2001</i>		7
Part 3—Miscellaneous amendments		12
<i>Corporations Act 2001</i>		12
<b>Schedule 2—Application of amendments</b>		14
<i>Corporations Act 2001</i>		14





# Corporations Amendment (Phoenixing and Other Measures) Act 2012

No. 48, 2012

---

## An Act to amend the *Corporations Act 2001*, and for other purposes

[Assented to 26 May 2012]

The Parliament of Australia enacts:

### 1 Short title

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

---

## 2 Commencement

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

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.	26 May 2012
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.	

Note: This table relates only to the provisions of this Act as originally enacted.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

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

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendments**

### **Part 1—Winding up by ASIC**

#### ***Corporations Act 2001***

##### **1 After Part 5.4B**

Insert:

### **Part 5.4C—Winding up by ASIC**

#### **489EA ASIC may order the winding up of a company**

- (1) ASIC may order the winding up of a company if:
  - (a) the response to a return of particulars given to the company is at least 6 months late; and
  - (b) the company has not lodged any other documents under this Act in the last 18 months; and
  - (c) ASIC has reason to believe that the company is not carrying on business; and
  - (d) ASIC has reason to believe that making the order is in the public interest.
- (2) ASIC may order the winding up of a company if the company's review fee in respect of a review date has not been paid in full at least 12 months after the due date for payment.
- (3) ASIC may order the winding up of a company if:
  - (a) ASIC has reinstated the registration of the company under subsection 601AH(1) in the last 6 months; and
  - (b) ASIC has reason to believe that making the order is in the public interest.
- (4) ASIC may order the winding up of a company if:
  - (a) ASIC has reason to believe that the company is not carrying on business; and
  - (b) at least 20 business days before making the order, ASIC gives to:

- (i) the company; and
    - (ii) each director of the company;
  - a notice:
  - (iii) stating ASIC's intention to make the order; and
    - (iv) informing the company or the director, as the case may be, that the company or the director may, within 10 business days after the receipt of the notice, give ASIC a written objection to the making of the order; and
  - (c) neither the company, nor any of its directors, has given ASIC such an objection within the time limit specified in the notice.
- (5) Paragraphs (4)(b) and (c) do not apply to a person if ASIC does not have the necessary information about the person's identity or address.
- (6) Before making an order under subsection (1), (2), (3) or (4), ASIC must:
- (a) give notice of its intention to make the order on ASIC database; and
  - (b) both:
    - (i) publish notice of its intention to make the order; and
    - (ii) do so in the prescribed manner.
- (7) ASIC must not order the winding up of a company under subsection (1), (2), (3) or (4) if an application is before the Court for the winding up of the company.
- (8) Paragraph (b) of the definition of **director** in section 9 does not apply to subsection (4) of this section.
- (9) To avoid doubt, subsections (1), (2), (3) and (4):
- (a) have effect independently of each other; and
  - (b) do not limit each other.

**489EB Deemed resolution that company be wound up voluntarily**

If ASIC orders under section 489EA that a company be wound up:

- (a) the company is taken to have passed a special resolution under section 491 that the company be wound up voluntarily; and
- (b) the company is taken to have passed the special resolution:



- (i) at the time when ASIC made the order under section 489EA; and
- (ii) without a declaration having been made and lodged under section 494; and
- (c) section 496 has effect as if:
  - (i) a declaration had been made under section 494; and
  - (ii) the reference in subsection 496(1) to the period stated in the declaration were a reference to the 12-month period beginning when ASIC made the order under section 489EA; and
- (d) section 497 is taken to have been complied with in relation to the winding up.

#### **489EC Appointment of liquidator**

- (1) If ASIC orders under section 489EA that a company be wound up, ASIC may:
  - (a) appoint a liquidator for the purpose of winding up the affairs and distributing the property of the company; and
  - (b) determine the remuneration to be paid to the liquidator.
- (2) An appointment of a liquidator by ASIC must not be made without the written consent of the liquidator.
- (3) A vacancy in the office of a liquidator appointed by ASIC is to be filled by the appointment of a liquidator by ASIC.

#### **2 At the end of section 601AA**

Add:

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

#### **3 At the end of section 601AB**

Add:

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

**4 After paragraph 1317C(c)**

Insert:

- (ca) a decision of ASIC to order the winding up of a company under section 489EA; or

## **Part 2—Publication requirements**

### ***Corporations Act 2001***

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

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

#### **6 Subsection 412(4)**

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

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

Repeal the paragraph, substitute:

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

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

Repeal the paragraph, substitute:

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

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

Repeal the paragraph, substitute:

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

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

Repeal the paragraph, substitute:

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

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

Repeal the paragraph, substitute:

- (b) cause a notice setting out the prescribed information about the appointment to be published, within the period ascertained in accordance with the regulations, in the prescribed manner.

**12 Paragraph 465A(c)**

Repeal the paragraph, substitute:

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

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

Repeal the paragraph, substitute:

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

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

Repeal the paragraph, substitute:

- (d) both:
  - (i) publish in the prescribed manner a copy of the notice given or to be given under paragraph (a); and
  - (ii) do so within the period ascertained in accordance with the regulations.

**15 Subsection 498(3)**

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

**16 Subsection 509(2)**

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

**17 Subsection 568A(2)**

Repeal the subsection, substitute:

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

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

Omit “in the *Gazette*”, substitute “in the prescribed manner”.

**19 Subsection 601AA(4)**

Repeal the subsection, substitute:

*Deregistration procedure*

(4) If:

- (a) ASIC decides to deregister the company under this section;  
and
- (b) ASIC is not aware of any failure to comply with  
subsections (1) to (3);

ASIC must:

- (c) give notice of the proposed deregistration on ASIC database;  
and
- (d) publish notice of the proposed deregistration in the  
prescribed manner.

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

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

Repeal the heading, substitute:

*Circumstances in which ASIC may deregister*

**21 Subsection 601AB(3)**

Repeal the subsection, substitute:

*Deregistration procedure*

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

- (a) give notice of the proposed deregistration:
  - (i) to the company; and
  - (ii) to the company’s liquidator (if any); and
  - (iii) to the company’s directors; and
  - (iv) on ASIC database; and

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

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

**22 Subsection 601AB(4)**

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

**23 Subsection 601AB(5)**

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

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

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

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

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

**26 After section 1367**

Insert:

**1367A Publication in the prescribed manner**

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

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

the regulations may provide that:

- (c) the person is taken to have complied with that requirement if, and only if, the person lodges the notice or copy under subsection (2); and
- (d) if the person lodges the notice or copy under subsection (2), ASIC must publish the notice or copy in the manner specified in the regulations.

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

## Part 3—Miscellaneous amendments

### *Corporations Act 2001*

#### 27 Section 9

Insert:

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

#### 28 Before section 600A

Insert:

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

(1) A person who:

- (a) is appointed (whether or not by a court), and acts, as a receiver and manager in respect of property of a body corporate; or
- (b) is appointed as the administrator of a body corporate under Division 2 of Part 5.3A; or
- (c) is appointed as the liquidator or provisional liquidator of a body corporate;

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

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

- (a) the person must pay an instalment under section 72 of the *Paid Parental Leave Act 2010*; and
- (b) either:
  - (i) that time occurs during the instalment period (within the meaning of that Act) to which the instalment relates; or
  - (ii) that time occurs after the end of the instalment period to which the instalment relates, but the person has not paid the instalment by that time.



## **29 Subsection 601AH(3)**

Repeal the subsection, substitute:

(3) If:

(a) ASIC reinstates the registration of a company under subsection (1); or

(b) the Court makes an order under subsection (2);

the Court may:

(c) validate anything done during the period:

(i) beginning when the company was deregistered; and

(ii) ending when the company's registration was reinstated;  
and

(d) make any other order it considers appropriate.

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

## Schedule 2—Application of amendments

### *Corporations Act 2001*

#### **1 At the end of Chapter 10**

Add:

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

#### **1532 Definition**

In this Part:

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

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

- (1) Paragraph 489EA(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.
- (2) Subsection 489EA(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.
- (3) Subsection 489EA(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.

---

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

- (1) The amendment of subsection 412(1) of the *Corporations Act 2001* made by Part 3 of Schedule 1 to the amending Act applies in relation to a notice published after the commencement of Schedule 1 to the amending Act.
- (2) The amendment of subsection 436E(3) of the *Corporations Act 2001* made by Part 3 of Schedule 1 to the amending Act applies in relation to a meeting convened after the commencement of Schedule 1 to the amending Act.
- (3) The amendment of subsection 439A(3) of the *Corporations Act 2001* made by Part 3 of Schedule 1 to the amending Act applies in relation to a meeting convened after the commencement of Schedule 1 to the amending Act.
- (4) The amendment of subsection 446A(5) of the *Corporations Act 2001* made by Part 3 of Schedule 1 to the amending Act applies in relation to a resolution that is taken, because of section 446A of the *Corporations Act 2001*, to have been passed by a company after the commencement of Schedule 1 to the amending Act.
- (5) The amendment of subsection 449C(5) of the *Corporations Act 2001* made by Part 3 of Schedule 1 to the amending Act applies in relation to a meeting convened after the commencement of Schedule 1 to the amending Act.
- (6) The amendment of subsection 450A(1) of the *Corporations Act 2001* made by the amending Act applies in relation to an appointment of an administrator that occurs after the commencement of Schedule 1 to the amending Act.
- (7) The amendment of section 465A of the *Corporations Act 2001* made by Part 3 of Schedule 1 to the amending Act applies in relation to an application made under section 459P, 462 or 464 of that Act after the commencement of Schedule 1 to the amending Act.
- (8) The amendment of subsection 491(2) of the *Corporations Act 2001* made by Part 3 of Schedule 1 to the amending Act applies in relation to a resolution passed after the commencement of Schedule 1 to the amending Act.

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

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

Section 600AA of the *Corporations Act 2001* as amended by the amending Act applies in relation to an appointment, if the appointment occurs after the commencement of Schedule 1 to the amending Act.

---

*[Minister's second reading speech made in—  
House of Representatives on 15 February 2012  
Senate on 13 March 2012]*

(7/12)

---