



Corporations Amendment (Strengthening Protections for Employee Entitlements) Act 2019

No. 44, 2019

**An Act to amend the law relating to protecting
employee entitlements, and for related purposes**

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No. 44, 2019

**An Act to amend the law relating to protecting
employee entitlements, and for related purposes**

[Assented to 5 April 2019]

The Parliament of Australia enacts:

1 Short title

*This Act is the Corporations Amendment (Strengthening
Protections for Employee Entitlements) Act 2019.*

No. 44, 2019

*Corporations Amendment (Strengthening Protections for Employee
Entitlements) Act 2019*

1

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
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	6 April 2019

Note: This table relates only to the provisions of this Act as originally enacted.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 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Corporations Act 2001

1 Section 9 (definition of *linked*)

Omit “section 596AB are *linked* if they are linked under subsection 596AB(4)”, substitute “subsection 596AC(1), (2), (3) or (4) are *linked* if they are linked under subsection 596AC(10)”.

2 Paragraph 588N(b)

Omit “section 596AC in relation to a contravention of section 596AB”, substitute “section 596ACA in relation to a contravention of subsection 596AC(1), (2), (3) or (4)”.

3 Section 596AA (heading)

Repeal the heading, substitute:

596AA Objects and coverage of this Part

4 Subsection 596AA(1)

Repeal the subsection, substitute:

Objects

- (1) The objects of this Part are to:
 - (a) deter avoidance of the payment of the entitlements of employees; and
 - (b) protect the entitlements of a company’s employees from agreements, arrangements and transactions that avoid or prevent the recovery of those entitlements, or significantly reduce the amount of those entitlements that can be recovered, in the winding up of the company.

5 Subsection 596AA(2)

Omit “An entitlement of an employee need not be owed to the employee. It might, for example, be an amount owed to the employee’s dependants or a superannuation contribution payable to a fund in respect of services rendered by the employee.”.

6 After subsection 596AA(2)

Insert:

- (2A) For the purposes of subsection (2), an entitlement of an employee need not be owed to the employee. It might, for example, be:
- (a) an amount owed to the employee’s dependants; or
 - (b) a superannuation contribution payable to a fund in respect of services rendered by the employee; or
 - (c) a right in relation to an entitlement that becomes a right of the Commonwealth under paragraph 31(1)(b) of the *Fair Entitlements Guarantee Act 2012*; or
 - (d) an entitlement in relation to which an entity other than the employee has a right of subrogation.

7 Section 596AB (heading)

Repeal the heading, substitute:

596AB Relevant agreements or transactions that avoid employee entitlements—offences

8 Subsections 596AB(1) and (2)

Repeal the subsections, substitute:

Offences of entering into relevant agreement or transaction

- (1) A person contravenes this subsection if the person enters into a relevant agreement or a transaction with the intention of, or with intentions that include the intention of:
- (a) avoiding or preventing the recovery of the entitlements of employees of a company; or
 - (b) significantly reducing the amount of the entitlements of employees of a company that can be recovered.

Note: A contravention of this subsection is an offence (see subsection 1311(1)).

- (1A) A person contravenes this subsection if:
- (a) the person enters into a relevant agreement or a transaction; and
 - (b) the person is reckless as to whether the relevant agreement or the transaction will:
 - (i) avoid or prevent the recovery of the entitlements of employees of a company; or
 - (ii) significantly reduce the amount of the entitlements of employees of a company that can be recovered.

Note: A contravention of this subsection is an offence (see subsection 1311(1)).

Offences of causing company to enter into relevant agreement or transaction

- (1B) A person contravenes this subsection if:
- (a) the person is an officer of a company; and
 - (b) the person causes the company to enter into a relevant agreement or a transaction; and
 - (c) the person does so with the intention of, or with intentions that include the intention of:
 - (i) avoiding or preventing the recovery of the entitlements of employees of the company; or
 - (ii) significantly reducing the amount of the entitlements of employees of the company that can be recovered.

Note: A contravention of this subsection is an offence (see subsection 1311(1)).

- (1C) A person contravenes this subsection if:
- (a) the person is an officer of a company; and
 - (b) the person causes the company to enter into a relevant agreement or a transaction; and
 - (c) the person is reckless as to whether the relevant agreement or the transaction will:
 - (i) avoid or prevent the recovery of the entitlements of employees of the company; or

- (ii) significantly reduce the amount of the entitlements of employees of the company that can be recovered.

Note: A contravention of this subsection is an offence (see subsection 1311(1)).

Application of offence provisions

- (2) Subsections (1) and (1A) apply even if the company is not a party to the relevant agreement or the transaction.
- (2A) Subsections (1), (1A), (1B) and (1C) apply even if:
 - (a) the relevant agreement or the transaction is approved by a court; or
 - (b) the relevant agreement or the transaction has not had the effect or effects mentioned in paragraph (1)(a) or (b), (1A)(b), (1B)(c) or (1C)(c), as the case may be; or
 - (c) despite the relevant agreement or the transaction, the entitlements of the employees of the company are recovered.
- (2B) However, subsections (1), (1A), (1B) and (1C) do not apply if the relevant agreement or the transaction is, or is entered into under:
 - (a) a compromise or arrangement between the company and its creditors or a class of its creditors, or its members or a class of its members, that is approved by a Court under section 411; or
 - (b) a deed of company arrangement executed by the company.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the *Criminal Code*).

- (2C) Subsections (1A) and (1C) do not apply if a liquidator or provisional liquidator of the company causes the relevant agreement or the transaction to be entered into in the course of winding up the company.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the *Criminal Code*).

Definitions

9 At the end of subsection 596AB(3)

Add:

Note: A relevant agreement is an agreement, arrangement or understanding (see the definition of *relevant agreement* in section 9).

10 Subsection 596AB(4)

Repeal the subsection.

11 Section 596AC

Repeal the section, substitute:

596AC Relevant agreements or transactions that avoid employee entitlements—civil contraventions

Entering into relevant agreement or transaction

- (1) A person contravenes this subsection if:
- (a) the person enters into a relevant agreement or a transaction (within the meaning of subsection 596AB(3)); and
 - (b) the person knows, or a reasonable person in the position of the person would know, that the relevant agreement or the transaction is likely to:
 - (i) avoid or prevent the recovery of the entitlements of employees of a company; or
 - (ii) significantly reduce the amount of the entitlements of employees of a company that can be recovered.

Note: This subsection is a civil penalty provision (see section 1317E).

- (2) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Note 1: Section 79 defines *involved*.

Note 2: This subsection is a civil penalty provision (see section 1317E).

Causing company to enter into relevant agreement or transaction

- (3) A person contravenes this subsection if:
- (a) the person is an officer of a company; and
 - (b) the person causes the company to enter into a relevant agreement or a transaction (within the meaning of subsection 596AB(3)); and

- (c) the person knows, or a reasonable person in the position of the person would know, that the relevant agreement or the transaction is likely to:
 - (i) avoid or prevent the recovery of the entitlements of employees of the company; or
 - (ii) significantly reduce the amount of the entitlements of employees of the company that can be recovered.

Note: This subsection is a civil penalty provision (see section 1317E).

- (4) A person who is involved in a contravention of subsection (3) contravenes this subsection.

Note 1: Section 79 defines *involved*.

Note 2: This subsection is a civil penalty provision (see section 1317E).

Application of contravention provisions

- (5) Subsections (1) and (2) apply even if the company is not a party to the relevant agreement or the transaction.
- (6) Subsections (1), (2), (3) and (4) apply even if:
 - (a) the relevant agreement or the transaction is approved by a court; or
 - (b) the relevant agreement or the transaction has not had the effect or effects mentioned in paragraph (1)(b) or (3)(c), as the case may be; or
 - (c) despite the relevant agreement or the transaction, the entitlements of the employees of the company are recovered.
- (7) However, subsections (1), (2), (3) and (4) do not apply if:
 - (a) the relevant agreement or the transaction is, or is entered into under:
 - (i) a compromise or arrangement between the company and its creditors or a class of its creditors, or its members or a class of its members, that is approved by a Court under section 411; or
 - (ii) a deed of company arrangement executed by the company; or

- (b) a liquidator or provisional liquidator of the company causes the relevant agreement or the transaction to be entered into in the course of winding up the company.
- (8) A person who wishes to rely on subsection (7) in a proceeding for, or relating to, a contravention of subsection (1), (2), (3) or (4) bears an evidential burden in relation to that matter.

Proceedings may be begun only after liquidator appointed

- (9) Proceedings under section 1317E for a declaration of a contravention of this section may only be begun after a liquidator has been appointed to the company.

Linked debts

- (10) If a person contravenes this section by incurring a debt (within the meaning of section 588G), the incurring of the debt and the contravention are **linked** for the purposes of this Act.

Definitions

- (11) In this section:

evidential burden, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

596ACA Person who contravenes section 596AC liable to compensate for loss

- (1) A person is liable to pay compensation under subsection (3) or (4) if:
- (a) the person has contravened subsection 596AC(1), (2), (3) or (4) in relation to the entitlements of employees of a company; and
 - (b) employees of the company have suffered loss or damage because of the relevant agreement or the transaction referred to in subsection 596AC(1) or (3), or because of action taken to give effect to the relevant agreement or the transaction; and
 - (c) a liquidator has been appointed to the company.

- (2) The person may be liable whether or not:
 - (a) a Court has made a declaration of contravention or a pecuniary penalty order under Part 9.4B that applies to the person in relation to the contravention; or
 - (b) the person has been convicted of an offence based on section 596AB in relation to the matters giving rise to the contravention; or
 - (c) the company has been wound up.
- (3) The company's liquidator may recover from the person, as a debt due to the company, an amount equal to the loss or damage referred to in paragraph (1)(b).
- (4) An employee who suffers loss or damage referred to in paragraph (1)(b) may, as provided in section 596AF (but not otherwise), recover from the person, as a debt due to the employee, an amount equal to the loss or damage.
- (5) An amount recovered under subsection (4) is to be taken into account in working out the amount (if any) for which the employee may prove in the liquidation of the company.
- (6) Proceedings under this section may only be begun within 6 years after the company begins to be wound up.

12 Section 596AD

Omit "section 596AC in relation to a contravention of section 596AB", substitute "section 596ACA in relation to a contravention of subsection 596AC(1), (2), (3) or (4)".

13 At the end of section 596AD

Add:

- ; and (c) proceedings under section 588ZA in relation to the entitlements to which the contravention relates; and
- (d) proceedings under section 1317H in relation to the contravention.

14 Section 596AE (heading)

Repeal the heading, substitute:

596AE Effect of section 596ACA

15 Section 596AE

Omit “Section 596AC”, substitute “Section 596ACA”.

16 Sections 596AF to 596AI

Repeal the sections, substitute:

596AF Proceedings for compensation

- (1) Subject to section 596AG and to subsection (2) of this section, any of the following may begin proceedings under section 596ACA for compensation to be paid under subsection 596ACA(3) or (4) in relation to a contravention of subsection 596AC(1), (2), (3) or (4) that relates to a company:
- (a) the Commissioner of Taxation;
 - (b) the Fair Work Ombudsman;
 - (c) the Secretary of the Department administered by the Minister who administers the *Fair Entitlements Guarantee Act 2012*;
 - (ca) subject to subsection (1A)—an organisation registered under the *Fair Work (Registered Organisations) Act 2009* that is entitled to represent the industrial interests of one or more employees of the company;
 - (d) an employee of the company.

This subsection does not prevent the company’s liquidator beginning proceedings under subsection 596ACA(3).

- (1A) An organisation mentioned in paragraph (1)(ca) may begin proceedings under section 596ACA for compensation to be paid under subsection 596ACA(4) in relation to one or more employees of the company:
- (a) who are members of the organisation; or
 - (b) whose industrial interests the organisation is entitled to represent, and who consent to the proceedings being begun;
- and may not otherwise begin proceedings under section 596ACA.

If liquidator appointed, proceedings require consent or leave

- (2) If a liquidator is appointed to the company, proceedings may only be begun as described in subsection (1):
- (a) with the written consent of the liquidator; or
 - (b) with the leave of the Court.
- (3) The Court may give leave under paragraph (2)(b) only if:
- (a) the person seeking to bring the proceedings (the **applicant**) has given a written notice to the liquidator asking the liquidator to give consent under paragraph (2)(a); and
 - (b) either:
 - (i) the liquidator has given written notice to the applicant refusing to give consent under paragraph (2)(a); or
 - (ii) more than 30 days have passed since the notice under paragraph (a) of this subsection was given; and
 - (c) the Court is satisfied that it is appropriate to give leave, having regard to the following matters:
 - (i) whether it is likely that the liquidator will begin proceedings under section 596ACA in relation to the compensation;
 - (ii) whether the liquidator has applied under section 588FF in relation to a transaction that constituted, or was part of, the contravention;
 - (iii) whether the liquidator has intervened in an application for a civil penalty order against a person in relation to a contravention of section 588G in relation to the incurring of a debt that is linked to the contravention of subsection 596AC(1), (2), (3) or (4) referred to in subsection (1) of this section;
 - (iv) whether the liquidator has begun proceedings under section 588M in relation to the incurring of a debt that is linked to the contravention of subsection 596AC(1), (2), (3) or (4) referred to in subsection (1) of this section;
 - (v) any other matter that the Court considers relevant.

596AG Events preventing proceedings

- (1) Proceedings cannot be begun as described in subsection 596AF(1) in relation to a company and a contravention of subsection 596AC(1), (2), (3) or (4) if the company's liquidator has begun proceedings under section 596ACA in relation to the contravention.
- (2) An employee of a company that is being wound up, or an organisation mentioned in paragraph 596AF(1)(ca), cannot begin proceedings under section 596ACA in relation to a contravention of subsection 596AC(1), (2), (3) or (4) if a person mentioned in paragraph 596AF(1)(a), (b) or (c), or an organisation mentioned in paragraph 596AF(1)(ca), has begun proceedings under section 596ACA in relation to the contravention.

596AH Joining parties to proceedings

- (1) If a company's liquidator has begun proceedings under section 596ACA, any of the following may apply to the Court for leave to be joined as a party to the proceedings:
 - (a) the Commissioner of Taxation;
 - (b) the Fair Work Ombudsman;
 - (c) the Secretary of the Department administered by the Minister who administers the *Fair Entitlements Guarantee Act 2012*;
 - (ca) an organisation registered under the *Fair Work (Registered Organisations) Act 2009* that is entitled to represent the industrial interests of one or more employees of the company;
 - (d) an employee of the company.
- (2) If a person mentioned in paragraph (1)(a), (b) or (c), or an organisation mentioned in paragraph (1)(ca), has begun proceedings under section 596ACA, any of the following may apply to the Court for leave to be joined as a party to the proceedings:
 - (a) another person mentioned in paragraph (1)(a), (b) or (c);
 - (aa) another organisation mentioned in paragraph (1)(ca);
 - (b) an employee of the company to which the proceedings relate;
 - (c) the company's liquidator.

17 Subsection 1317E(1) (before table item 7)

Insert:

- 6C subsections 596AC(1), (2), (3) and (4) avoiding employee entitlements

18 Schedule 3 (table item 145)

Repeal the item, substitute:

- 145 Subsections 596AB(1), (1A), (1B) and (1C) In the case of an individual, imprisonment for 10 years or a fine of the greater of the following:
- (a) 4,500 penalty units;
 - (b) if the court can determine the total value of the benefits that have been obtained by one or more persons and are reasonably attributable to the commission of the offence—3 times that total value;
- or both.
- In the case of a body corporate, a fine of the greatest of the following:
- (a) 45,000 penalty units;
 - (b) if the court can determine the total value of the benefits that have been obtained by one or more persons and are reasonably attributable to the commission of the offence—3 times that total value;
 - (c) 10% of the body corporate's annual turnover (as defined in section 761A) during the 12-month period ending at the end of the month in which the body corporate committed, or began committing, the offence.

Part 2—Contribution orders

Corporations Act 2001

19 Section 9

Insert:

employee entitlements contribution order has the meaning given by subsection 588ZA(1).

20 At the end of Part 5.7B

Add:

Division 8—Employee entitlements contribution orders

588ZA Employee entitlements contribution orders

Making of employee entitlements contribution order

- (1) The Court may make an order under subsection (2) (an *employee entitlements contribution order*) in relation to an entity (the *contributing entity*) if the Court is satisfied that:
- (a) a company (the *insolvent company*) is being wound up; and
 - (b) an amount (the *unpaid entitlements amount*) of the entitlements of one or more employees (within the meaning of Part 5.8A) of the insolvent company that are protected under Part 5.8A has not been paid; and
 - (c) the contributing entity is a member of the same contribution order group (see subsection (6)) as the insolvent company; and
 - (d) the contributing entity has benefited, directly or indirectly, from work done by those employees; and
 - (e) that benefit exceeds the benefit that would be reasonable in the circumstances if the insolvent company and the contributing entity were dealing at arm's length; and
 - (f) it is just and equitable to make the order.

Schedule 1 Amendments
Part 2 Contribution orders

Note 1: For the people who may apply to the Court for an employee entitlements contribution order, see section 588ZB.

Note 2: A reference in Part 5.8A to an employee of a company is a reference to a current or former employee, and includes a reference to another person to whom an entitlement of an employee is owed (see section 596AA).

- (2) For the purposes of subsection (1), the Court may order the contributing entity to pay to the liquidator of the insolvent company an amount that:
 - (a) reflects the value of the excess referred to in paragraph (1)(e); and
 - (b) does not, together with any other payments required to be made in respect of the unpaid entitlements amount by the order, exceed the unpaid entitlements amount.
- (3) The payment of an amount in accordance with an employee entitlements contribution order is not to be taken to be an advance of money for the purposes of section 560.
- (4) In determining whether it is just and equitable to make an employee entitlements contribution order, the Court may have regard to the following matters:
 - (a) the size of the excess referred to in paragraph (1)(e);
 - (b) the nature of the relationship between the contributing entity and the insolvent company;
 - (c) any efforts made by the contributing entity, or officers of the contributing entity, and officers of the insolvent company to pay or to provide for the payment of the unpaid entitlements amount;
 - (d) if the contributing entity is solvent—whether the order is likely to result in the contributing entity becoming insolvent;
 - (e) the extent (if any) to which the order is likely to result in the contributing entity becoming unable to pay the entitlements of its employees or make distributions to creditors;
 - (f) any other matters that the Court considers appropriate.
- (5) If the Court makes an employee entitlements contribution order, the Court may do the following:
 - (a) if the contributing entity is a company—order that the obligation to pay an amount under the order has the priority

of a debt or claim covered by any of paragraph 556(1)(e), (f), (g) or (h) in the winding up of the contributing entity (whether or not the contributing entity is being wound up when the order is made);

- (b) make any other orders, and give any directions, that the Court considers appropriate for the purposes of giving effect to the employee entitlements contribution order.

Contribution order group

- (6) For the purposes of subsection (1), 2 entities are ***members of the same contribution order group*** if:
- (a) one of the entities is, or has been, a related body corporate of the other entity; or
 - (b) one of the entities is, or has been, a related body corporate of a body corporate that is, or has been, a related body corporate of the other entity; or
 - (c) one of the entities is, or has been, controlled by the other entity or a related body corporate of the other entity; or
 - (d) both of the entities represent, or have represented, to the public that they are related to one another; or
 - (e) both entities are, or have been, part of the same consolidated entity; or
 - (f) both entities are, or have been, part of a collection of entities that, as a matter of economic and commercial substance, functions or functioned as a single entity.

588ZB Who may apply for an employee entitlements contribution order

- (1) An application to the Court for an employee entitlements contribution order may only be made by:
- (a) the liquidator of the insolvent company referred to in paragraph 588ZA(1)(a) (the ***insolvent company***); or
 - (b) the Commissioner of Taxation; or
 - (c) the Fair Work Ombudsman; or
 - (d) the Secretary of the Department administered by the Minister who administers the *Fair Entitlements Guarantee Act 2012*.

- (2) If a liquidator is appointed to the insolvent company, a person mentioned in paragraph (1)(b), (c) or (d) may make the application only:
- (a) if the liquidator has given written consent to the applicant for the application to be made; or
 - (b) with the leave of the Court.
- (3) The Court may give leave under paragraph (2)(b) only if:
- (a) the applicant has given a written notice to the liquidator asking the liquidator to give consent under paragraph (2)(a); and
 - (b) either:
 - (i) the liquidator has given written notice to the applicant refusing to give consent under paragraph (2)(a); or
 - (ii) more than 30 days have passed since the notice under paragraph (a) of this subsection was given; and
 - (c) the Court is satisfied that it is appropriate to give leave, having regard to the following matters:
 - (i) whether it is likely that the liquidator will make an application for an employee entitlements contribution order in relation to the insolvent company;
 - (ii) any other matter that the Court considers relevant.

When proceedings may be begun

- (4) An application for an employee entitlements contribution order may only be made within 6 years after the beginning of the winding up of the insolvent company.

Part 3—Disqualification from managing corporations

Division 1—Main amendments

Corporations Act 2001

21 Subsection 201B(2)

Omit “section 206F”, substitute “section 206GAB”.

22 Section 203B

Omit “sections 206F”, substitute “sections 206GAB”.

23 Subsection 204B(2)

Omit “section 206F”, substitute “section 206GAB”.

24 Section 204G

Omit “sections 206F”, substitute “sections 206GAB”.

25 Subsections 206A(1B) and (2)

Omit “section 206F”, substitute “section 206GAB”.

26 After section 206EAA

Insert:

206EAB Court power of disqualification—unrecovered payments under employee entitlements scheme

- (1) On application by ASIC, the Court may disqualify a person from managing corporations for a period that the Court considers appropriate if:
 - (a) subsection (2) applies to the person in relation to 2 or more corporations; and
 - (b) the Court is satisfied that the disqualification is justified.
- (2) This subsection applies to the person in relation to a corporation if:
 - (a) within the last 7 years:
 - (i) the person has been an officer of the corporation; and

- (ii) while the person was an officer, or within 12 months after the person ceased to be an officer, the corporation began to be wound up; and
 - (iii) money was advanced for the purposes of paying the entitlements of employees of the corporation under the *Fair Entitlements Guarantee Act 2012*; and
 - (b) the Commonwealth has received a minimal return, or no return, on the advance (whether or not the corporation is still being wound up, or has been wound up); and
 - (c) the Court is satisfied that the Commonwealth is unlikely to receive more than a minimal return on the advance; and
 - (d) either of the following occurred during the 7-year period mentioned in paragraph (a):
 - (i) the corporation contravened this Act or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* while the person was an officer of the corporation, and the person failed to take reasonable steps to prevent the contravention;
 - (ii) the person contravened this Act or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* while the person was an officer of the corporation.
- (3) For the purposes of paragraphs (2)(b) and (c), the Commonwealth has received a minimal return on an advance under the *Fair Entitlements Guarantee Act 2012* if the amount of the advance recovered by the Commonwealth is 10 cents in the dollar or less.
- Note: For recovery of advances paid under the *Fair Entitlements Guarantee Act 2012*, see Part 5 of that Act.
- (4) In determining whether the disqualification is justified, the Court may have regard to:
- (a) the person's conduct in relation to the management, business or property of any corporation; and
 - (b) any other matters that the Court considers appropriate.
- (5) To avoid doubt, the references in paragraph (1)(a) and subsections (2) and (4) to a corporation include references to an Aboriginal and Torres Strait Islander corporation.
-

27 Subsection 206F(5)

Repeal the subsection.

28 Before section 206G

Insert:

206GAA ASIC's power of disqualification—unrecovered payments under employee entitlements scheme

- (1) ASIC may disqualify a person from managing corporations for up to 5 years if:
 - (a) subsection (2) applies to the person in relation to 2 or more corporations; and
 - (b) ASIC has given the person:
 - (i) a notice in the prescribed form requiring them to demonstrate why they should not be disqualified; and
 - (ii) an opportunity to be heard on the question; and
 - (c) ASIC is satisfied that the disqualification is justified.
- (2) This subsection applies to the person in relation to a corporation if:
 - (a) within 7 years immediately before ASIC gives the notice under subparagraph (1)(b)(i):
 - (i) the person has been an officer of the corporation; and
 - (ii) while the person was an officer, or within 12 months after the person ceased to be an officer, the corporation began to be wound up; and
 - (iii) money was advanced for the purposes of paying the entitlements of employees of the corporation under the *Fair Entitlements Guarantee Act 2012*; and
 - (b) the Commonwealth has received a minimal return, or no return, on the advance (whether or not the corporation is still being wound up, or has been wound up); and
 - (c) ASIC has reason to believe that the Commonwealth is unlikely to receive more than a minimal return on the advance; and
 - (d) ASIC has reason to believe that either of the following occurred during the 7-year period mentioned in paragraph (a):

- (i) the corporation contravened this Act or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* while the person was an officer of the corporation, and the person failed to take reasonable steps to prevent the contravention;
 - (ii) the person contravened this Act or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* while the person was an officer of the corporation.
- (3) For the purposes of paragraphs (2)(b) and (c), the Commonwealth has received a minimal return on an advance under the *Fair Entitlements Guarantee Act 2012* if the amount of the advance recovered by the Commonwealth is 10 cents in the dollar or less.

Note: For recovery of advances paid under the *Fair Entitlements Guarantee Act 2012*, see Part 5 of that Act.
- (4) In determining whether the disqualification is justified, ASIC:
 - (a) must have regard to whether any of the corporations mentioned in paragraph (1)(a) were related to one another; and
 - (b) may have regard to:
 - (i) the person's conduct in relation to the management, business or property of any corporation; and
 - (ii) whether the disqualification would be in the public interest; and
 - (iii) any other matters that ASIC considers appropriate.
- (5) To avoid doubt, the references in paragraph (1)(a) and subsections (2) and (4) to a corporation include references to an Aboriginal and Torres Strait Islander corporation.

Notice of disqualification

- (6) If ASIC disqualifies a person from managing corporations under this section, ASIC must serve a notice on the person advising them of the disqualification. The notice must be in the prescribed form.

Start of disqualification

- (7) The disqualification takes effect from the time when a notice referred to in subsection (6) is served on the person.
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206GAB ASIC power to grant leave

ASIC may give a person who it has disqualified from managing corporations under this Part written permission to manage a particular corporation or corporations. The permission may be expressed to be subject to conditions and exceptions determined by ASIC.

29 Paragraph 1274AA(1)(a)

Omit “206EA, 206EB or 206F”, substitute “206EAB, 206EA, 206EB, 206F or 206GAA”.

30 After paragraph 1274AA(2)(ab)

Insert:

(aba) every court order referred to in section 206EAB; and

31 Paragraph 1274AA(2)(c)

Repeal the paragraph, substitute:

(c) every notice that was served under subsection 206GAA(6);
and

(ca) each permission given under section 206GAB; and

Division 2—Consequential amendments

***Corporations (Aboriginal and Torres Strait Islander) Act
2006***

32 Paragraph 279-35(2)(b)

After “section 206F”, insert “or 206GAA”.

Part 4—Transitional provisions

Corporations Act 2001

33 In the appropriate position in Chapter 10

Insert:

Part 10.34—Transitional provisions relating to the Corporations Amendment (Strengthening Protections for Employee Entitlements) Act 2019

1647 Application—protection of employee entitlements

The amendments made by Part 1 of Schedule 1 to the *Corporations Amendment (Strengthening Protections for Employee Entitlements) Act 2019* apply in relation to a relevant agreement or a transaction that is entered into at or after the commencement of that Part.

1648 Application—contribution orders

The amendments made by Part 2 of Schedule 1 to the *Corporations Amendment (Strengthening Protections for Employee Entitlements) Act 2019* apply in relation to the winding up of a company that begins at or after the commencement of that Part.

1649 Application—director disqualification

- (1) The period of 7 years referred to in paragraphs 206EAB(2)(a) and 206GAA(2)(a) may include any period that is not more than 5 years before the day (the **commencement day**) that Part 3 of Schedule 1 to the *Corporations Amendment (Strengthening Protections for Employee Entitlements) Act 2019* commences (subject to the time limit of 7 years in those paragraphs).

- (2) However, a person may only be disqualified from managing corporations under section 206EAB or 206GAA if at least one of the contraventions referred to in paragraph 206EAB(2)(d) or 206GAA(2)(d), as the case may be, occurs on or after the commencement day.
- (3) A permission given under subsection 206F(5) that was in force immediately before the commencement day continues in force (and may be dealt with) as if it had been given under section 206GAB as inserted by Part 3 of Schedule 1 to the *Corporations Amendment (Strengthening Protections for Employee Entitlements) Act 2019*.
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[Minister's second reading speech made in—
House of Representatives on 20 September 2018
Senate on 12 November 2018]

(197/18)

No. 44, 2019

Corporations Amendment (Strengthening Protections for Employee Entitlements) Act 2019

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