

Crackdown on phoenix companies goes too far: experts

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April 26, 2012

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LEGISLATION aimed at cracking down on phoenix company operators will still "catch out" and penalise innocent company directors, experts have warned, despite government changes to the draft laws.

The proposed laws, introduced to Parliament in November, will make directors liable for workers' unpaid superannuation, targeting operators of so-called phoenix companies - failed businesses resurrected in a different guise, avoiding paying debts to creditors and employees.

The government unveiled the revised draft legislation a week ago, revealing several changes aimed at addressing industry concerns.

But accountants and insolvency specialists said a key issue had not been fixed - that directors not attempting to "phoenix" a business in difficulty could be forced to sell personal assets or go bankrupt to meet the business's unpaid superannuation and taxes withheld from wages.

The Worrells partner Matthew Jess said it would catch out innocent directors. "It is something that will affect everyone who falls behind in superannuation and tax debts ... it does not distinguish between legitimate business failure and so-called phoenix operators."

Parties have until May 2 to comment on the revised laws, and Andrew Yeo, at Pitcher Partners, said this was not enough time.

"This is the most dramatic impact on personal liability of directors of any legislation that exists at the moment," he said.

Under the draft laws, the Tax Office could move to seize personal assets of directors of a company that was three months or more behind in its superannuation and pay-as-you-go withholding tax - and they would not be able to place the company into voluntary administration or liquidation to protect their assets.

Mr Jess said this "significantly" changed the current law, which gave directors 21 days notice before the Tax Office could act - including when the debt was older than three months. The laws would encourage directors to pay out the Tax Office ahead of other creditors and would appear to have a greater impact on increasing tax revenue than overcoming fraudulent activity or protecting workers' entitlements.

A spokesman for the assistant treasurer, David Bradbury, said the legislation "made it clear" directors had an obligation to ensure superannuation was paid and those who used phoenix companies to avoid debts would be held liable.