

2008-2009-2010

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Corporations Amendment (Corporate
Reporting Reform) Bill 2010**

No. , 2010

(Financial Services, Superannuation and Corporate Law)

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

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1 **A Bill for an Act to amend the law in relation to**
2 **corporations, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Corporations Amendment (Corporate*
6 *Reporting Reform) Act 2010*.

7 **2 Commencement**

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

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.	
2. Schedule 1, Part 1	The day this Act receives the Royal Assent.	
3. Schedule 1, Part 2	The day this Act receives the Royal Assent. However, if this Act receives the Royal Assent on or after the day on which item 34 of Schedule 1 to the <i>Corporations Amendment (Financial Market Supervision) Act 2010</i> commences, the provision(s) do not commence at all.	
4. Schedule 1, Part 3	The later of: (a) the start of the day this Act receives the Royal Assent; and (b) immediately after the commencement of item 34 of Schedule 1 to the <i>Corporations Amendment (Financial Market Supervision) Act 2010</i> . However, if this Act receives the Royal Assent before the day on which item 34 of Schedule 1 to the <i>Corporations Amendment (Financial Market Supervision) Act 2010</i> commences, the provision(s) do not commence at all.	
5. Schedule 1, Part 4	The day this Act receives the Royal Assent.	
6. Schedule 2	The day this Act receives the Royal Assent.	

1 Note: This table relates only to the provisions of this Act as originally
2 passed by both Houses of the Parliament and assented to. It will not be
3 expanded to deal with provisions inserted in this Act after assent.

4 (2) Column 3 of the table contains additional information that is not
5 part of this Act. Information in this column may be added to or
6 edited in any published version of this Act.

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3 Schedule(s)

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Each Act that is specified in a Schedule to this Act is amended or

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repealed as set out in the applicable items in the Schedule

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concerned, and any other item in a Schedule to this Act has effect

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according to its terms.

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Schedule 1—Amendments relating to the Corporations Act 2001

Part 1—Main amendments

Corporations Act 2001

1 Section 9 (definition of *audit*)

After “a financial report for”, insert “a financial year or”.

2 Section 9

Insert:

deductible gift recipient has the same meaning as in the *Income Tax Assessment Act 1997*.

3 Section 9

Insert:

small company limited by guarantee has the meaning given by section 45B.

4 After section 45A

Insert:

45B Small companies limited by guarantee

- (1) A company is a *small company limited by guarantee* in a particular financial year if:
 - (a) it is a company limited by guarantee for the whole of the financial year; and
 - (b) it is not a deductible gift recipient at any time during the financial year; and
 - (c) either:
 - (i) where the company is not required by the accounting standards to be included in consolidated financial statements—the revenue of the company for the financial year is less than the threshold amount; or

- 1 (ii) where the company is required by the accounting
2 standards to be included in consolidated financial
3 statements—the consolidated revenue of the
4 consolidated entity for the financial year is less than the
5 threshold amount; and
6 (d) it is not one of the following:
7 (i) a Commonwealth company for the purposes of the
8 *Commonwealth Authorities and Companies Act 1997*;
9 (ii) a subsidiary of a Commonwealth company for the
10 purposes of that Act;
11 (iii) a subsidiary of a Commonwealth authority for the
12 purposes of that Act; and
13 (e) it has not been a transferring financial institution of a State or
14 Territory within the meaning of clause 1 of Schedule 4 to this
15 Act; and
16 (f) it is not a company that is permitted to use the expression
17 ***building society, credit society or credit union*** under
18 section 66 of the *Banking Act 1959* at any time during the
19 financial year.
- 20 (2) The ***threshold amount***, for the purposes of subparagraphs (1)(c)(i)
21 and (ii), is \$250,000, or any other amount prescribed by the
22 regulations for the purposes of this subsection.
- 23 (3) Revenue and consolidated revenue are to be calculated for the
24 purposes of this section in accordance with accounting standards in
25 force at the relevant time (even if the standard does not otherwise
26 apply to the financial year of some or all of the companies
27 concerned).

28 **5 Paragraph 9.1 of the small business guide in Part 1.5**

29 Repeal the paragraph, substitute:

30 *9.1 Dividends*

31 Dividends are payments to shareholders. They can only be paid if:

- 32 • the company's assets are sufficiently in excess of its liabilities
33 immediately before the dividend is declared; and

- 1 • the payment of the dividend is fair and reasonable to the
2 company's shareholders as a whole and does not materially prejudice the
3 company's ability to pay its creditors.

4 It is a replaceable rule (see 1.6) that the directors decide whether
5 the company should pay a dividend.

6 [sections 254T, 254U]

7 **6 Before section 254T**

8 Insert:

9 **254SA Companies limited by guarantee not to pay dividends**

10 A company limited by guarantee must not pay a dividend to its
11 members.

12 **7 Section 254T**

13 Repeal the section, substitute:

14 **254T Circumstances in which a dividend may be paid**

15 (1) A company must not pay a dividend unless:

- 16 (a) the company's assets exceed its liabilities immediately before
17 the dividend is declared and the excess is sufficient for the
18 payment of the dividend; and
19 (b) the payment of the dividend is fair and reasonable to the
20 company's shareholders as a whole; and
21 (c) the payment of the dividend does not materially prejudice the
22 company's ability to pay its creditors.

23 Note 1: As an example, the payment of a dividend would materially prejudice
24 the company's ability to pay its creditors if the company would
25 become insolvent as a result of the payment.

26 Note 2: For a director's duty to prevent insolvent trading on payment of
27 dividends, see section 588G.

28 (2) Assets and liabilities are to be calculated for the purposes of this
29 section in accordance with accounting standards in force at the
30 relevant time (even if the standard does not otherwise apply to the
31 financial year of some or all of the companies concerned).

32 **8 Section 258F**

1 Before “A company”, insert “(1)”.

2 **9 Section 258F (second sentence)**

3 Repeal the sentence.

4 **10 At the end of section 258F**

5 Add:

6 (2) This power does not apply if:

7 (a) the company also cancels shares; or

8 (b) the cancellation of paid-up share capital is inconsistent with
9 the requirements of any accounting standard.

10 **11 Subsection 285(1) (cell at table item 2, column headed**
11 **“comments”)**

12 Repeal the cell, substitute:

13 Unless the report relates to a
14 company limited by
15 guarantee, it has a general
16 component (sections 299 and
17 299A), a specific component
18 (section 300) and a special
19 component for listed
20 companies (section 300A).
21 See section 285A for an
22 overview of the obligations of
23 companies limited by
24 guarantee.

25 **12 Subsection 285(1) (cell at table item 3, column headed**
26 **“comments”, after the first paragraph)**

27 Insert:

28 There are similar rules for
29 companies limited by
30 guarantee (see section 285A
31 for an overview).

32 **13 Subsection 285(1) (cell at table item 4, column headed**
33 **“comments”)**

34 Repeal the cell, substitute:

Schedule 1 Amendments relating to the Corporations Act 2001

Part 1 Main amendments

1 Unless the report relates to a
2 company limited by
3 guarantee, a concise financial
4 report may be provided to
5 members instead of the full
6 financial statements
7 (subsections 314(1) and (2)).
8 For deadline, see subsections
9 315(1) to (4). See
10 section 285A for an overview
11 of the obligations of
12 companies limited by
13 guarantee.

14 **14 After section 285**

15 Insert:

16 **285A Overview of obligations of companies limited by guarantee**

17 The following table sets out what is involved in annual financial
18 reporting for companies limited by guarantee:
19

Annual financial reporting for companies limited by guarantee			
Item	Nature of company	Obligations	Sections
1	Small company limited by guarantee.	No obligation to do any of the following unless required to do so under a member direction or ASIC direction: <ul style="list-style-type: none">• prepare a financial report;• prepare a directors' report;• have financial report audited;• notify members of reports.	Sections 292, 301 and 316A
2	Company limited by guarantee with annual revenue or, if part of a consolidated entity, annual consolidated revenue of less than \$1 million.	Must prepare a financial report. Must prepare a directors' report, although less detailed than that required of other companies. Need not have financial report audited unless a	Sections 292, 298, 300B, 301, 316A

Annual financial reporting for companies limited by guarantee

Item	Nature of company	Obligations	Sections
		Commonwealth company, or a subsidiary of a Commonwealth company or Commonwealth authority. If the company does not have financial report audited, it must have financial report reviewed. Must give reports to any member who elects to receive them.	
3	Company limited by guarantee with annual revenue or, if part of a consolidated entity, annual consolidated revenue of \$1 million or more.	Must prepare a financial report. Must prepare a directors' report, although less detailed than that required of other companies. Must have financial report audited. Must give reports to any member who elects to receive them.	Sections 292, 298, 300B, 301, 316A

1

15 At the end of section 292

2

3

Add:

4

Small companies limited by guarantee

5

(3) Despite subsection (1), a small company limited by guarantee has to prepare the financial report and directors' report only if it is directed to do so under section 294A or 294B. The rest of this Part does not apply to any other small company limited by guarantee.

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Note: The following heading to subsection 292(2) is inserted "*Small proprietary companies*".

10

16 After section 294

11

Insert:

1 **294A Small company limited by guarantee—member direction**

- 2 (1) Members with at least 5% of the votes in a small company limited
3 by guarantee may give the company a direction to:
- 4 (a) prepare a financial report and directors' report for a financial
5 year; and
 - 6 (b) send them to members who have elected to receive them
7 under section 316A.
- 8 (2) The direction must be:
- 9 (a) signed by the members giving the direction; and
 - 10 (b) made no later than 12 months after the end of the financial
11 year concerned.
- 12 (3) The direction may specify all or any of the following:
- 13 (a) that the financial report does not have to comply with some
14 or all of the accounting standards;
 - 15 (b) that a directors' report or a part of that report need not be
16 prepared;
 - 17 (c) that the financial report is to be audited or reviewed.

18 **294B Small company limited by guarantee—ASIC direction**

- 19 (1) ASIC may give a small company limited by guarantee a direction
20 to comply with the requirements of this Division and Divisions 3,
21 4, 5 and 6 for a financial year.
- 22 (2) An offence based on subsection (1) is an offence of strict liability.
23 Note: For strict liability, see section 6.1 of the *Criminal Code*.
- 24 (3) The direction may be general or may specify the particular
25 requirements that the company is to comply with.
- 26 (4) The direction must specify the date by which the documents have
27 to be prepared, sent or lodged. The date must be a reasonable one
28 in view of the nature of the direction.
- 29 (5) The direction must:
- 30 (a) be made in writing; and
 - 31 (b) specify the financial year concerned; and
 - 32 (c) be made no later than 6 years after the end of that financial
33 year.

- 1 (6) A direction given under subsection (1) is not a legislative
2 instrument.

3 **17 Subsection 295(2)**

4 Repeal the subsection, substitute:

5 *Financial statements*

- 6 (2) The financial statements for the year are:
7 (a) unless paragraph (b) applies—the financial statements in
8 relation to the company, registered scheme or disclosing
9 entity required by the accounting standards; or
10 (b) if the accounting standards require the company, registered
11 scheme or disclosing entity to prepare financial statements in
12 relation to a consolidated entity—the financial statements in
13 relation to the consolidated entity required by the accounting
14 standards.

15 **18 After paragraph 295(4)(c)**

16 Insert:

- 17 (ca) if the company, registered scheme or disclosing entity has
18 included in the notes to the financial statements, in
19 compliance with the accounting standards, an explicit and
20 unreserved statement of compliance with international
21 financial reporting standards—that this statement has been
22 included in the notes to the financial statements; and

23 **19 Subsection 296(1) (second sentence)**

24 Repeal the sentence.

25 **20 After subsection 296(1)**

26 Insert:

27 *Small proprietary companies*

- 28 (1A) Despite subsection (1), the financial report of a small proprietary
29 company does not have to comply with particular accounting
30 standards if:
31 (a) the report is prepared in response to a shareholder direction
32 under section 293; and

- 1 (b) the direction specifies that the report does not have to comply
2 with those standards.

3 *Small companies limited by guarantee*

- 4 (1B) Despite subsection (1), the financial report of a small company
5 limited by guarantee does not have to comply with particular
6 accounting standards if:

7 (a) the report is prepared in response to a member direction
8 under section 294A; and

9 (b) the direction specifies that the report does not have to comply
10 with those standards.

11 Note: The following heading to subsection 296(2) is inserted "*Further requirements*".

12 **21 Subsection 298(1) (second sentence)**

13 Repeal the sentence.

14 **22 After subsection 298(1)**

15 Insert:

16 (1AA) Except in the case of a company limited by guarantee, the report
17 must include:

18 (a) the general information required by sections 299 (all entities)
19 and 299A (additional requirements for listed entities); and

20 (b) the specific information required by sections 300 and 300A;
21 and

22 (c) a copy of the auditor's declaration under section 307C in
23 relation to the audit for the financial year.

24 (1AB) In the case of a company limited by guarantee, the report must
25 include:

26 (a) the general information required by section 300B; and

27 (b) a copy of the auditor's declaration under section 307C in
28 relation to the audit or review for the financial year.

29 **23 At the end of section 298**

30 Add:

1 *Small companies limited by guarantee*

2 (4) A small company limited by guarantee does not have to comply
3 with subsection (1) for a financial year if:

- 4 (a) it is preparing the financial statements for that year in
5 response to a member direction under section 294A; and
6 (b) the direction specified that a directors' report need not be
7 prepared.

8 Note: The following heading to subsection 298(3) is inserted "*Small proprietary companies*".

9 **24 Subsection 299A(1)**

10 Omit "a company or disclosing entity that is a listed public company
11 must also contain information that members of the company", substitute
12 "a company, registered scheme or disclosing entity that is listed must
13 also contain information that members of the listed entity".

14 Note: The heading to section 299A is altered by omitting "**public companies**" and
15 substituting "**entities**".

16 **25 Paragraph 299A(1)(b)**

17 Omit "the entity", substitute "the entity reported on".

18 **26 Paragraph 299A(1)(c)**

19 Repeal the paragraph, substitute:

- 20 (c) the business strategies, and prospects for future financial
21 years, of the entity reported on.

22 **27 Paragraph 299A(2)(a)**

23 Repeal the paragraph, substitute:

- 24 (a) the company, registered scheme or disclosing entity that is
25 listed (if consolidated financial statements are not required);
26 or

27 **28 Subsection 299A(3)**

28 Omit "the company or disclosing entity" (wherever occurring),
29 substitute "the company, registered scheme or disclosing entity".

30 **29 After section 300A**

31 Insert:

1 **300B Annual directors' report—companies limited by guarantee**

2 (1) The directors' report for a financial year for a company limited by
3 guarantee must:

- 4 (a) contain a description of the short and long term objectives of
5 the entity reported on; and
6 (b) set out the entity's strategy for achieving those objectives;
7 and
8 (c) state the entity's principal activities during the year; and
9 (d) state how those activities assisted in achieving the entity's
10 objectives; and
11 (e) state how the entity measures its performance, including any
12 key performance indicators used by the entity.

13 (2) The entity reported on is:

- 14 (a) the company (if consolidated financial statements are not
15 required); or
16 (b) the consolidated entity (if consolidated financial statements
17 are required).

18 (3) The directors' report for a financial year for a company limited by
19 guarantee must also include details of:

- 20 (a) the name of each person who has been a director of the
21 company at any time during or since the end of the year and
22 the period for which the person was a director; and
23 (b) each director's qualifications, experience and special
24 responsibilities; and
25 (c) the number of meetings of the board of directors held during
26 the year and each director's attendance at those meetings; and
27 (d) for each class of membership in the company—the amount
28 which a member of that class is liable to contribute if the
29 company is wound up; and
30 (e) the total amount that members of the company are liable to
31 contribute if the company is wound up.

32 **30 At the end of section 301**

33 Add:

1 *Companies limited by guarantee*

- 2 (3) A company limited by guarantee may have its financial report for a
3 financial year reviewed, rather than audited, if:
4 (a) the company is not one of the following:
5 (i) a Commonwealth company for the purposes of the
6 *Commonwealth Authorities and Companies Act 1997*;
7 (ii) a subsidiary of a Commonwealth company for the
8 purposes of that Act;
9 (iii) a subsidiary of a Commonwealth authority for the
10 purposes of that Act; and
11 (b) one of the following is true:
12 (i) the company is not required by the accounting standards
13 to be included in consolidated financial statements and
14 the revenue of the company for the financial year is less
15 than \$1 million;
16 (ii) the company is required by the accounting standards to
17 be included in consolidated financial statements and the
18 consolidated revenue of the consolidated entity for the
19 financial year is less than \$1 million.
20 (4) A small company limited by guarantee's financial report for a
21 financial year does not have to be audited or reviewed if:
22 (a) the report is prepared in response to a member direction
23 under section 294A; and
24 (b) the direction does not ask for the audit or review.

25 Note: The following heading to subsection 301(2) is inserted "*Small proprietary companies*".

26 **31 Subsection 303(2)**

27 Repeal the subsection, substitute:

28 *Financial statements*

- 29 (2) The financial statements for the half-year are:
30 (a) unless paragraph (b) applies—the financial statements in
31 relation to the disclosing entity required by the accounting
32 standards; or
33 (b) if the accounting standards require the disclosing entity to
34 prepare financial statements in relation to a consolidated

1 entity—the financial statements in relation to the
2 consolidated entity required by the accounting standards.

3 **32 Paragraphs 307A(1)(a) and (2)(a)**

4 After “audit”, insert “or review”.

5 **33 Subparagraphs 307B(1)(b)(i) and (3)(a)(i)**

6 After “audit”, insert “or review”.

7 **34 Paragraphs 307C(1)(a) and (3)(a)**

8 After “audit”, insert “or review”.

9 **35 After subsection 308(3)**

10 Insert:

11 (3AA) An auditor who reviews the financial report for a company limited
12 by guarantee must report to members on whether the auditor
13 became aware of any matter in the course of the review that makes
14 the auditor believe that the financial report does not comply with
15 Division 1.

16 (3AB) A report under subsection (3AA) must:

17 (a) describe any matter referred to in subsection (3AA); and

18 (b) say why that matter makes the auditor believe that the
19 financial report does not comply with Division 1.

20 **36 Subsection 308(4)**

21 Repeal the subsection, substitute:

22 (4) A report under subsection (1) or (3AA) must specify the date on
23 which it is made.

24 **37 Subsection 308(5)**

25 After “(3),” insert “(3AA), (3AB),”.

26 **38 After subsection 314(1)**

27 Insert:

28 (1AAA) This section does not apply to a company limited by guarantee.

29 Note: The requirement for annual financial reporting to members for those
30 companies is in section 316A.

1 **39 At the end of section 316**

2 Add:

- 3 (5) This section does not apply in relation to a company limited by
4 guarantee.

5 **40 After section 316**

6 Insert:

7 **316A Annual financial reporting to members of companies limited**
8 **by guarantee**

- 9 (1) A member of a company limited by guarantee may, by notice in
10 writing to the company, elect to receive a hard copy or an
11 electronic copy of the following reports:
12 (a) the financial reports;
13 (b) the directors' reports;
14 (c) the auditor's reports.
- 15 (2) If a member makes an election in a financial year, the election:
16 (a) is made by the member for that financial year; and
17 (b) is a standing election made by the member for each later
18 financial year until the member changes the election.
- 19 (3) If the company prepares a financial report or a directors' report for
20 a financial year, or obtains an auditor's report on the financial
21 report, the company must send a copy of the report, free of charge,
22 to each member who has made an election for that financial year,
23 in accordance with the election, by the earlier of:
24 (a) 21 days before the next AGM after the end of the financial
25 year; and
26 (b) 4 months after the end of the financial year.

27 Note: For the deadline for holding an AGM, see section 250N.

- 28 (4) If a member direction is given to a small company limited by
29 guarantee under section 294A after the end of a financial year,
30 subsection (3) does not apply and the company must send a copy of
31 the reports that the company prepares or obtains as a result of the
32 direction to each member who has made an election for that
33 financial year, in accordance with the election, by the later of:
34 (a) 2 months after the date on which the direction was given; and

1 (b) 4 months after the end of the financial year.

2 (5) An offence based on subsection (3) or (4) is an offence of strict
3 liability.

4 Note: For strict liability, see section 6.1 of the *Criminal Code*.

5 **41 After subsection 317(1)**

6 Insert:

7 (1A) Subsection (1) does not apply to a small company limited by
8 guarantee in relation to a report if the company is not required
9 under a member direction made under section 294A or an ASIC
10 direction made under section 294B to prepare or obtain the report.

11 **42 Subsection 319(2)**

12 Repeal the subsection, substitute:

13 (2) Subsection (1) does not apply to:

- 14 (a) a small proprietary company that prepares a report in
15 response to a shareholder direction under section 293 or an
16 ASIC direction under section 294; and
17 (b) a small company limited by guarantee that prepares a report
18 in response to a member direction under section 294A or an
19 ASIC direction under section 294B.

20 **43 Subsection 323D(2)**

21 Omit “subsection (4)”, substitute “subsections (2A) and (4)”.

22 **44 After subsection 323D(2)**

23 Insert:

- 24 (2A) A subsequent financial year may last for a period of less than 12
25 months determined by the directors if:
26 (a) the subsequent financial year starts at the end of the previous
27 financial year; and
28 (b) there has not been a period during the previous 5 financial
29 years in which there was a financial year of less than 12
30 months in reliance on this subsection; and
31 (c) the change to the subsequent financial year is made in good
32 faith in the best interests of the company, registered scheme
33 or disclosing entity.

1 **45 After section 324BD**

2 Insert:

3 **324BE Exception from registration requirement—reviewing**
4 **financial reports of companies limited by guarantee**

5 (1) An individual is taken to be a registered company auditor for the
6 purposes of a review of a financial report of a company limited by
7 guarantee if the individual:

8 (a) is a member of a professional accounting body; and

9 (b) holds a practising certificate of the kind specified in the
10 regulations.

11 (2) The provisions of this Act apply, with the necessary modifications,
12 in relation to the individual accordingly.

13 **46 Subsection 324CH(9) (definition of *relevant financial year*)**

14 Omit “an audit of a financial report for a financial year”, substitute “an
15 audit or review of a financial report for a financial year”.

16 **47 Subsection 329(9)**

17 After “proprietary company”, insert “or a small company limited by
18 guarantee”.

19 **48 Schedule 3 (after table item 82)**

20 Insert:

82A	Section 254SA	100 penalty units or imprisonment for 2 years, or both.
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21 **49 Schedule 3 (after table item 103)**

22 Insert:

103AA	Section 294B	10 penalty units or imprisonment for 3 months, or both.
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23 **50 Schedule 3 (cell at table item 104, column headed**
24 **“Provision”)**

25 After “(3),”, insert “(3AA), (3AB),”.

26 **51 Schedule 3 (after table item 109)**

Schedule 1 Amendments relating to the Corporations Act 2001

Part 1 Main amendments

1	Insert:		
109A	Subsections 316A(3) and (4)		10 penalty units or imprisonment for 3 months, or both.

1

2 **Part 2—Transitional provisions if this Act receives**
3 **the Royal Assent before the commencement**
4 **of item 34 of Schedule 1 to the Corporations**
5 **Amendment (Financial Market Supervision)**
6 **Act 2010**

7 *Corporations Act 2001*

8 **52 At the end of Chapter 10**

9 Add:

10 **Part 10.14—Transitional provisions relating to the**
11 **Corporations Amendment (Corporate**
12 **Reporting Reform) Act 2010**
13

14 **1510A Definition**

15 In this Part:

16 *amending Act* means the *Corporations Amendment (Corporate*
17 *Reporting Reform) Act 2010*.

18 **1510B Application of Part 1 of Schedule 1 to the amending Act**

- 19 (1) The amendments made by items 1 to 4, items 11 to 16, items 18 to
20 23, items 29 and 30, items 32 to 42, items 45 to 47 and items 49 to
21 51 of Schedule 1 to the amending Act apply in relation to a
22 company, registered scheme or disclosing entity for financial years
23 of the company, registered scheme or disclosing entity ending on
24 or after 30 June 2010.
- 25 (2) The amendments made by items 6, 7 and 48 of Schedule 1 to the
26 amending Act apply in relation to dividends declared on or after
27 the commencement of those items.

Schedule 1 Amendments relating to the Corporations Act 2001

Part 2 Transitional provisions if this Act receives the Royal Assent before the commencement of item 34 of Schedule 1 to the Corporations Amendment (Financial Market Supervision) Act 2010

-
- 1 (3) The amendments made by items 8, 9 and 10 of Schedule 1 to the
2 amending Act apply in relation to cancellations of paid-up share
3 capital that occur on or after the commencement of those items.
- 4 (4) Despite the amendment made by item 17 of Schedule 1 to the
5 amending Act, accounting standards made for the purposes of
6 subsection 295(2) of this Act that were in force immediately before
7 the commencement of that item continue in force, after that
8 commencement, as if they were made for the purposes of
9 subsection 295(2) of this Act as amended by that item.
- 10 (5) The amendment made by item 17 of Schedule 1 to the amending
11 Act applies to a report of a company, registered scheme or
12 disclosing entity for financial years of the company, registered
13 scheme or disclosing entity ending on or after 30 June 2010.
- 14 (6) The amendments made by items 24 to 28 of Schedule 1 to the
15 amending Act apply in relation to a company, registered scheme or
16 disclosing entity for financial years of the company, registered
17 scheme or disclosing entity ending on or after 30 June 2011.
- 18 (7) Despite the amendment made by item 31 of Schedule 1 to the
19 amending Act, accounting standards made for the purposes of
20 subsection 303(2) of this Act that were in force immediately before
21 the commencement of that item continue in force, after that
22 commencement, as if they were made for the purposes of
23 subsection 303(2) of this Act as amended by that item.
- 24 (8) The amendment made by item 31 of Schedule 1 to the amending
25 Act applies to a report of a disclosing entity for half-years of the
26 disclosing entity ending on or after 30 June 2010.
- 27 (9) The amendments made by items 43 and 44 of Schedule 1 to the
28 amending Act apply where the previous financial year of the
29 company, registered scheme or disclosing entity ends on or after
30 30 June 2010.

31 ***Corporations Amendment (Financial Market Supervision)***
32 ***Act 2010***

33 **53 Item 34 of Schedule 1**

34 Omit “Part 10.14”, substitute “Part 10.15”.

1

2 **Part 3—Transitional provisions if this Act receives**
3 **the Royal Assent on or after the**
4 **commencement of item 34 of Schedule 1 to**
5 **the Corporations Amendment (Financial**
6 **Market Supervision) Act 2010**

7 *Corporations Act 2001*

8 **54 At the end of Chapter 10**

9 Add:

10 **Part 10.15—Transitional provisions relating to the**
11 **Corporations Amendment (Corporate**
12 **Reporting Reform) Act 2010**
13

14 **1514 Definition**

15 In this Part:

16 *amending Act* means the *Corporations Amendment (Corporate*
17 *Reporting Reform) Act 2010*.

18 **1515 Application of Part 1 of Schedule 1 to the amending Act**

- 19 (1) The amendments made by items 1 to 4, items 11 to 16, items 18 to
20 23, items 29 and 30, items 32 to 42, items 45 to 47 and items 49 to
21 51 of Schedule 1 to the amending Act apply in relation to a
22 company, registered scheme or disclosing entity for financial years
23 of the company, registered scheme or disclosing entity ending on
24 or after 30 June 2010.
- 25 (2) The amendments made by items 6, 7 and 48 of Schedule 1 to the
26 amending Act apply in relation to dividends declared on or after
27 the commencement of those items.

Schedule 1 Amendments relating to the Corporations Act 2001

Part 3 Transitional provisions if this Act receives the Royal Assent on or after the commencement of item 34 of Schedule 1 to the Corporations Amendment (Financial Market Supervision) Act 2010

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- 1 (3) The amendments made by items 8, 9 and 10 of Schedule 1 to the
2 amending Act apply in relation to cancellations of paid-up share
3 capital that occur on or after the commencement of those items.
- 4 (4) Despite the amendment made by item 17 of Schedule 1 to the
5 amending Act, accounting standards made for the purposes of
6 subsection 295(2) of this Act that were in force immediately before
7 the commencement of that item continue in force, after that
8 commencement, as if they were made for the purposes of
9 subsection 295(2) of this Act as amended by that item.
- 10 (5) The amendment made by item 17 of Schedule 1 to the amending
11 Act applies to a report of a company, registered scheme or
12 disclosing entity for financial years of the company, registered
13 scheme or disclosing entity ending on or after 30 June 2010.
- 14 (6) The amendments made by items 24 to 28 of Schedule 1 to the
15 amending Act apply in relation to a company, registered scheme or
16 disclosing entity for financial years of the company, registered
17 scheme or disclosing entity ending on or after 30 June 2011.
- 18 (7) Despite the amendment made by item 31 of Schedule 1 to the
19 amending Act, accounting standards made for the purposes of
20 subsection 303(2) of this Act that were in force immediately before
21 the commencement of that item continue in force, after that
22 commencement, as if they were made for the purposes of
23 subsection 303(2) of this Act as amended by that item.
- 24 (8) The amendment made by item 31 of Schedule 1 to the amending
25 Act applies to a report of a disclosing entity for half-years of the
26 disclosing entity ending on or after 30 June 2010.
- 27 (9) The amendments made by items 43 and 44 of Schedule 1 to the
28 amending Act apply where the previous financial year of the
29 company, registered scheme or disclosing entity ends on or after
30 30 June 2010.

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2 **Part 4—Consequential amendments**

3 ***Financial Sector (Business Transfer and Group Restructure)***
4 ***Act 1999***

5 **55 Subsection 36G(2) (note 2)**

6 Repeal the note, substitute:

7 Note 2: Section 254T of that Act provides that dividends may only be paid if:

- 8 (a) the company's assets are sufficiently in excess of its liabilities
9 immediately before the dividend is declared; and
10 (b) the payment of the dividend is fair and reasonable to the
11 company's shareholders as a whole and does not materially
12 prejudice the company's ability to pay its creditors.

13 ***Income Tax Assessment Act 1936***

14 **56 After subsection 44(1)**

15 Insert:

16 (1A) For the purposes of this Act, a dividend paid out of an amount
17 other than profits is taken to be a dividend paid out of profits.

18 **57 Application of income tax amendment**

19 Subsection 44(1A) of the *Income Tax Assessment Act 1936* (as inserted
20 by this Schedule) applies in relation to dividends declared on or after
21 the commencement of item 7 of this Schedule.

22 ***Medibank Private Sale Act 2006***

23 **58 Subitem 57(1) of Schedule 2**

24 Omit “, section 254T of the *Corporations Act 2001*”.

25 **59 Subitem 57(3) of Schedule 2**

26 Omit “section 254T of the *Corporations Act 2001* or”.

1
2 **Schedule 2—Australian Securities and**
3 **Investments Commission Act 2001**

4 **Part 1—Amendments**

5 *Australian Securities and Investments Commission Act 2001*

6 **1 Subsection 5(1) (definition of CPAA member)**

7 Repeal the definition.

8 **2 Subsection 5(1) (definition of ICAA member)**

9 Repeal the definition.

10 **3 Paragraphs 203(1)(c) and (d)**

11 Repeal the paragraphs, substitute:

- 12 (c) 6 members that the Minister selects who are eligible under
13 subsection (1B) for appointment as a member; and

14 **4 Subsection 203(1A)**

15 Repeal the subsection, substitute:

- 16 (1A) The *accounting members* are the members appointed under
17 paragraph (1)(c), and the *business members* are the members
18 appointed under paragraph (1)(e).

19 **5 Subsection 203(1B)**

20 Repeal the subsection, substitute:

- 21 (1B) A person is eligible under this subsection for appointment as an
22 accounting member if the person:
23 (a) is resident in Australia; and
24 (b) is a member of:
25 (i) a professional accounting body; or
26 (ii) any other body prescribed by the regulations for the
27 purposes of this subparagraph.

28 **6 Subsection 210A(5)**

1 Repeal the subsection, substitute:

2 (5) If the Chairperson is satisfied that it is practicable and appropriate
3 to do so, the Chairperson is to constitute the Panel so that it is a 5
4 person Panel.

5 **7 After subsection 221(1)**

6 Insert:

7 (1A) The Chairperson of the Board has, in the performance of his or her
8 functions or the exercise of his or her powers in relation to a
9 conference under section 1294A of the Corporations Act, the same
10 protection and immunity as a Justice of the High Court.

11 **8 After subsection 221(2)**

12 Insert:

13 (2A) A barrister, solicitor or other person appearing on behalf of a
14 person at a conference under section 1294A of the Corporations
15 Act has the same protection and immunity as a barrister has in
16 appearing for a party in proceedings in the High Court.

17 **9 Subparagraph 225(2)(h)(ii)**

18 Omit “; and”, substitute “.”.

19 **10 Paragraphs 225(2)(i) and (j)**

20 Repeal the paragraphs.

21 **11 Subparagraph 225(2A)(h)(ii)**

22 Omit “; and”, substitute “.”.

23 **12 Paragraphs 225(2A)(i) and (j)**

24 Repeal the paragraphs.

1

2

Part 2—Application, saving and transitional provisions

3

4

Australian Securities and Investments Commission Act 2001

5

13 At the end of the Act

6

Add:

7

Part 18—Transitional provisions relating to the Corporations Amendment (Corporate Reporting Reform) Act 2010

8

9

10

11

289 Definitions

12

In this Part:

13

amending Act means the *Corporations Amendment (Corporate Reporting Reform) Act 2010*.

14

15

old Act means this Act as in force immediately before the commencement of the amending Act.

16

17

Schedule 2 commencement means the day on which Part 1 of Schedule 2 to the amending Act commences.

18

19

transition period means the period:

20

(a) beginning at the start of the day Part 1 of Schedule 2 to the amending Act commences; and

21

22

(b) ending when there is no longer any person holding an appointment as a member of the Companies Auditors and Liquidators Disciplinary Board under paragraph 203(1)(c) or (d) of the old Act.

23

24

25

1 **290 Application of Companies Auditors and Liquidators**
2 **Disciplinary Board amendments**

- 3 (1) The amendments made by items 1 to 5 of Schedule 2 to the
4 amending Act do not apply until after the transition period.
- 5 (2) During the transition period:
- 6 (a) a person holding an appointment as a member of the
7 Companies Auditors and Liquidators Disciplinary Board
8 under paragraph 203(1)(c) or (d) of the old Act immediately
9 before the Schedule 2 commencement continues to hold that
10 appointment on and after that commencement for the
11 remainder of the term of the person's appointment as if those
12 amendments had not been made; and
- 13 (b) paragraph (a) does not prevent the Minister terminating the
14 appointment under section 207 or the person from resigning
15 under section 206; and
- 16 (c) there are to be no more than 6 accounting members of the
17 Companies Auditors and Liquidators Disciplinary Board; and
- 18 (d) any member appointed after the Schedule 2 commencement:
19 (i) must be selected by the Minister; and
20 (ii) must be eligible to be appointed under subsection
21 203(1B) as inserted by item 5 of Schedule 2 to the
22 amending Act; and
- 23 (e) *accounting member* means:
24 (i) a member appointed under paragraph (d); or
25 (ii) a member appointed under paragraph 203(1)(c) or (d) of
26 the old Act.
- 27 (3) After the transition period, *accounting member* is taken to include
28 a member appointed under paragraph (2)(d).

29 **291 Application of pre-hearing conference amendments**

30 The amendments made by items 7 and 8 of Schedule 2 to the
31 amending Act apply in relation to conferences conducted before,
32 on or after the Schedule 2 commencement.