

EXPOSURE DRAFT

2008-2009-2010

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT

Corporations Amendment (Corporate Reporting Reform) Bill 2010

No. , 2010

(Treasury)

**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 This Act commences on the day this Act receives the Royal
9 Assent.

10 **3 Schedule(s)**

11 Each Act that is specified in a Schedule to this Act is amended or
12 repealed as set out in the applicable items in the Schedule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 according to its terms.

2 *Corporations Amendment (Corporate Reporting Reform) Bill 2010* No. , 2010

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Amendments relating to the Corporations Act 2001 **Schedule 1**
Amendments **Part 1**

1 **Schedule 1—Amendments relating to the**
2 **Corporations Act 2001**

3 **Part 1—Amendments**

4 *Corporations Act 2001*

5 **1 Section 9 (definition of *audit*)**

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

7 **2 Section 9**

8 Insert:

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

11 **3 Section 9**

12 Insert:

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

15 **4 After section 45A**

16 Insert:

17 **45B Small companies limited by guarantee**

18 A company is a *small company limited by guarantee* in a
19 particular financial year if:

- 20 (a) it is a company limited by guarantee for the whole of the
21 financial year; and
22 (b) it is not a deductible gift recipient at any time during the
23 financial year; and
24 (c) either:
25 (i) where the company is not required by the accounting
26 standards to be included in consolidated financial
27 statements—the revenue of the company for the
28 financial year is less than \$250,000; or

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- 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
5 \$250,000; 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.

13 5 Paragraph 9.1 of the small business guide in Part 1.5

14 Repeal the paragraph, substitute:

15 *9.1 Dividends*

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

- 17 • the company's assets are sufficiently in excess of its liabilities;
18 and
19 • the payment of the dividend is fair and reasonable to the
20 company's shareholders as a whole and does not materially prejudice the
21 company's ability to pay its creditors.

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

24 [sections 254T, 254U]

25 6 Before section 254T

26 Insert:

27 **254SA Companies limited by guarantee not to pay dividends**

28 A company limited by guarantee must not pay a dividend to its
29 members.

30 7 Section 254T

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1 Repeal the section, substitute:

2 **254T Circumstances in which a dividend may be paid**

3 A company must not pay a dividend unless:

- 4 (a) the company's assets exceed its liabilities and the excess is
5 sufficient for the payment of the dividend; and
6 (b) the payment of the dividend is fair and reasonable to the
7 company's shareholders as a whole; and
8 (c) the payment of the dividend does not materially prejudice the
9 company's ability to pay its creditors.

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

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

15 **8 Section 258F**

16 Before "A company", insert "(1)".

17 **9 Section 258F (second sentence)**

18 Repeal the sentence.

19 **10 At the end of section 258F**

20 Add:

- 21 (2) This power does not apply if:
22 (a) the company also cancels shares; or
23 (b) the cancellation of paid-up share capital is inconsistent with
24 the requirements of any accounting standard.

25 **11 Subsection 285(1) (cell at table item 2, column headed**
26 **"comments")**

27 Repeal the cell, substitute:

28 Unless the report relates to a
29 company limited by
30 guarantee, it has a general
31 component (sections 299 and
32 299A), a specific component
33 (section 300) and a special

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1 component for listed
2 companies (section 300A).
3 See section 285A for an
4 overview of the obligations of
5 companies limited by
6 guarantee.

7 **12 Subsection 285(1) (cell at table item 3, column headed**
8 **“comments”, after the first paragraph)**

9 Insert:
10 There are similar rules for
11 companies limited by
12 guarantee (see section 285A
13 for an overview).

14 **13 Subsection 285(1) (cell at table item 4, column headed**
15 **“comments”)**

16 Repeal the cell, substitute:
17 Unless the report relates to a
18 company limited by
19 guarantee, a concise financial
20 report may be provided to
21 members instead of the full
22 financial statements
23 (subsections 314(1) and (2)).
24 For deadline, see subsections
25 315(1) to (4). See
26 section 285A for an overview
27 of the obligations of
28 companies limited by
29 guarantee.

30 **14 After section 285**

31 Insert:

32 **285A Overview of obligations of companies limited by guarantee**

33 The following table sets out what is involved in annual financial
34 reporting for companies limited by guarantee:
35

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Amendments relating to the Corporations Act 2001 **Schedule 1**
Amendments **Part 1**

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 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 notify members of right to elect to receive reports and, if reports are available on internet, how to access on internet. Must give reports to any member who elects to receive them.	Sections 292, 298, 300B, 301, 316A
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	Sections 292, 298, 300B, 301, 316A

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Schedule 1 Amendments relating to the Corporations Act 2001

Part 1 Amendments

Annual financial reporting for companies limited by guarantee

Item	Nature of company	Obligations	Sections
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		audited. Must notify members of right to elect to receive reports and, if reports are available on internet, how to access on internet. Must give reports to any member who elects to receive them.	
--	--	--	--

1

2 **15 At the end of section 292**

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.

6

7

8

9

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

10

16 After section 294

11

Insert:

12

294A Small company limited by guarantee—member direction

13

- (1) Members with at least 5% of the votes in a small company limited by guarantee may give the company a direction to:

14

15

16

17

- (a) prepare a financial report and directors' report for a financial year; and
(b) send them to all members.

18

- (2) The direction must be:

19

20

21

- (a) signed by the members giving the direction; and
(b) made no later than 12 months after the end of the financial year concerned.

22

- (3) The direction may specify all or any of the following:

8

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- 1 (a) that the financial report does not have to comply with some
2 or all of the accounting standards;
3 (b) that a directors' report or a part of that report need not be
4 prepared;
5 (c) that the financial report is to be audited or reviewed.

6 **294B Small company limited by guarantee—ASIC direction**

- 7 (1) ASIC may give a small company limited by guarantee a direction
8 to comply with the requirements of this Division and Divisions 3,
9 4, 5 and 6 for a financial year.
- 10 (2) An offence based on subsection (1) is an offence of strict liability.
11 Note: For strict liability, see section 6.1 of the *Criminal Code*.
- 12 (3) The direction may be general or may specify the particular
13 requirements that the company is to comply with.
- 14 (4) The direction must specify the date by which the documents have
15 to be prepared, sent or lodged. The date must be a reasonable one
16 in view of the nature of the direction.
- 17 (5) The direction must:
18 (a) be made in writing; and
19 (b) specify the financial year concerned; and
20 (c) be made no later than 6 years after the end of that financial
21 year.
- 22 (6) A direction given under subsection (1) is not a legislative
23 instrument.

24 **17 Subsection 295(2)**

25 Repeal the subsection, substitute:

26 *Financial statements*

- 27 (2) The financial statements for the year are:
28 (a) unless paragraph (b) applies—the financial statements in
29 relation to the company, registered scheme or disclosing
30 entity required by the accounting standards; or
31 (b) if the accounting standards require the company, registered
32 scheme or disclosing entity to prepare financial statements in

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

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

5 Insert:

6 (ca) whether, in the directors' opinion, the financial statements
7 and notes are in accordance with the international financial
8 reporting standards issued by the International Accounting
9 Standards Board; and

10 **19 Subsection 296(1) (second sentence)**

11 Repeal the sentence.

12 **20 After subsection 296(1)**

13 Insert:

14 *Small proprietary companies*

15 (1A) Despite subsection (1), the financial report of a small proprietary
16 company does not have to comply with particular accounting
17 standards if:

18 (a) the report is prepared in response to a shareholder direction
19 under section 293; and

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

22 *Small companies limited by guarantee*

23 (1B) Despite subsection (1), the financial report of a small company
24 limited by guarantee does not have to comply with particular
25 accounting standards if:

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

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

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

31 **21 Subsection 298(1) (second sentence)**

32 Repeal the sentence.

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22 After subsection 298(1)

Insert:

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

- (a) the general information required by sections 299 (all entities) and 299A (additional requirements for listed entities); and
- (b) the specific information required by sections 300 and 300A; and
- (c) a copy of the auditor's declaration under section 307C in relation to the audit for the financial year.

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

- (a) the general information required by section 300B; and
- (b) a copy of the auditor's declaration under section 307C in relation to the audit for the financial year.

23 At the end of section 298

Add:

Small companies limited by guarantee

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

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

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

24 Subsection 299A(1)

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

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

25 Paragraph 299A(1)(b)

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1 Omit “the entity”, substitute “the entity reported on”.

2 **26 Paragraph 299A(1)(c)**

3 Repeal the paragraph, substitute:

4 (c) the business strategies, and prospects for future financial
5 years, of the entity reported on.

6 **27 Paragraph 299A(2)(a)**

7 Repeal the paragraph, substitute:

8 (a) the company, registered scheme or disclosing entity that is
9 listed (if consolidated financial statements are not required);
10 or

11 **28 Subsection 299A(3)**

12 Omit “the company or disclosing entity” (wherever occurring),
13 substitute “the company, registered scheme or disclosing entity”.

14 **29 After section 300A**

15 Insert:

16 **300B Annual directors’ report—companies limited by guarantee**

17 (1) The directors’ report for a financial year for a company limited by
18 guarantee must:

- 19 (a) contain a description of the short and long term objectives of
20 the entity reported on; and
21 (b) set out the entity’s strategy for achieving those objectives;
22 and
23 (c) state the entity’s principal activities during the year; and
24 (d) state how those activities assisted in achieving the entity’s
25 objectives; and
26 (e) state how the entity measures its performance, including any
27 key performance indicators used by the entity.

28 (2) The entity reported on is:

- 29 (a) the company (if consolidated financial statements are not
30 required); or
31 (b) the consolidated entity (if consolidated financial statements
32 are required).

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- 1 (3) The directors' report for a financial year for a company limited by
2 guarantee must also include details of:
- 3 (a) the name of each person who has been a director of the
4 company at any time during or since the end of the year and
5 the period for which the person was a director; and
 - 6 (b) each director's qualifications, experience and special
7 responsibilities; and
 - 8 (c) the number of meetings of the board of directors held during
9 the year and each director's attendance at those meetings; and
 - 10 (d) for each class of membership in the company—the amount
11 which a member of that class is liable to contribute if the
12 company is wound up; and
 - 13 (e) the total amount that members of the company are liable to
14 contribute if the company is wound up.

15 **30 At the end of section 301**

16 Add:

17 *Companies limited by guarantee*

- 18 (3) A company limited by guarantee may have its financial report for a
19 financial year reviewed, rather than audited, if:
- 20 (a) the company is not one of the following:
 - 21 (i) a Commonwealth company for the purposes of the
22 *Commonwealth Authorities and Companies Act 1997*;
 - 23 (ii) a subsidiary of a Commonwealth company for the
24 purposes of that Act;
 - 25 (iii) a subsidiary of a Commonwealth authority for the
26 purposes of that Act; and
 - 27 (b) one of the following is true:
 - 28 (i) the company is not required by the accounting standards
29 to be included in consolidated financial statements and
30 the revenue of the company for the financial year is less
31 than \$1 million;
 - 32 (ii) the company is required by the accounting standards to
33 be included in consolidated financial statements and the
34 consolidated revenue of the consolidated entity for the
35 financial year is less than \$1 million.

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- 1 (4) A small company limited by guarantee's financial report for a
2 financial year does not have to be audited or reviewed if:
3 (a) the report is prepared in response to a member direction
4 under section 294A; and
5 (b) the direction does not ask for the audit or review.

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

7 **31 Subsection 303(2)**

8 Repeal the subsection, substitute:

9 *Financial statements*

- 10 (2) The financial statements for the half-year are:
11 (a) unless paragraph (b) applies—the financial statements in
12 relation to the disclosing entity required by the accounting
13 standards; or
14 (b) if the accounting standards require the disclosing entity to
15 prepare financial statements in relation to a consolidated
16 entity—the financial statements in relation to the
17 consolidated entity required by the accounting standards.

18 **32 Paragraphs 307A(1)(a) and (2)(a)**

19 After "audit", insert "or review".

20 **33 Subparagraphs 307B(1)(b)(i) and (3)(a)(i)**

21 After "audit", insert "or review".

22 **34 Paragraphs 307C(1)(a) and (3)(a)**

23 After "audit", insert "or review".

24 **35 After subsection 308(3)**

25 Insert:

26 (3AA) An auditor who reviews the financial report for a company limited
27 by guarantee must report to members on whether the auditor
28 became aware of any matter in the course of the review that makes
29 the auditor believe that the financial report does not comply with
30 Division 1.

31 (3AB) A report under subsection (3AA) must:

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- 1 (a) describe any matter referred to in subsection (3AA); and
2 (b) say why that matter makes the auditor believe that the
3 financial report does not comply with Division 1.

4 **36 Subsection 308(4)**

5 Repeal the subsection, substitute:

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

8 **37 Subsection 308(5)**

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

10 **38 After section 310**

11 Insert:

12 **310A Protection of certain audit information**

13 (1) Except where it is necessary to do so for the purposes of giving
14 effect to this Act, the *Australian Prudential Regulation Authority*
15 *Act 1998* or the *Australian Securities and Investments Commission*
16 *Act 2001*, a person is not to be required:

- 17 (a) to produce to another person or to a court a document
18 containing information covered by subsection (2); or
19 (b) to disclose information covered by subsection (2) to another
20 person or to a court.

21 (2) Information covered by this subsection is information that:

- 22 (a) relates to the contingent liabilities of a company, registered
23 scheme or disclosing entity in relation to an Australian or
24 overseas proceeding, or an anticipated or pending Australian
25 or overseas proceeding; and
26 (b) was disclosed or obtained for the purposes of, or in
27 connection with, an audit or review of a financial report for
28 the company, registered scheme or disclosing entity.

29 (3) In this section:

30 *Australian or overseas proceeding* has the same meaning as in the
31 *Evidence Act 1995*.

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1 *court* includes any tribunal, authority or person having power to
2 require the production of documents or the answering of questions.

3 *produce* includes permit access to.

4 **39 After subsection 314(1)**

5 Insert:

6 (1AAA) This section does not apply to a company limited by guarantee.

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

9 **40 At the end of section 316**

10 Add:

11 (5) This section does not apply in relation to a company limited by
12 guarantee.

13 **41 After section 316**

14 Insert:

15 **316A Annual financial reporting to members of companies limited** 16 **by guarantee**

17 (1) A company limited by guarantee must report to its members for
18 each financial year by giving each of its members notice in writing:

19 (a) stating that the following reports have been prepared or
20 obtained:

21 (i) the financial report for the year;

22 (ii) the directors' report for the year;

23 (iii) the auditor's report for the year; and

24 (b) stating that members may elect to receive a hard copy or an
25 electronic copy of the reports free of charge and giving
26 details of how that election is to be made; and

27 (c) if the reports are available on the internet—giving details of
28 how members may access the reports on the internet.

29 (2) The company must notify members under subsection (1) by the
30 earlier of:

31 (a) 21 days before the next AGM after the end of the financial
32 year; and

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- 1 (b) 4 months after the end of the financial year.
- 2 Note: For the deadline for holding an AGM, see section 250N.
- 3 (3) If a member makes an election to receive a hard copy or an
4 electronic copy of the reports:
- 5 (a) the company must send the member a copy of the reports,
6 free of charge, in accordance with the election as soon as is
7 reasonably practicable after the election is made; and
- 8 (b) the election is a standing election for each later financial year
9 until the member changes the election.
- 10 (4) If a standing election is in force for a later financial year, the
11 company need not comply with subsections (1) and (2) but must
12 instead send the member who made the election a copy of the
13 report in accordance with the election by the earlier of:
- 14 (a) 21 days before the next AGM after the end of the financial
15 year; and
- 16 (b) 4 months after the end of the financial year.
- 17 Note: For the deadline for holding an AGM, see section 250N.
- 18 (5) If a member direction is given to a small company limited by
19 guarantee under section 294A after the end of a financial year,
20 subsection (2) does not apply and the company must notify the
21 members under subsection (1) by the later of:
- 22 (a) 2 months after the date on which the direction is given; and
23 (b) 4 months after the end of the financial year.
- 24 (6) An offence based on subsection (1) or (2), paragraph (3)(a) or
25 subsection (4) or (5) is an offence of strict liability.
- 26 Note: For strict liability, see section 6.1 of the *Criminal Code*.

42 After subsection 317(1)

27 Insert:

- 28 (1A) Subsection (1) does not apply to a small company limited by
29 guarantee in relation to a report if the company is not required
30 under a member direction made under section 294A or an ASIC
31 direction made under section 294B to prepare or obtain the report.
32

43 Subsection 319(2)

33 Repeal the subsection, substitute:
34

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- 1 (2) Subsection (1) does not apply to:
2 (a) a small proprietary company that prepares a report in
3 response to a shareholder direction under section 293 or an
4 ASIC direction under section 294; and
5 (b) a small company limited by guarantee that prepares a report
6 in response to a member direction under section 294A or an
7 ASIC direction under section 294B.

8 **44 Subsection 323D(2)**

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

10 **45 After subsection 323D(2)**

11 Insert:

- 12 (2A) A subsequent financial year may last for a period other than 12
13 months (but not longer than 18 months) determined by the
14 directors if:
15 (a) the subsequent financial year starts at the end of the previous
16 financial year; and
17 (b) there has not been a period during the previous 5 financial
18 years in which there was a financial year of other than 12
19 months in reliance on this subsection; and
20 (c) the change to the subsequent financial year is made in good
21 faith in the best interests of the company, registered scheme
22 or disclosing entity.

23 **46 After section 324BD**

24 Insert:

25 **324BE Exception from registration requirement—reviewing** 26 **financial reports of companies limited by guarantee**

- 27 (1) An individual is taken to be a registered company auditor for the
28 purposes of a review of a financial report of a company limited by
29 guarantee if the individual:
30 (a) is a member of a professional accounting body; and
31 (b) holds a practising certificate of the kind specified in the
32 regulations.

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Amendments relating to the Corporations Act 2001 **Schedule 1**
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1 (2) The provisions of this Act apply, with the necessary modifications,
2 in relation to the individual accordingly.

3 **47 Subsection 324CH(9) (definition of *relevant financial year*)**

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

6 **48 Schedule 3 (after table item 82)**

7 Insert:

82A Section 254SA 100 penalty units or imprisonment for 2 years,
or both.

8 **49 Schedule 3 (after table item 103)**

9 Insert:

103AA Section 294B 10 penalty units or imprisonment for 3 months,
or both.

10 **50 Schedule 3 (cell at table item 104, column headed**
11 **“Provision”)**

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

13 **51 Schedule 3 (after table item 109)**

14 Insert:

109A Subsections 316A(1) 10 penalty units or imprisonment for 3 months,
and (2), paragraph or both.
316A(3)(a) and
subsections 316A(4)
and (5)

15 ***Financial Sector (Business Transfer and Group Restructure)***
16 ***Act 1999***

17 **52 Subsection 36G(2) (note 2)**

18 Repeal the note, substitute:

19 Note 2: Section 254T of that Act provides that dividends may only be paid if:
20 (a) the company’s assets are sufficiently in excess of its liabilities;
21 and
22 (b) the payment of the dividend is fair and reasonable to the
23 company’s shareholders as a whole and does not materially
24 prejudice the company’s ability to pay its creditors.

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Schedule 1 Amendments relating to the Corporations Act 2001

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1 ***Medibank Private Sale Act 2006***

2 **53 Subitem 57(1) of Schedule 2**

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

4 **54 Subitem 57(3) of Schedule 2**

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

6

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Amendments relating to the Corporations Act 2001 **Schedule 1**
Application, saving and transitional provisions **Part 2**

1 **Part 2—Application, saving and transitional**
2 **provisions**

3 *Corporations Act 2001*

4 **55 At the end of Chapter 10**

5 Add:

6 **Part 10.13—Transitional provisions relating to the**
7 **Corporations Amendment (Corporate**
8 **Reporting Reform) Act 2010**
9

10 **1499 Definition**

11 In this Part:

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

14 **1500 Application of Part 1 of Schedule 1 to the amending Act**

- 15 (1) The amendments made by items 1 to 4, items 11 to 16, items 18 to
16 23, items 29 and 30, items 32 to 37, items 39 to 43 and items 46 to
17 51 of Schedule 1 to the amending Act apply in relation to a
18 company, registered scheme or disclosing entity for financial years
19 of the company, registered scheme or disclosing entity ending on
20 or after 30 June 2010.
- 21 (2) The amendment made by item 6 of Schedule 1 to the amending Act
22 applies in relation to dividends paid on or after the commencement
23 of the item.
- 24 (3) The amendments made by items 8, 9 and 10 of Schedule 1 to the
25 amending Act apply in relation to cancellations of paid-up share
26 capital that occur on or after the commencement of those items.
- 27 (4) Despite the amendment made by item 17 of Schedule 1 to the
28 amending Act, accounting standards made for the purposes of
29 subsection 295(2) of this Act that were in force immediately before
30 the commencement of that item continue in force, after that

EXPOSURE DRAFT

Schedule 1 Amendments relating to the Corporations Act 2001

Part 2 Application, saving and transitional provisions

- 1 commencement, as if they were made for the purposes of
2 subsection 295(2) of this Act as amended by that item.
- 3 (5) The amendment made by item 17 of Schedule 1 to the amending
4 Act applies to a report of a company, registered scheme or
5 disclosing entity for financial years of the company, registered
6 scheme or disclosing entity ending on or after 30 June 2010.
- 7 (6) The amendments made by items 24 to 28 of Schedule 1 to the
8 amending Act apply in relation to a company, registered scheme or
9 disclosing entity for financial years of the company, registered
10 scheme or disclosing entity ending on or after 30 June 2011.
- 11 (7) Despite the amendment made by item 31 of Schedule 1 to the
12 amending Act, accounting standards made for the purposes of
13 subsection 303(2) of this Act that were in force immediately before
14 the commencement of that item continue in force, after that
15 commencement, as if they were made for the purposes of
16 subsection 303(2) of this Act as amended by that item.
- 17 (8) The amendment made by item 31 of Schedule 1 to the amending
18 Act applies to a report of a disclosing entity for half-years of the
19 disclosing entity ending on or after 30 June 2010.
- 20 (9) The amendment made by item 38 of Schedule 1 to the amending
21 Act applies regardless of whether the information came into
22 existence before, on or after the commencement of that item.
- 23 (10) The amendments made by items 44 and 45 of Schedule 1 to the
24 amending Act apply where the previous financial year of the
25 company, registered scheme or disclosing entity ends on or after
26 30 June 2010.
27

EXPOSURE DRAFT

Australian Securities and Investments Commission Act 2001 **Schedule 2**
Amendments **Part 1**

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

3 **Part 1—Amendments**

4 *Australian Securities and Investments Commission Act 2001*

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

6 Repeal the definition.

7 **2 Subsection 5(1) (definition of ICAA member)**

8 Repeal the definition.

9 **3 Paragraphs 203(1)(c) and (d)**

10 Repeal the paragraphs, substitute:

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

13 **4 Subsection 203(1A)**

14 Repeal the subsection, substitute:

- 15 (1A) The *accounting members* are the members appointed under
16 paragraph (1)(c), and the *business members* are the members
17 appointed under paragraph (1)(e).

18 **5 Subsection 203(1B)**

19 Repeal the subsection, substitute:

- 20 (1B) A person is eligible under this subsection for appointment as an
21 accounting member if the person:
22 (a) is resident in Australia; and
23 (b) is a member of:
24 (i) a professional accounting body; or
25 (ii) any other body prescribed by the regulations for the
26 purposes of this subparagraph.

27 **6 Subsection 210A(5)**

28 Repeal the subsection, substitute:

EXPOSURE DRAFT

Schedule 2 Australian Securities and Investments Commission Act 2001

Part 1 Amendments

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

4 **7 After subsection 221(1)**

5 Insert:

6 (1A) The Chairperson of the Board has, in the performance of his or her
7 functions or the exercise of his or her powers in convening a
8 conference under section 1294A of the Corporations Act, the same
9 protection and immunity as a Justice of the High Court.

10 **8 Subsection 221(2)**

11 After “hearing”, insert “or conference”.

12 **9 Subparagraph 225(2)(h)(ii)**

13 Omit “; and”, substitute “.”.

14 **10 Paragraphs 225(2)(i) and (j)**

15 Repeal the paragraphs.

16 **11 Subparagraph 225(2A)(h)(ii)**

17 Omit “; and”, substitute “.”.

18 **12 Paragraphs 225(2A)(i) and (j)**

19 Repeal the paragraphs.
20

EXPOSURE DRAFT

Australian Securities and Investments Commission Act 2001 **Schedule 2**
Application, saving and transitional provisions **Part 2**

1 **Part 2—Application, saving and transitional**
2 **provisions**

3 *Australian Securities and Investments Commission Act 2001*

4 **13 At the end of the Act**

5 Add:

6 **Part 18—Transitional provisions relating to the**
7 **Corporations Amendment (Corporate**
8 **Reporting Reform) Act 2010**
9

10 **289 Definitions**

11 In this Part:

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

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

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

18 *transition period* means the period:

- 19 (a) beginning at the start of the day Part 1 of Schedule 2 to the
20 amending Act commences; and
21 (b) ending when there is no longer any person holding an
22 appointment as a member of the Companies Auditors and
23 Liquidators Disciplinary Board under paragraph 203(1)(c) or
24 (d) of the old Act.

25 **290 Application of Companies Auditors and Liquidators**
26 **Disciplinary Board amendments**

27 (1) The amendments made by items 1 to 5 of Schedule 2 to the
28 amending Act do not apply until after the transition period.

29 (2) During the transition period:

EXPOSURE DRAFT

Schedule 2 Australian Securities and Investments Commission Act 2001

Part 2 Application, saving and transitional provisions

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

24 **291 Application of pre-hearing conference amendments**

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