



Corporations Amendment (Repayment of Directors' Bonuses) Act 2003

No. 25, 2003

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

Note: An electronic version of this Act is available in SCALEplus
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An Act to amend the *Corporations Act 2001*, and for related purposes

[Assented to 11 April 2003]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Corporations Amendment (Repayment of Directors' Bonuses) Act 2003*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Corporations Act 2001

1 Section 9

Insert:

close associate of a director means:

- (a) a relative or de facto spouse of the director; or
- (b) a relative of a spouse, or of a de facto spouse, of the director.

2 Section 9

Insert:

unreasonable director-related transaction has the meaning given by section 588FDA.

3 After section 588FD

Insert:

588FDA Unreasonable director-related transactions

- (1) A transaction of a company is an *unreasonable director-related transaction* of the company if, and only if:
 - (a) the transaction is:
 - (i) a payment made by the company; or
 - (ii) a conveyance, transfer or other disposition by the company of property of the company; or
 - (iii) the issue of securities by the company; or
 - (iv) the incurring by the company of an obligation to make such a payment, disposition or issue; and
 - (b) the payment, disposition or issue is, or is to be, made to:
 - (i) a director of the company; or
 - (ii) a close associate of a director of the company; or
 - (iii) a person on behalf of, or for the benefit of, a person mentioned in subparagraph (i) or (ii); and

- (c) it may be expected that a reasonable person in the company's circumstances would not have entered into the transaction, having regard to:
- (i) the benefits (if any) to the company of entering into the transaction; and
 - (ii) the detriment to the company of entering into the transaction; and
 - (iii) the respective benefits to other parties to the transaction of entering into it; and
 - (iv) any other relevant matter.

The obligation referred to in subparagraph (a)(iv) may be a contingent obligation.

Note: Subparagraph (a)(iv)—This would include, for example, granting options over shares in the company.

- (2) To avoid doubt, if:
- (a) the transaction is a payment, disposition or issue; and
 - (b) the transaction is entered into for the purpose of meeting an obligation the company has incurred;
- the test in paragraph (1)(c) applies to the transaction taking into account the circumstances as they exist at the time when the transaction is entered into (rather than as they existed at the time when the obligation was incurred).
- (3) A transaction may be an unreasonable director-related transaction because of subsection (1):
- (a) whether or not a creditor of the company is a party to the transaction; and
 - (b) even if the transaction is given effect to, or is required to be given effect to, because of an order of an Australian court or a direction by an agency.

4 Subsection 588FE(1)

Repeal the subsection, substitute:

- (1) If a company is being wound up:
- (a) a transaction of the company may be voidable because of any one or more of subsections (2) to (6) if the transaction was entered into on or after 23 June 1993; and

- (b) a transaction of the company may be voidable because of subsection (6A) if the transaction was entered into on or after the commencement of the *Corporations Amendment (Repayment of Directors' Bonuses) Act 2003*.

5 After subsection 588FE(6)

Insert:

- (6A) The transaction is voidable if:
 - (a) it is an unreasonable director-related transaction of the company; and
 - (b) it was entered into, or an act was done for the purposes of giving effect to it:
 - (i) during the 4 years ending on the relation-back day; or
 - (ii) after that day but on or before the day when the winding up began.

6 At the end of section 588FF

Add:

- (4) If the transaction is a voidable transaction solely because it is an unreasonable director-related transaction, the court may make orders under subsection (1) only for the purpose of recovering for the benefit of the creditors of the company the difference between:
 - (a) the total value of the benefits provided by the company under the transaction; and
 - (b) the value (if any) that it may be expected that a reasonable person in the company's circumstances would have provided having regard to the matters referred to in paragraph 588FDA(1)(c).

7 Subsection 588FG(2)

After "unfair loan to the company", insert " , or an unreasonable director-related transaction of the company,".

[Minister's second reading speech made in—
House of Representatives on 16 October 2002
Senate on 3 March 2003]

(219/02)
