





# **Corporations Amendment (Corporate Reporting Reform) Act 2010**

**No. 66, 2010**

**An Act to amend the law in relation to corporations, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# Corporations Amendment (Corporate Reporting Reform) Act 2010

No. 66, 2010

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## **An Act to amend the law in relation to corporations, and for related purposes**

[Assented to 28 June 2010]

The Parliament of Australia enacts:

### **1 Short title**

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

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## 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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	28 June 2010
2. Schedule 1, Part 1	The day this Act receives the Royal Assent.	28 June 2010
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.	28 June 2010
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.	Does not commence ( <i>Corporations Amendment (Financial Market Supervision) Act 2010</i> , Schedule 1 has not commenced)
5. Schedule 1, Part 4	The day this Act receives the Royal Assent.	28 June 2010
6. Schedule 2	The day this Act receives the Royal Assent.	28 June 2010

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

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

### **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 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

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

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

Repeal the paragraph, substitute:

### *9.1 Dividends*

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

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

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

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

[sections 254T, 254U]

## **6 Before section 254T**

Insert:

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

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

## **7 Section 254T**

Repeal the section, substitute:

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

- (1) A company must not pay a dividend unless:
  - (a) the company's assets exceed its liabilities immediately before the dividend is declared and the excess is sufficient for the payment of the dividend; and
  - (b) the payment of the dividend is fair and reasonable to the company's shareholders as a whole; and
  - (c) the payment of the dividend does not materially prejudice the company's ability to pay its creditors.

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

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

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

## **8 Section 258F**

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Before “A company”, insert “(1)”.

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

Repeal the sentence.

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

Add:

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

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

Repeal the cell, substitute:

Unless the report relates to a company limited by guarantee, it has a general component (sections 299 and 299A), a specific component (section 300) and a special component for listed companies (section 300A). See section 285A for an overview of the obligations of companies limited by guarantee.

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

Insert:

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

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

Repeal the cell, substitute:

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

#### 14 After section 285

Insert:

#### 285A Overview of obligations of companies limited by guarantee

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

<b>Annual financial reporting for companies limited by guarantee</b>			
<b>Item</b>	<b>Nature of company</b>	<b>Obligations</b>	<b>Sections</b>
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"><li>• prepare a financial report;</li><li>• prepare a directors' report;</li><li>• have financial report audited;</li><li>• notify members of reports.</li></ul>	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

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**Annual financial reporting for companies limited by guarantee**

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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

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**15 At the end of section 292**

Add:

*Small companies limited by guarantee*

- (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.

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

**16 After section 294**

Insert:

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

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

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

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

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

**17 Subsection 295(2)**

Repeal the subsection, substitute:

*Financial statements*

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

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

Insert:

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

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

Repeal the sentence.

**20 After subsection 296(1)**

Insert:

*Small proprietary companies*

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

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

*Small companies limited by guarantee*

- (1B) Despite subsection (1), the financial report of a small company limited by guarantee does not have to comply with particular accounting standards if:
  - (a) the report is prepared in response to a member direction under section 294A; and
  - (b) the direction specifies that the report does not have to comply with those standards.

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

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

Repeal the sentence.

**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 or review 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)**

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

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

Repeal the paragraph, substitute:

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

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

Repeal the paragraph, substitute:

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

**28 Subsection 299A(3)**

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

**29 After section 300A**

Insert:

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

- (1) The directors' report for a financial year for a company limited by guarantee must:
  - (a) contain a description of the short and long term objectives of the entity reported on; and
  - (b) set out the entity's strategy for achieving those objectives; and
  - (c) state the entity's principal activities during the year; and
  - (d) state how those activities assisted in achieving the entity's objectives; and
  - (e) state how the entity measures its performance, including any key performance indicators used by the entity.
- (2) The entity reported on is:
  - (a) the company (if consolidated financial statements are not required); or
  - (b) the consolidated entity (if consolidated financial statements are required).
- (3) The directors' report for a financial year for a company limited by guarantee must also include details of:
  - (a) the name of each person who has been a director of the company at any time during or since the end of the year and the period for which the person was a director; and
  - (b) each director's qualifications, experience and special responsibilities; and
  - (c) the number of meetings of the board of directors held during the year and each director's attendance at those meetings; and
  - (d) for each class of membership in the company—the amount which a member of that class is liable to contribute if the company is wound up; and
  - (e) the total amount that members of the company are liable to contribute if the company is wound up.

**30 At the end of section 301**

Add:

*Companies limited by guarantee*

- (3) A company limited by guarantee may have its financial report for a financial year reviewed, rather than audited, if:
- (a) the company is not one of the following:
    - (i) a Commonwealth company for the purposes of the *Commonwealth Authorities and Companies Act 1997*;
    - (ii) a subsidiary of a Commonwealth company for the purposes of that Act;
    - (iii) a subsidiary of a Commonwealth authority for the purposes of that Act; and
  - (b) one of the following is true:
    - (i) the company is not required by the accounting standards to be included in consolidated financial statements and the revenue of the company for the financial year is less than \$1 million;
    - (ii) the company is required by the accounting standards to be included in consolidated financial statements and the consolidated revenue of the consolidated entity for the financial year is less than \$1 million.
- (4) A small company limited by guarantee's financial report for a financial year does not have to be audited or reviewed if:
- (a) the report is prepared in response to a member direction under section 294A; and
  - (b) the direction does not ask for the audit or review.

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

**31 Subsection 303(2)**

Repeal the subsection, substitute:

*Financial statements*

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

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

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

After “audit”, insert “or review”.

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

After “audit”, insert “or review”.

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

After “audit”, insert “or review”.

**35 After subsection 308(3)**

Insert:

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

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

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

**36 Subsection 308(4)**

Repeal the subsection, substitute:

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

**37 Subsection 308(5)**

After “(3),”, insert “(3AA), (3AB),”.

**38 After subsection 314(1)**

Insert:

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

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

**39 At the end of section 316**

Add:

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

**40 After section 316**

Insert:

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

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

Note: For the deadline for holding an AGM, see section 250N.
- (4) If a member direction is given to a small company limited by guarantee under section 294A after the end of a financial year, subsection (3) does not apply and the company must send a copy of the reports that the company prepares or obtains as a result of the direction to each member who has made an election for that financial year, in accordance with the election, by the later of:
  - (a) 2 months after the date on which the direction was given; and

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

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

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

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

Insert:

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

#### **42 Subsection 319(2)**

Repeal the subsection, substitute:

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

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

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

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

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

Insert:

(2A) A subsequent financial year may last for a period of less than 12 months determined by the directors if:

- (a) the subsequent financial year starts at the end of the previous financial year; and
- (b) there has not been a period during the previous 5 financial years in which there was a financial year of less than 12 months in reliance on this subsection; and
- (c) the change to the subsequent financial year is made in good faith in the best interests of the company, registered scheme or disclosing entity.

**45 After section 324BD**

Insert:

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

- (1) An individual is taken to be a registered company auditor for the purposes of a review of a financial report of a company limited by guarantee if the individual:
  - (a) is a member of a professional accounting body; and
  - (b) holds a practising certificate of the kind specified in the regulations.
- (2) The provisions of this Act apply, with the necessary modifications, in relation to the individual accordingly.

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

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

**47 Subsection 329(9)**

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

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

Insert:

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

Insert:

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

After “(3),”, insert “(3AA), (3AB),”.

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

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

**Part 1** Main amendments

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Insert:

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

*Corporations Act 2001*

**52 At the end of Chapter 10**

Add:

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

**1510A Definition**

In this Part:

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

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

- (1) The amendments made by items 1 to 4, items 11 to 16, items 18 to 23, items 29 and 30, items 32 to 42, items 45 to 47 and items 49 to 51 of Schedule 1 to the amending Act apply in relation to a company, registered scheme or disclosing entity for financial years of the company, registered scheme or disclosing entity ending on or after 30 June 2010.
- (1A) The amendment made by item 6 of Schedule 1 to the amending Act applies in relation to a company limited by guarantee incorporated on or after the commencement of that item.

**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

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- (2) The amendments made by items 7 and 48 of Schedule 1 to the amending Act apply in relation to dividends declared on or after the commencement of those items.
  - (3) The amendments made by items 8, 9 and 10 of Schedule 1 to the amending Act apply in relation to cancellations of paid-up share capital that occur on or after the commencement of those items.
  - (4) Despite the amendment made by item 17 of Schedule 1 to the amending Act, accounting standards made for the purposes of subsection 295(2) of this Act that were in force immediately before the commencement of that item continue in force, after that commencement, as if they were made for the purposes of subsection 295(2) of this Act as amended by that item.
  - (5) The amendment made by item 17 of Schedule 1 to the amending Act applies to a report of a company, registered scheme or disclosing entity for financial years of the company, registered scheme or disclosing entity ending on or after 30 June 2010.
  - (6) The amendments made by items 24 to 28 of Schedule 1 to the amending Act apply in relation to a company, registered scheme or disclosing entity for financial years of the company, registered scheme or disclosing entity ending on or after 30 June 2011.
  - (7) Despite the amendment made by item 31 of Schedule 1 to the amending Act, accounting standards made for the purposes of subsection 303(2) of this Act that were in force immediately before the commencement of that item continue in force, after that commencement, as if they were made for the purposes of subsection 303(2) of this Act as amended by that item.
  - (8) The amendment made by item 31 of Schedule 1 to the amending Act applies to a report of a disclosing entity for half-years of the disclosing entity ending on or after 30 June 2010.
  - (9) The amendments made by items 43 and 44 of Schedule 1 to the amending Act apply where the previous financial year of the company, registered scheme or disclosing entity ends on or after 30 June 2010.
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Amendments relating to the Corporations Act 2001 **Schedule 1**  
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 **Part 2**

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

**53 Item 34 of Schedule 1**

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

**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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**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**

*Corporations Act 2001*

**54 At the end of Chapter 10**

Add:

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

**1514 Definition**

In this Part:

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

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

- (1) The amendments made by items 1 to 4, items 11 to 16, items 18 to 23, items 29 and 30, items 32 to 42, items 45 to 47 and items 49 to 51 of Schedule 1 to the amending Act apply in relation to a company, registered scheme or disclosing entity for financial years of the company, registered scheme or disclosing entity ending on or after 30 June 2010.
- (1A) The amendment made by item 6 of Schedule 1 to the amending Act applies in relation to a company limited by guarantee incorporated on or after the commencement of that item.

- (2) The amendments made by items 7 and 48 of Schedule 1 to the amending Act apply in relation to dividends declared on or after the commencement of those items.
- (3) The amendments made by items 8, 9 and 10 of Schedule 1 to the amending Act apply in relation to cancellations of paid-up share capital that occur on or after the commencement of those items.
- (4) Despite the amendment made by item 17 of Schedule 1 to the amending Act, accounting standards made for the purposes of subsection 295(2) of this Act that were in force immediately before the commencement of that item continue in force, after that commencement, as if they were made for the purposes of subsection 295(2) of this Act as amended by that item.
- (5) The amendment made by item 17 of Schedule 1 to the amending Act applies to a report of a company, registered scheme or disclosing entity for financial years of the company, registered scheme or disclosing entity ending on or after 30 June 2010.
- (6) The amendments made by items 24 to 28 of Schedule 1 to the amending Act apply in relation to a company, registered scheme or disclosing entity for financial years of the company, registered scheme or disclosing entity ending on or after 30 June 2011.
- (7) Despite the amendment made by item 31 of Schedule 1 to the amending Act, accounting standards made for the purposes of subsection 303(2) of this Act that were in force immediately before the commencement of that item continue in force, after that commencement, as if they were made for the purposes of subsection 303(2) of this Act as amended by that item.
- (8) The amendment made by item 31 of Schedule 1 to the amending Act applies to a report of a disclosing entity for half-years of the disclosing entity ending on or after 30 June 2010.
- (9) The amendments made by items 43 and 44 of Schedule 1 to the amending Act apply where the previous financial year of the company, registered scheme or disclosing entity ends on or after 30 June 2010.

## **Part 4—Consequential amendments**

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

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

Repeal the note, substitute:

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

### ***Income Tax Assessment Act 1936***

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

Insert:

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

#### **57 Application of income tax amendment**

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

### ***Medibank Private Sale Act 2006***

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

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

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

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

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

### **Part 1—Amendments**

#### *Australian Securities and Investments Commission Act 2001*

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

Repeal the definition.

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

Repeal the definition.

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

Repeal the paragraphs, substitute:

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

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

Repeal the subsection, substitute:

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

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

Repeal the subsection, substitute:

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

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

Repeal the subsection, substitute:

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

**7 After subsection 221(1)**

Insert:

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

**8 After subsection 221(2)**

Insert:

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

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

Omit “; and”, substitute “.”.

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

Repeal the paragraphs.

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

Omit “; and”, substitute “.”.

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

Repeal the paragraphs.

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

### *Australian Securities and Investments Commission Act 2001*

#### **13 At the end of the Act**

Add:

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

### **289 Definitions**

In this Part:

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

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

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

*transition period* means the period:

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

## **290 Application of Companies Auditors and Liquidators Disciplinary Board amendments**

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

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

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

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*[Minister's second reading speech made in—  
House of Representatives on 26 May 2010  
Senate on 22 June 2010]*

(109/10)