





# **Corporations Amendment (Sons of Gwalia) Act 2010**

**No. 150, 2010**

**An Act to amend the law relating to claims against 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 (Sons of Gwalia) Act 2010

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## **An Act to amend the law relating to claims against corporations, and for related purposes**

[Assented to 17 December 2010]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Corporations Amendment (Sons of Gwalia) 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.	17 December 2010
2. Schedule 1	The day after this Act receives the Royal Assent.	18 December 2010

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in Column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Amendment of the Corporations Act 2001**

### **1 At the end of Chapter 2F**

Add:

### **Part 2F.4—Proceedings against a company by members and others**

#### **247E Shareholding does not prevent compensation claim**

A person is not prevented from obtaining damages or other compensation from a company only because the person:

- (a) holds, or has held, shares in the company; or
- (b) has subscribed for shares in the company; or
- (c) has a right to be included in the register that the company maintains under section 169.

#### **1A After subsection 411(5)**

Insert:

(5A) If the compromise or arrangement:

- (a) involves creditors of the Part 5.1 body with subordinate claims (within the meaning of subsection 563A(2)); and
- (b) is approved by the Court;

those creditors are also bound by the compromise or arrangement despite the fact that a meeting of those creditors has not been ordered by the Court under subsection (1) or (1A).

#### **2 Section 563A**

Repeal the section, substitute:

### **563A Postponing subordinate claims**

- (1) The payment of a subordinate claim against a company is to be postponed until all other debts payable by, and claims against, the company are satisfied.
- (2) In this section:

*claim* means a claim that is admissible to proof against the company (within the meaning of section 553).

*debt* means a debt that is admissible to proof against the company (within the meaning of section 553).

*subordinate claim* means:

- (a) a claim for a debt owed by the company to a person in the person's capacity as a member of the company (whether by way of dividends, profits or otherwise); or
- (b) any other claim that arises from buying, holding, selling or otherwise dealing in shares in the company.

### **2A Subsection 563B(2)**

Omit "debts owed to members of the company as members of the company (whether by way of dividends, profits or otherwise)", substitute "subordinate claims (within the meaning of section 563A)".

### **3 At the end of Division 3 of Part 5.9**

Add:

### **600H Rights if claim against the company postponed**

- (1) A person whose claim against a company is postponed under section 563A is entitled:
  - (a) to receive a copy of any notice, report or statement to creditors only if the person asks the administrator or liquidator of the company, in writing, for a copy of the notice, report or statement; and
  - (b) to vote in their capacity as a creditor of the company, at a meeting ordered under subsection 411(1) or during the external administration of the company, only if the Court so orders.

(2) In this section:

*external administration* includes the following:

- (a) voluntary administration;
- (b) a compromise or arrangement under part 5.1;
- (c) administration under a deed of company arrangement;
- (d) winding up by the Court;
- (e) voluntary winding up.

#### **4 Application provision—postponed claims**

- (1) Section 563A of the *Corporations Act 2001*, as amended by this Schedule, applies to a claim that arises after this Schedule commences.
- (2) Section 600H of the *Corporations Act 2001*, as inserted by this Schedule, applies to a claim made against a company if the external administration of the company commences after this Schedule commences.

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[Minister's second reading speech made in—  
*House of Representatives on 29 September 2010*  
*Senate on 26 November 2010*]