

# EXPOSURE-DRAFT

2010-2011-2012

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

## **Corporations Legislation Amendment (Remuneration Disclosures and Other Measures) Bill 2012**

**No.     , 2012**

*(Treasury)*

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



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# EXPOSURE-DRAFT

1     **A Bill for an Act to amend the law relating 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 Legislation Amendment*  
6                     *(Remuneration Disclosures and Other Measures) Act 2012*.

7     **2 Commencement**

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

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1 **3 Schedule(s)**

2           Each Act that is specified in a Schedule to this Act is amended or  
3           repealed as set out in the applicable items in the Schedule  
4           concerned, and any other item in a Schedule to this Act has effect  
5           according to its terms.  
6

# EXPOSURE-DRAFT

Amendment of the Corporations Act 2001 **Schedule 1**  
Amendments **Part 1**

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1  
2 **Schedule 1—Amendment of the Corporations**  
3 **Act 2001**

4 **Part 1—Amendments**

5 **1 Section 9**

6 Insert:

7 *material misstatement or omission*: a misstatement or omission in  
8 the financial statements for a financial year is a *material*  
9 *misstatement or omission* if the misstatement or omission is  
10 material within the meaning of the accounting standards.

11 **2 Paragraph 9.1 of the small business guide in Part 1.5**

12 Repeal the paragraph, substitute:

13 *9.1 Dividends*

14 Dividends are payments to shareholders.

15 Dividends can only be declared if, immediately before the dividend  
16 is declared:

- 17 • the company's assets are sufficiently in excess of its liabilities;  
18 and
- 19 • the directors of the company reasonably believe that the company  
20 will, immediately after the dividend is declared, be solvent.

21 If dividends are not declared, they can only be paid if, immediately  
22 before the dividend is paid:

- 23 • the company's assets are sufficiently in excess of its liabilities;  
24 and
- 25 • the directors of the company reasonably believe that the company  
26 will, immediately after the dividend is paid, be solvent.

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

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# EXPOSURE-DRAFT

Schedule 1 Amendment of the Corporations Act 2001

Part 1 Amendments

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[sections 254T, 254U]

## 3 Section 254T

Repeal the section, substitute:

### 254T Circumstances in which a dividend may be declared or paid

#### *Declaration of dividends*

(1) A company must not declare a dividend unless, immediately before the dividend is declared:

(a) the company's assets exceed its liabilities, and the excess is sufficient for the payment of the dividend; and

(b) the directors of the company reasonably believe that the company will, immediately after the dividend is declared, be solvent.

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

#### *Payment of dividends without declaration*

(2) A company must not pay a dividend unless, immediately before the dividend is paid:

(a) the company's assets exceed its liabilities, and the excess is sufficient for the payment of the dividend; and

(b) the directors of the company reasonably believe that the company will, immediately after the dividend is paid, be solvent.

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

(3) Subsection (2) does not apply to a dividend that is declared.

#### *Calculation of assets and liabilities*

(4) The assets and liabilities of a company at a particular time are to be calculated for the purposes of this section in accordance with:

(a) if the company is required to prepare a financial report, for the financial year during which the time occurs, that complies with one or more of the accounting standards—accounting standards in force at that time; or

(b) otherwise—the financial records of the company.

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Amendment of the Corporations Act 2001 **Schedule 1**  
Amendments **Part 1**

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## 4 Before paragraph 300A(1)(a)

Insert:

(aa) either:

- (i) a description of the company's process (the *remuneration governance framework*) for determining remuneration in relation to the key management personnel for the company or, if consolidated financial statements are required, for the consolidated entity; or
- (ii) if that remuneration governance framework is set out in the financial report for the financial year or in another section of the directors' report for the financial year—details of where it is set out; and

## 5 After paragraph 300A(1)(c)

Insert:

(ca) for each person referred to in paragraph (c):

- (i) the total amount of remuneration that was granted to the person before the start of the year and paid to the person during the year; and
- (ii) the total amount of remuneration that was granted, and paid, to the person during the year; and
- (iii) the total amount of remuneration that was granted to the person during the year (whether or not payment is dependent on satisfaction of a performance condition), but that is not to be paid to the person until after the end of the year; and

## 6 Subparagraph 300A(1)(e)(iv)

Repeal the subparagraph, substitute:

- (iv) if options granted to the person as part of their remuneration lapse during the financial year—the number of those options, and the year in which those options were granted; and

## 7 Subparagraph 300A(1)(e)(vi)

Repeal the subparagraph.

## 8 After paragraph 300A(1)(e)

Insert:

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# EXPOSURE-DRAFT

## Schedule 1 Amendment of the Corporations Act 2001

### Part 1 Amendments

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- 1 (ea) for each person referred to in paragraph (c):
- 2 (i) details of the benefits to be given by the company or a
- 3 related body corporate to the person in connection with
- 4 the person's retirement from an office or position of
- 5 employment in the company, if a failure to give the
- 6 benefit would constitute a contravention of a law in
- 7 force in Australia or elsewhere (otherwise than because
- 8 of a breach of contract or a breach of trust); and
- 9 (ii) details of the benefits to be given by the company or a
- 10 related body corporate to the person in connection with
- 11 the person's retirement from an office or position of
- 12 employment in the company, if subparagraph (i) does
- 13 not apply to the benefit; and
- 14 (iii) details of any other benefits to be given to the person, or
- 15 arrangements entered into or to be entered into with the
- 16 person, by the company or a related body corporate, that
- 17 relate or that will relate to a period beginning after the
- 18 person's retirement from an office or position of
- 19 employment with the company (whether or not the
- 20 benefit is required to be given or the arrangement
- 21 required to be entered into under a contract or in
- 22 accordance with any law); and

23 Note: See subsection (5) for the meaning of expressions used in  
24 paragraph (1)(ea).

#### 25 **9 At the end of subsection 300A(1)**

26 Add:

- 27 ; and (i) if the company becomes aware during the financial year of a
- 28 material misstatement or omission in the financial statements
- 29 in relation to the company in any of the previous 3 financial
- 30 years—for each person referred to in paragraph (c):
- 31 (i) the details of any reduction, repayment, or other
- 32 alteration of the person's remuneration made, or to be
- 33 made, because of the misstatement or omission; or
- 34 (ii) if a reduction, repayment or alteration of the person's
- 35 remuneration has not been made, and will not be made,
- 36 because of the misstatement or omission—an
- 37 explanation of why.

#### 38 **10 Subsection 300A(2)**

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# EXPOSURE-DRAFT

Amendment of the Corporations Act 2001 **Schedule 1**  
Amendments **Part 1**

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1 Omit “disclosing entity”, substitute “listed disclosing entity”.

2 **11 At the end of section 300A**

3 Add:

4 (5) For the purposes of paragraph (1)(ea), a reference to a benefit  
5 given in connection with a person’s retirement from an office or  
6 position of employment with a company has the same meaning as  
7 in section 200A.

8 **12 After subsection 327A(1)**

9 Insert:

10 (1A) Subsection (1) does not apply in relation to a company if:  
11 (a) the directors reasonably believe that subsection 301(3) will  
12 apply to the company’s financial reports; or  
13 (b) the company is a small company limited by guarantee.

14 **13 After subsection 327B(1)**

15 Insert:

16 (1A) Subsection (1) does not apply in relation to a company if:  
17 (a) subsection 301(3) applies to the company’s financial reports;  
18 or  
19 (b) the company is a small company limited by guarantee.

20 **14 At the end of subsection 327C(1)**

21 Add:

22 Note: Certain public companies are not required to appoint an auditor: see  
23 subsections 327A(1A) and 327B(1A).  
24

# EXPOSURE-DRAFT

Schedule 1 Amendment of the Corporations Act 2001

Part 2 Application provisions

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1

## 2 Part 2—Application provisions

### 3 15 At the end of Chapter 10

4 Add:

## 5 Part 10.21B—Transitional provisions relating to the 6 Corporations Legislation Amendment 7 (Remuneration Disclosures and Other 8 Measures) Act 2012 9

### 10 1538C Definition

11 In this Part:

12 *amending Act* means the *Corporations Legislation Amendment*  
13 *(Remuneration Disclosures and Other Measures) Act 2012*.

### 14 1538D Application of amendments relating to directors' reports

15 The amendments made by items 1 and 4 to 11 of Schedule 1 to the  
16 amending Act apply in relation to directors' reports for financial  
17 years starting on or after 1 July 2013.

### 18 1538E Application of amendments relating to dividends

19 (1) This section applies if:

- 20 (a) before the commencement of item 3 of Schedule 1 to the  
21 amending Act, a company declares a dividend; and  
22 (b) as at the commencement of that item, the dividend has not  
23 been paid.

24 (2) Despite the amendment made by that item, section 254T continues  
25 to apply, in relation to the dividend, as if the amendment had not  
26 been made.  
27

# EXPOSURE-DRAFT

Amendment of the Australian Securities and Investments Commission Act 2001

Schedule 2

Amendments Part 1

1

2

## Schedule 2—Amendment of the Australian Securities and Investments Commission Act 2001

3

4

### Part 1—Amendments

5

6

#### 1 Subsection 235A(2)

7

Repeal the subsection.

8

#### 2 After section 235A

9

Insert:

10

#### 235AA Terms and conditions of appointment of FRC members

11

##### *Remuneration and allowances*

12

(1) A member of the FRC is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid such remuneration as the Minister determines in writing.

13

14

15

16

(2) A member of the FRC is to be paid such allowances as the Minister determines in writing.

17

18

(3) Subsections (1) and (2) have effect subject to the *Remuneration Tribunal Act 1973*.

19

20

##### *Leave—full-time members*

21

(4) A full-time member of the FRC has the recreation leave entitlements that are determined by the Remuneration Tribunal.

22

23

(5) The Minister may grant a full-time member of the FRC leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines.

24

25

# EXPOSURE-DRAFT

**Schedule 2** Amendment of the Australian Securities and Investments Commission Act 2001

**Part 1** Amendments

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1 *Other terms and conditions*

2 (6) A member of the FRC holds office on the terms and conditions (if  
3 any) in relation to matters not covered by this Act as the Minister  
4 determines in writing.

### 5 **3 Subsection 236B(6)**

6 Repeal the subsection.

### 7 **4 After section 236B**

8 Insert:

### 9 **236BA Terms and conditions of appointment of the Chair of the** 10 **AASB**

11 *Remuneration and allowances*

12 (1) The Chair of the AASB is to be paid the remuneration that is  
13 determined by the Remuneration Tribunal. If no determination of  
14 that remuneration by the Tribunal is in operation, the Chair is to be  
15 paid such remuneration as the Minister determines in writing.

16 (2) The Chair of the AASB is to be paid such allowances as the  
17 Minister determines in writing.

18 (3) Subsections (1) and (2) have effect subject to the *Remuneration*  
19 *Tribunal Act 1973*.

20 *Leave—full-time Chair*

21 (4) A full-time Chair of the AASB has the recreation leave  
22 entitlements that are determined by the Remuneration Tribunal.

23 (5) The Minister may grant a full-time Chair of the AASB leave of  
24 absence, other than recreation leave, on such terms and conditions  
25 as to remuneration or otherwise as the Minister determines.

26 *Other terms and conditions*

27 (6) The Chair of the AASB holds office on such terms and conditions  
28 (if any) in relation to matters not covered by this Act as the  
29 Minister determines in writing.

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# EXPOSURE-DRAFT

Amendment of the Australian Securities and Investments Commission Act 2001

Schedule 2

Amendments Part 1

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## 236BB Terms and conditions of appointment of other members of the AASB

### *Application*

- (1) This section applies to a member of the AASB other than the Chair.

### *Remuneration and allowances*

- (2) A member of the AASB is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid such remuneration as the FRC determines in writing.
- (3) A member of the AASB is to be paid such allowances as the FRC determines in writing.
- (4) Subsections (2) and (3) have effect subject to the *Remuneration Tribunal Act 1973*.

### *Leave—full-time member*

- (5) A full-time member of the AASB has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (6) The FRC may grant a full-time member of the AASB leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the FRC determines.

### *Other terms and conditions*

- (7) A member of the AASB holds office on such terms and conditions (if any) in relation to matters not covered by this Act as the FRC determines in writing.

## 5 Subsections 236F(8) and (9)

Repeal the subsections.

## 6 After section 236F

Insert:

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**Schedule 2** Amendment of the Australian Securities and Investments Commission Act 2001

**Part 1** Amendments

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1     **236FA Terms and conditions of appointment of the Chair of the**  
2                     **AUASB**

3                     *Remuneration and allowances*

4                     (1) The Chair of the AUASB is to be paid the remuneration that is  
5                         determined by the Remuneration Tribunal. If no determination of  
6                         that remuneration by the Tribunal is in operation, the Chair is to be  
7                         paid such remuneration as the Minister determines in writing.

8                     (2) The Chair of the AUASB is to be paid such allowances as the  
9                         Minister determines in writing.

10                    (3) Subsections (1) and (2) have effect subject to the *Remuneration*  
11                         *Tribunal Act 1973*.

12                    *Leave—full-time Chair*

13                    (4) A full-time Chair of the AUASB has the recreation leave  
14                         entitlements that are determined by the Remuneration Tribunal.

15                    (5) The Minister may grant a full-time Chair of the AUASB leave of  
16                         absence, other than recreation leave, on such terms and conditions  
17                         as to remuneration or otherwise as the Minister determines.

18                    *Other terms and conditions*

19                    (6) The Chair of the AUASB holds office on such terms and  
20                         conditions (if any) in relation to matters not covered by this Act as  
21                         the Minister determines in writing.

22     **236FB Terms and conditions of appointment of other members of**  
23                     **the AUASB**

24                     *Application*

25                     (1) This section applies to a member of the AUASB other than the  
26                         Chair.

27                     *Remuneration and allowances*

28                     (2) A member of the AUASB is to be paid the remuneration that is  
29                         determined by the Remuneration Tribunal. If no determination of

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# EXPOSURE-DRAFT

Amendment of the Australian Securities and Investments Commission Act 2001

**Schedule 2**

Amendments **Part 1**

- 
- 1                   that remuneration by the Tribunal is in operation, the member is to  
2                   be paid such remuneration as the FRC determines in writing.
- 3                   (3) A member of the AUASB is to be paid such allowances as the FRC  
4                   determines in writing.
- 5                   (4) Subsections (2) and (3) have effect subject to the *Remuneration*  
6                   *Tribunal Act 1973*.
- 7                   *Leave—full-time member*
- 8                   (5) A full-time member of the AUASB has the recreation leave  
9                   entitlements that are determined by the Remuneration Tribunal.
- 10                  (6) The FRC may grant a full-time member of the AUASB leave of  
11                  absence, other than recreation leave, on the terms and conditions as  
12                  to remuneration or otherwise that the FRC determines.
- 13                  *Other terms and conditions*
- 14                  (7) A member of the AUASB holds office on such terms and  
15                  conditions (if any) in relation to matters not covered by this Act as  
16                  the FRC determines in writing.  
17

# EXPOSURE-DRAFT

Schedule 2 Amendment of the Australian Securities and Investments Commission Act 2001

Part 2 Application provisions

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1

## 2 Part 2—Application provisions

### 3 7 At the end of the Act

4 Add:

## 5 Part 20—Transitional provisions relating to the 6 Corporations Legislation Amendment 7 (Remuneration Disclosures and Other 8 Measures) Act 2012 9

### 10 295 Definitions

11 In this Part:

12 *amending Act* means the *Corporations Legislation Amendment*  
13 *(Remuneration Disclosures and Other Measures) Act 2012*.

14 *commencement* means the commencement of Schedule 2 to the  
15 amending Act.

### 16 296 FRC members

17 (1) If:

18 (a) immediately before commencement, a person is a member of  
19 the FRC; or

20 (b) a person is appointed as a member of the FRC during the  
21 transition period;

22 this Act applies to the member, during the transition period, as if  
23 the amendments made by Schedule 2 to the amending Act had not  
24 been made.

25 (2) For the purposes of this section, *transition period* means the  
26 period:

27 (a) beginning on commencement; and

28 (b) ending when the Remuneration Tribunal makes a  
29 determination under subsection 235AA(1) as inserted by the  
30 amending Act.

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# EXPOSURE-DRAFT

Amendment of the Australian Securities and Investments Commission Act 2001

Schedule 2

Application provisions Part 2

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## 297 AASB members

(1) If:

(a) immediately before commencement, a person is a member of the AASB; or

(b) a person is appointed as a member of the AASB during the transition period;

this Act applies to the member, during the transition period, as if the amendments made by Schedule 2 to the amending Act had not been made.

(2) For the purposes of this section, *transition period* means the period:

(a) beginning on commencement; and

(b) ending:

(i) if the member is the Chair of the AASB—when the Remuneration Tribunal makes a determination under subsection 236BA(1) as inserted by the amending Act; or

(ii) otherwise—when the Remuneration Tribunal makes a determination under subsection 236BB(2) as inserted by the amending Act.

## 298 AUASB members

(1) If:

(a) immediately before commencement, a person is a member of the AUASB; or

(b) a person is appointed as a member of the AUASB during the transition period;

this Act applies to the member, during the transition period, as if the amendments made by Schedule 2 to the amending Act had not been made.

(2) For the purposes of this section, *transition period* means the period:

(a) beginning on commencement; and

(b) ending:

(i) if the member is the Chair of the AUASB—when the Remuneration Tribunal makes a determination under

# EXPOSURE-DRAFT

**Schedule 2** Amendment of the Australian Securities and Investments Commission Act 2001

**Part 2** Application provisions

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- 1 subsection 236FA(1) as inserted by the amending Act;  
2 or  
3 (ii) otherwise—when the Remuneration Tribunal makes a  
4 determination under subsection 236FB(2) as inserted by  
5 the amending Act.  
6

# EXPOSURE-DRAFT

Consequential amendments **Schedule 3**

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1

2

## **Schedule 3—Consequential amendments**

3

4

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

5

#### *Act 1999*

6

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

7

Repeal the note, substitute:

8

Note 2: Section 254T of that Act sets out the circumstances in which a dividend may be declared or paid.

9