

# EXPOSURE DRAFT

2013-2014

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT
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## **Corporations Legislation Amendment (Deregulatory and Other Measures) Bill 2014**

**No.     , 2014**

*(Treasury)*

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

**EXPOSURE DRAFT**



# EXPOSURE DRAFT

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# EXPOSURE DRAFT

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## 2 **A Bill for an Act to amend the law relating to** 3 **corporations, and for related purposes**

4 The Parliament of Australia enacts:

### 5 **1 Short title**

6 This Act may be cited as the *Corporations Legislation Amendment*  
7 *(Deregulatory and Other Measures) Act 2014*.

### 8 **2 Commencement**

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

### 11 **3 Schedule(s)**

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13 repealed as set out in the applicable items in the Schedule  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

# EXPOSURE DRAFT

Schedule 1 Amendment of the Corporations Act 2001

Part 1 Amendments

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

3 **Part 1—Amendments**

4 **1 Paragraph 9.1 of the small business guide in Part 1.5**

5 Repeal the paragraph, substitute:

6 *9.1 Dividends*

7 Dividends are payments to shareholders.

8 Dividends can only be declared if, immediately before the dividend  
9 is declared, the directors of the company reasonably believe that  
10 the company will, immediately after the dividend is declared, be  
11 solvent.

12 If dividends are not declared, they can only be paid if, immediately  
13 before the dividend is paid, the directors of the company  
14 reasonably believe that the company will, immediately after the  
15 dividend is paid, be solvent.

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

18 [sections 254T, 254U]

19 **2 Subsection 249D(1)**

20 Omit all the words after “the request”, substitute “of members with at  
21 least 5% of the votes that may be cast at the general meeting”.

22 **3 Subsection 249D(1A)**

23 Repeal the subsection.

24 **4 Section 254T**

25 Repeal the section, substitute:

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

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1 **254T Circumstances in which a dividend may be declared or paid**

2 *Declaration of dividends*

- 3 (1) A company must not declare a dividend unless, immediately before  
4 the dividend is declared, the directors of the company reasonably  
5 believe that the company will, immediately after the dividend is  
6 declared, be solvent.

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

9 *Payment of dividends without declaration*

- 10 (2) A company must not pay a dividend unless, immediately before the  
11 dividend is paid, the directors of the company reasonably believe  
12 that the company will, immediately after the dividend is paid, be  
13 solvent.

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

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

17 **254TA Share capital reductions by way of dividends**

- 18 (1) A company may reduce its share capital by declaring or paying a  
19 dividend, if:

- 20 (a) the dividend is declared or paid, as the case may be, in  
21 accordance with section 254T; and  
22 (b) the reduction in share capital is an equal reduction.

- 23 (2) For the purposes of paragraph (1)(b), the reduction is an *equal*  
24 *reduction* if:

- 25 (a) it relates only to ordinary shares; and  
26 (b) it applies to each holder of ordinary shares in proportion to  
27 the number of ordinary shares they hold; and  
28 (c) the terms of the reduction are the same for each holder of  
29 ordinary shares, disregarding differences that are:  
30 (i) attributable to the fact that shares have different accrued  
31 dividend entitlements; or
-

# EXPOSURE DRAFT

Schedule 1 Amendment of the Corporations Act 2001

Part 1 Amendments

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- 1 (ii) attributable to the fact that shares have different  
2 amounts unpaid on them; or  
3 (iii) introduced solely to ensure that each shareholder is left  
4 with a whole number of shares; or  
5 (iv) attributable to the use of dividend reinvestment plans.

## 6 **5 Subsection 256B(1) (note 2)**

7 After “preference shares”, insert “, section 254TA authorises reductions  
8 involved in the declaration or payment of dividends”.

## 9 **6 Subsection 256B(1) (note 2)**

10 Omit “subsection 257A(2)”, substitute “section 257A”.

## 11 **7 Paragraph 300(1)(a)**

12 Repeal the paragraph, substitute:

- 13 (a) dividends or distributions paid to members during the year,  
14 including details of the source of any dividends paid  
15 otherwise than out of profits; and

## 16 **8 After paragraph 300(1)(b)**

17 Insert:

- 18 (ba) if dividends were paid to members during the year, and the  
19 dividends were paid otherwise than out of profits—board  
20 policy for determining the amount and source of dividends;  
21 and

## 22 **9 Before paragraph 300A(1)(a)**

23 Insert:

- 24 (aa) either:  
25 (i) a description of the company’s process (the  
26 **remuneration governance framework**) for determining  
27 remuneration in relation to the key management  
28 personnel for the company or, if consolidated financial  
29 statements are required, for the consolidated entity; or  
30 (ii) if that remuneration governance framework is set out in  
31 the financial report for the financial year or in another



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

---

1 section of the directors' report for the financial year—  
2 details of where it is set out; and

## 3 **10 Subparagraph 300A(1)(e)(iv)**

4 Repeal the subparagraph, substitute:

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

## 9 **11 Subparagraph 300A(1)(e)(vi)**

10 Repeal the subparagraph.

## 11 **12 Subsection 300A(2)**

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

## 13 **13 At the end of subsection 323D(2A)**

14 Add:

15 Note: For the purposes of paragraph (b), financial years that, in reliance on  
16 subsection (2) or (4), were less than 12 months are disregarded.

## 17 **14 After subsection 327A(1)**

18 Insert:

19 (1A) Subsection (1) does not apply in relation to a company if:

- 20 (a) the directors reasonably believe that subsection 301(3) will  
21 apply to the company's financial reports; or  
22 (b) the company is a small company limited by guarantee.

## 23 **15 After subsection 327B(1)**

24 Insert:

25 (1A) Subsection (1) does not apply in relation to a company if:

- 26 (a) subsection 301(3) applies to the company's financial reports;  
27 or  
28 (b) the company is a small company limited by guarantee.

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Schedule 1 Amendment of the Corporations Act 2001

Part 1 Amendments

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1 **16 At the end of subsection 327C(1)**

2 Add:

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

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6 *Corporations Legislation Amendment (Deregulatory and Other Measures) Bill 2014* No. , 2014

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# EXPOSURE DRAFT

Amendment of the Corporations Act 2001 **Schedule 1**  
Application provisions **Part 2**

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1 **Part 2—Application provisions**

2 **17 At the end of Chapter 10**

3 Add:

4 **Part 10.24—Transitional provisions relating to the**  
5 **Corporations Legislation Amendment**  
6 **(Deregulatory and Other Measures) Act**  
7 **2014**  
8

9 **1547 Definition**

10 In this Part:

11 *amending Act* means the *Corporations Legislation Amendment*  
12 *(Deregulatory and Other Measures) Act 2014*.

13 **1548 Application of amendments relating to calling of general**  
14 **meetings**

15 The amendments of section 249D made by the amending Act do  
16 not apply in relation to a request made under that section before the  
17 commencement of this section.

18 **1549 Application of amendment relating to declaration or payment**  
19 **of dividends**

20 (1) This section applies if:

21 (a) before the commencement of this section, a company  
22 declared a dividend; and

23 (b) as at the commencement of this section, the dividend has not  
24 been paid.

25 (2) Despite the repeal and substitution of section 254T by the  
26 amending Act, that section continues to apply, in relation to the  
27 dividend, as if it had not been so repealed and substituted.

# EXPOSURE DRAFT

Schedule 1 Amendment of the Corporations Act 2001

Part 2 Application provisions

---

1 **1550 Application of section 254TA (share capital reductions by way**  
2 **of dividends)**

3 Section 254TA applies in relation to dividends declared or paid, as  
4 the case may be, in accordance with section 254T as repealed and  
5 substituted by the amending Act.

6 **1551 Application of amendments relating to directors' reports**

7 The amendments of sections 300 and 300A made by the amending  
8 Act apply in relation to directors' reports for financial years  
9 starting on or after the commencement of this section.

# EXPOSURE DRAFT

Amendment of the Australian Securities and Investments Commission Act 2001

Schedule 2

Amendments Part 1

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

### Part 1—Amendments

#### 1 Section 174

Before “The Panel”, insert “(1)”.

#### 2 At the end of section 174

Add:

(2) The functions and powers of the Panel may be exercised within or outside Australia.

(3) Any exercise of a function or power of the Panel outside Australia is subject to the obligations of Australia under international law, including obligations under any agreement or arrangement between Australian and another country or countries.

#### 3 Subsection 235A(2)

Repeal the subsection.

#### 4 After section 235A

Insert:

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

##### *Remuneration and allowances*

(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.

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

# EXPOSURE DRAFT

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

**Part 1** Amendments

---

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

3 *Leave—full-time members*

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

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

9 *Other terms and conditions*

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

## 13 **5 Subsection 236B(6)**

14 Repeal the subsection.

## 15 **6 After section 236B**

16 Insert:

### 17 **236BA Terms and conditions of appointment of members of the** 18 **AASB**

19 *Remuneration and allowances*

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

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

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

# EXPOSURE DRAFT

Amendment of the Australian Securities and Investments Commission Act 2001

Schedule 2

Amendments Part 1

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1                    *Leave—full-time members*

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

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

7                    *Other terms and conditions*

8                    (6) A member of the AASB holds office on such terms and conditions  
9                    (if any) in relation to matters not covered by this Act as the  
10                    Minister determines in writing.

## 11        **7 Subsections 236F(8) and (9)**

12                    Repeal the subsections.

## 13        **8 After section 236F**

14                    Insert:

### 15        **236FA Terms and conditions of appointment of members of the** 16                    **AUASB**

17                    *Remuneration and allowances*

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

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

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

26                    *Leave—full-time members*

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

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# EXPOSURE DRAFT

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

**Part 1** Amendments

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

5 *Other terms and conditions*

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



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Amendment of the Australian Securities and Investments Commission Act 2001

Schedule 2

Application provisions Part 2

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1 **Part 2—Application provisions**

2 **9 At the end of the Act**

3 Add:

4 **Part 21—Transitional provisions relating to the**  
5 **Corporations Legislation Amendment**  
6 **(Deregulatory and Other Measures) Act**  
7 **2014**  
8

9 **297 Definitions**

10 In this Part:

11 *amending Act* means the *Corporations Legislation Amendment*  
12 *(Deregulatory and Other Measures) Act 2014*.

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

15 **298 Takeovers Panel**

16 The amendment of section 174 made by Schedule 2 to the  
17 amending Act applies in relation to the exercise of functions and  
18 powers of the Panel after commencement, whether or not the  
19 exercise of the function or power relates to a Panel proceeding  
20 started before, on or after commencement.

21 **299 FRC members**

22 (1) If:

- 23 (a) immediately before commencement, a person is a member of  
24 the FRC; or  
25 (b) a person is appointed as a member of the FRC during the  
26 transition period;

# EXPOSURE DRAFT

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

**Part 2** Application provisions

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

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

- 6                   (a) beginning on commencement; and  
7                   (b) ending when the Remuneration Tribunal makes a  
8                   determination under subsection 235AA(1) as inserted by the  
9                   amending Act.

## 10           **300 AASB members**

11                   (1) If:

- 12                   (a) immediately before commencement, a person is a member of  
13                   the AASB; or  
14                   (b) a person is appointed as a member of the AASB during the  
15                   transition period;

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

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

- 21                   (a) beginning on commencement; and  
22                   (b) ending when the Remuneration Tribunal makes a  
23                   determination under subsection 236BA(1) as inserted by the  
24                   amending Act.

## 25           **301 AUASB members**

26                   (1) If:

- 27                   (a) immediately before commencement, a person is a member of  
28                   the AUASB; or  
29                   (b) a person is appointed as a member of the AUASB during the  
30                   transition period;

# EXPOSURE DRAFT

Amendment of the Australian Securities and Investments Commission Act 2001

**Schedule 2**

Application provisions **Part 2**

---

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

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

- 6                   (a) beginning on commencement; and  
7                   (b) ending when the Remuneration Tribunal makes a  
8                   determination under subsection 236FA(1) as inserted by the  
9                   amending Act.

**EXPOSURE DRAFT**

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## Schedule 3 Consequential amendments

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1 **Schedule 3—Consequential amendments**  
2

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

5 **1 Subsection 36G(2) (note 2)**

6 Repeal the note, substitute:

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