



Corporations Legislation Amendment Act 2003

No. 24, 2003

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

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

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Corporations Legislation Amendment Act 2003

No. 24, 2003

An Act to amend the law relating to corporations, 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 Legislation Amendment Act 2003*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

| Commencement information | | |
|---|--|---------------------|
| Column 1 | Column 2 | Column 3 |
| Provision(s) | Commencement | Date/Details |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day on which this Act receives the Royal Assent | 11 April 2003 |
| 2. Schedules 1 to 3 | 1 July 2003 | 1 July 2003 |
| 3. Schedule 4, items 1 to 7 | 1 July 2003 | 1 July 2003 |
| 4. Schedule 4, item 8 | Immediately after the commencement of the provisions covered by item 2 of this table | 1 July 2003 |
| 5. Schedule 5, items 1, 2 and 3 | The day on which this Act receives the Royal Assent | 11 April 2003 |
| 6. Schedule 5, items 4, 5 and 6 | Immediately after the commencement of the <i>Corporations Act 2001</i> | 15 July 2001 |
| 7. Schedule 5, items 7 to 9 | The day on which this Act receives the Royal Assent | 11 April 2003 |

Note: This table relates only to the provisions of this Act as originally passed by 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 is for additional information that is not part of this Act. This information may be included 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Repeal of annual return requirements

Corporations Act 2001

1 Section 9 (definition of *annual return*)

Repeal the definition.

2 Section 9

Insert:

extract of particulars for a company or a registered scheme means a statement given by ASIC that contains either or both of the following:

- (a) some or all of the particulars in relation to the company or scheme that are recorded in the register or registers maintained by ASIC under subsection 1274(1);
- (b) a requirement to provide a particular under section 346B.

3 Section 9

Insert:

negative solvency resolution means a resolution by the directors of a company that, in their opinion, there are not reasonable grounds to believe that the company will be able to pay its debts as and when they become due and payable.

4 Section 9

Insert:

positive solvency resolution means a resolution by the directors of a company that, in their opinion, there are reasonable grounds to believe that the company will be able to pay its debts as and when they become due and payable.

5 Section 9

Insert:

return of particulars for a company or a registered scheme means a statement given by ASIC that contains any or all of the following:

- (a) some or all of the particulars in relation to the company or scheme that are recorded in the register or registers maintained by ASIC under subsection 1274(1);
- (b) a requirement to provide a particular under section 348B;
- (c) a requirement to comply with a subsection of section 348C (and, if applicable, pass a resolution).

6 Section 9

Insert:

review date has the meaning given by section 345A.

7 Section 9

Insert:

review fee has the meaning given by section 5 of the *Corporations (Review Fees) Act 2003*.

8 Section 9

Insert:

solvency resolution means a resolution by the directors of a company as to whether or not, in their opinion, there are reasonable grounds to believe that the company will be able to pay its debts as and when they become due and payable.

9 After section 106

Insert:

107 Notice in relation to top 20 members of a class

For the purposes of subsection 163(3B), section 178B and paragraph 601BC(2)(1c), if 2 or more members in the top 20 members of a class of shares each hold the same number of shares, details of each of those members must be included in any notice given in relation to those provisions.

10 Paragraphs 4.2 and 4.3 of the Small Business Guide in Part 1.5

Repeal the paragraphs, substitute:

4.2 Extract of particulars

Each year, ASIC issues each company with an extract of particulars within 2 weeks of the company's review date (which is generally the anniversary of the company's registration). The extract includes details recorded on ASIC's database such as:

- names and addresses of each director and company secretary;
- issued shares and options granted;
- details of its shareholders;
- address of its registered office;
- address of its principal place of business.

If any of the details are not correct as at the date the extract is received, the company must correct those details.

The correction may be lodged with ASIC on a printed form or, if an agreement is in place to lodge electronically, in accordance with the agreement.

[Sections 346A and 346C, 352]

4.3 Review fee

A company must pay a review fee to ASIC each year.

[Corporations (Review Fees) Act 2003]

11 Paragraph 4.4 of the Small Business Guide in Part 1.5 (table)

Repeal the table, substitute:

| Notification requirements | | | |
|----------------------------------|---|--|-----------------------|
| | If... | the company must notify ASIC of the change... | see section... |
| 1 | a company issues shares | within 28 days after the issue | 254X |
| 2 | a company changes the location of a register | within 7 days after the change | 172, 1302 |
| 3 | a company changes the address of its registered office or principal place of business | within 28 days after the change | 142, 146 |
| 4 | a company changes its directors or company secretary | within 28 days after the change | 205B |
| 5 | there is a change in the name or address of the company's directors or secretary | within 28 days after the change | 205B |
| 6 | a company creates certain kinds of charges | within 45 days after the charge is created | 263 |
| 7 | a company has a new ultimate holding company, or details about the ultimate holding company change | within 28 days after the change happens | 349A |
| 8 | any of the changes in items 1 to 7 means that: (a) the company must add or alter particulars in its member register kept under section 169; or (b) the company must add or alter particulars in its member register kept under section 169, and as a result, details about the number and class of shares on issue, or the amount paid and unpaid on the shares, alter. | within the time determined under the table in section 178D | 178A 178C |

12 Paragraph 5.4 of the Small Business Guide in Part 1.5

Omit all the words from and including “The company secretary has specific responsibilities” to and including “lodges its annual return.”, substitute:

The company secretary has specific responsibilities under the Corporations Act, including responsibility for ensuring that the company:

- notifies ASIC about changes to the identities, names and addresses of the company’s directors and company secretaries; and
- notifies ASIC about changes to the register of members; and
- notifies ASIC about changes to any ultimate holding company; and
- responds, if necessary, to an extract of particulars that it receives and that it responds to any return of particulars that it receives.

13 Paragraph 5.4 of the Small Business Guide in Part 1.5 (note)

After “142,”, insert “178A, 178C,”.

14 Paragraph 5.4 of the Small Business Guide in Part 1.5 (note)

Omit “345”, substitute “346C, 348D, 349A”.

15 After subparagraph 117(2)(k)(ii)

Insert:

- (ia) whether the shares each member agrees in writing to take up will be fully paid on registration;

16 At the end of paragraph 117(2)(k)

Add:

- (iv) whether or not the shares each member agrees in writing to take up will be beneficially owned by the member on registration;

17 After paragraph 117(2)(m)

Insert:

- (ma) whether or not, on registration, the company will have an ultimate holding company;
- (mb) if, on registration, the company will have an ultimate holding company—the following:
 - (i) the name of the ultimate holding company;
 - (ii) if the ultimate holding company is registered in Australia—its ABN, ACN or ARBN;
 - (iii) if the ultimate holding company is not registered in Australia—the place at which it was incorporated or formed;

18 After subsection 163(3)

Insert:

- (3A) For a company changing to a proprietary company, if any of the particulars in the register kept by the company under section 169 and mentioned in paragraph 178A(1)(b) are different from the particulars set out:
 - (a) in the latest extract of particulars received by the company;
or
 - (b) if the company responded to the latest extract it received—in the company's extract taken together with the company's response to the extract;the application must set out those different particulars in addition to the other information required by this section.
- (3B) If the company has more than 20 members, the company is only required to set out the different particulars under subsection (3A) that relate to a person who is a top 20 member of a class of the company.

Note: See also section 107.

- (3C) If subsection (3A) applies and any details mentioned in subsection 178C(1) are different from the details set out:

- (a) in the latest extract of particulars received by the company;
or
 - (b) if the company responded to the latest extract it received—in the company's extract taken together with the company's response to the extract;
- the application must set out those different details as well.

19 Before section 167A

Insert:

Part 2C.1—Registers generally

20 After paragraph 169(3)(e)

Insert:

- (ea) the amount paid on the shares; and
- (eb) whether or not the shares are fully paid; and

21 At the end of subsection 175(3)

Add:

Note: A proprietary company may also have to notify certain particulars under Part 2C.2 of this Chapter.

22 At the end of Chapter 2C

Add:

Part 2C.2—Notice by proprietary companies of changes to member register

178A Notice of change to member register

- (1) A proprietary company must notify ASIC within the time determined under section 178D and in the prescribed form, if:
 - (a) it is required to add or alter a particular in the register it maintains under section 169; and
 - (b) the particular is one required to be kept under any of the following:

- (i) subsection 169(1) (name and address and date of entry of member's name into register);
- (ii) paragraph 169(3)(b) (number of shares in each allotment to the member);
- (iii) paragraph 169(3)(c) (the number of shares held by the member);
- (iv) paragraph 169(3)(d) (the class of shares held by the member);
- (v) paragraph 169(3)(ea) (the amount paid on the member's shares);
- (vi) paragraph 169(3)(eb) (whether the member's shares are fully paid);
- (vii) paragraph 169(3)(f) (the amount unpaid, if any, on the member's shares);
- (viii) subsection 169(5A) (statement whether any of the member's shares are held beneficially).

(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*.

178B Top 20 only

If a proprietary company has more than 20 members, the company is only required to notify additions or alterations of particulars under section 178A that relate to a person who is, or as a result of the addition or alteration will become, a top 20 member of a class of the company.

Note: See also section 107.

178C Notice of change to share structure

- (1) A proprietary company that is required to notify ASIC under section 178A of an addition or alteration must also notify ASIC, at the same time, of any of the following details in relation to the company that are different from the details previously notified to ASIC:
 - (a) the total number of the company's shares on issue;
 - (b) the classes into which the shares are divided;
 - (c) for each class issued:

Schedule 1 Repeal of annual return requirements

- (i) the total number of shares for the class;
- (ii) the total amount paid up for the class;
- (iii) the total amount unpaid for the class.

(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*.

178D Time within which ASIC must be notified

A proprietary company must notify ASIC under section 178A within the time determined by this table.

| Time within which the company must notify ASIC | | |
|---|---|--|
| Item | If the need to add or alter a particular arises in connection with this event... | The company must notify ASIC within this time... |
| 1 | the Court orders the company to correct its member register kept under section 169 | at the same time that it notifies ASIC of the correction under subsection 175(3) |
| 2 | the company divides shares into classes, or converts shares of a class into shares of another class | within the time within which it must notify ASIC of the particulars of the division or conversion under subsection 246F(1) |
| 3 | the company issues shares | within the time within which it must notify ASIC of the particulars of the issue under subsection 254X(1) |
| 4 | the company reduces its share capital | within the time within which it must notify ASIC of shareholder approval of the reduction under subsection 256C(3) |
| 5 | an event not covered by items 1 to 4 | within 28 days after the day on which it adds or alters the particular in the register |

23 Paragraph 188(1)(c)

Repeal the paragraph, substitute:

- (c) section 346C (requirement to respond to extract of particulars); or

(ca) section 348D (requirement to respond to return of particulars); or

24 After paragraph 188(1)(d)

Insert:

; or (e) section 146 (notice of change of principal place of business);
or

(f) section 178A (notice of change to member register (proprietary companies only)); or

(g) section 178C (notice of change to share structure (proprietary companies only)); or

(h) section 254X (notice of issue of shares); or

(i) subsection 319(1) (lodgment of financial reports); or

(j) section 349A (notice of changes to ultimate holding company (proprietary companies only)).

25 At the end of subsection 246F(1)

Add:

Note: A proprietary company may also have to notify certain particulars under Part 2C.2.

26 Subsection 254X(1) (note)

Omit “Note”, substitute “Note 1”.

27 At the end of subsection 254X(1)

Add:

Note 2: A proprietary company may also have to notify certain particulars under Part 2C.2.

28 At the end of subsection 256C(3)

Add:

Note: A proprietary company may also have to notify certain particulars under Part 2C.2.

29 Chapter 2N (heading)

Repeal the heading, substitute:

Chapter 2N—Updating ASIC information about companies and registered schemes

30 Part 2N.1

Repeal the Part, substitute:

Part 2N.1—Review date

345A Review date

- (1) The *review date* for a company is:
 - (a) either:
 - (i) if the company became registered as a company after the commencement of this Act—the anniversary of the company’s registration as a company under this Act; or
 - (ii) otherwise—the date of the company’s incorporation or registration as a company, as recorded in a register maintained by ASIC under section 1274; or
 - (b) if a choice of a different date has effect under section 345C—that different date.
- (1A) If:
 - (a) a company was incorporated as a company or became registered as a company before the commencement of this Act; and
 - (b) there is no date of incorporation of the company as a company or registration of the company as a company recorded in a register maintained by ASIC under section 1274; and
 - (c) paragraph (1)(b) does not apply to the company;the *review date* for the company is the date determined by ASIC and notified to the company.
- (1B) If, apart from this subsection, the review date for a company would be February 29, the *review date* for the company is February 28.

- (2) The *review date* for a registered scheme is:
 - (a) the anniversary of the scheme's registration as a registered scheme; or
 - (b) if a choice of a different date has effect under section 345C—that different date.

345B Company or responsible entity may change review date

- (1) With ASIC's approval, a company may choose as its review date a date that is different from the anniversary of its registration.
- (2) With ASIC's approval, the responsible entity of a registered scheme may choose as the review date for the scheme a date that is different from the anniversary of its registration.
- (3) If ASIC approves the choice, ASIC must notify the company or responsible entity in writing.

345C When choice has effect

If ASIC notifies the company or responsible entity of its approval under section 345B, the choice has effect:

- (a) if the different date occurs before the next review date for the company or scheme—at the time that ASIC notifies its approval; or
- (b) otherwise—immediately after the next review date for the company or scheme.

Part 2N.2—Extract of particulars

346A ASIC must give an extract of particulars each year

- (1) ASIC must, within 2 weeks after each review date for a company or a registered scheme, give to the company or responsible entity of the scheme an extract of particulars for the company or scheme.
- (2) If an agreement or approval under subsection 352(1) covers the lodgment of a response to an extract of particulars for a company, ASIC may satisfy subsection (1) by making the extract available to the company or its agent by electronic means.

- (3) An extract of particulars must specify the date of issue.

346B ASIC may ask questions

ASIC may include, in an extract of particulars for a company or a registered scheme, a requirement that the company or responsible entity of the scheme provide a particular prescribed by the regulations for the purposes of this section.

346C Requirements in relation to an extract of particulars

Respond if a particular is incorrect

- (1) A company, or responsible entity of a registered scheme, must respond to an extract of particulars that it receives if any particular set out in the extract is not correct as at the date of receipt. The response must comply with subsection (3).

Respond if required to provide a particular

- (2) A company, or responsible entity of a registered scheme, must respond to an extract of particulars that it receives if the extract includes a requirement to provide a particular under section 346B. The response must comply with subsection (3).

Contents of response

- (3) The response to an extract of particulars by a company, or by the responsible entity of a registered scheme:
- (a) must be lodged within 28 days after the date of issue of the extract; and
 - (b) must be in the prescribed form; and
 - (c) must be signed or authenticated; and
 - (d) if subsection (1) applies—must be such that the particulars set out in the extract, taken together with the response, are correct as at the date the response is signed or authenticated; and
 - (e) if subsection (2) applies—must provide the required particular, correct as at the date the response is signed or authenticated.

Response satisfies other requirements to notify

- (4) If a company responds to an extract of particulars:
- (a) correcting a particular; or
 - (b) providing a particular;
- in accordance with subsection (3), any requirement elsewhere in this Act to lodge a prescribed form in relation to the particular is satisfied by the response.
- (5) Subsection (4) does not affect the company's liability for late lodgment fees incurred before the response to the extract of particulars is lodged or continuing offences committed before that time.

Strict liability offences

- (6) An offence based on subsection (1) or (2) is an offence of strict liability.

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

Part 2N.3—Solvency resolution

347A Directors must pass a solvency resolution after each review date

- (1) The directors of a company must pass a solvency resolution within 2 months after each review date for the company.
- (2) Subsection (1) does not apply to the directors of a company that has lodged a financial report with ASIC under Chapter 2M within the period of 12 months before the review date.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

- (3) An offence based on this section is an offence of strict liability.

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

347B Notice to ASIC

- (1) If the directors of a company pass a negative solvency resolution under section 347A, the company must notify ASIC of that fact, in the prescribed form, within 7 days after the resolution is passed.
- (2) If:
 - (a) subsection 347A(1) applies to the directors of a company; and
 - (b) the directors have not passed a solvency resolution under section 347A within 2 months after a review date;the company must notify ASIC of that fact, in the prescribed form, within 7 days after the end of the 2 month period following the review date.
- (3) An offence based on this section is an offence of strict liability.

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

347C Payment of review fee is taken to be a representation by the directors that the company is solvent

- (1) If:
 - (a) a company has paid its review fee in respect of a review date; and
 - (b) the company has not lodged a notice under section 347B within 7 days after the end of the 2 month period following the review date; and
 - (c) the company has not lodged a financial report with ASIC under Chapter 2M within the period of 12 months before the review date;

the directors of the company are taken to have represented to ASIC, as at the end of the 2 month period following the company's review date, that, in their opinion, there are reasonable grounds to believe that the company will be able to pay its debts as and when they become due and payable.

Note: Directors are not taken to have passed a solvency resolution for the purposes of section 347A merely because they are taken, under this subsection, to have made a representation to ASIC.

- (2) Subsection (1) does not apply if the directors prove that they made a positive solvency resolution under section 347A within 2 months after the end of the review date.

Part 2N.4—Return of particulars

348A ASIC may give a return of particulars

- (1) ASIC may give to a company or responsible entity of a registered scheme a return of particulars for the company or scheme if:
 - (a) the company or responsible entity has not paid the company's or scheme's review fee by the due date; or
 - (b) ASIC suspects or believes that particulars recorded in relation to the company or scheme in a register maintained by ASIC under subsection 1274(1) are not correct; or
 - (c) no documents have been lodged with ASIC in relation to the company or scheme for at least one year.
- (2) If an agreement or approval under subsection 352(1) covers the lodgment of a response to a return of particulars for a company, ASIC may satisfy subsection (1) by making the return available to the company or its agent by electronic means.
- (3) A return of particulars must specify the date of issue.

348B ASIC may ask questions

ASIC may include, in a return of particulars for a company or a registered scheme, a requirement that the company or responsible entity of the scheme provide a particular prescribed by the regulations for the purposes of this section.

348C ASIC may require a solvency resolution and statement

- (1) ASIC may include, in a return of particulars for a company, a requirement that the company comply with subsection (2) or subsection (3). The company may choose which subsection to comply with.
- (2) The company complies with this subsection if:

- (a) before the company lodges a response to the return of particulars, the directors of the company pass a solvency resolution; and
 - (b) the response to the return of particulars states whether the resolution passed was a positive solvency resolution or a negative solvency resolution.
- (3) The company complies with this subsection if the response to the return of particulars states the date on which the directors passed a positive solvency resolution under section 347A in respect of the company's most recent review date.

348D General requirements in relation to a return of particulars

Response is required

- (1) A company, or responsible entity of a registered scheme, must respond to a return of particulars that it receives. The response must comply with subsection (2).

Contents of response

- (2) The response to a return of particulars by a company, or by the responsible entity of a registered scheme:
- (a) must be lodged with ASIC within 28 days after the date of issue of the return; and
 - (b) must be in the prescribed form; and
 - (c) must be signed or authenticated; and
 - (d) if, as at the date that the response is signed or authenticated, any particular set out in the return is not correct—must be such that the particulars set out in the return, taken together with the response, are correct as at the date the response is signed or authenticated; and
 - (e) if the return includes a requirement that the company or responsible entity of the scheme provide a particular under section 348B—must provide the required particular, correct as at the date the response is signed or authenticated; and
 - (f) if the return includes a requirement to comply with a subsection of section 348C—must include the statement

required by the subsection that the company chooses to comply with.

Response satisfies other requirements to notify

- (3) If a company responds to a return of particulars:
- (a) correcting a particular; or
 - (b) providing a particular;
- in accordance with subsection (2), any requirement elsewhere in this Act to lodge a prescribed form in relation to the particular is satisfied by the response.
- (4) Subsection (3) does not affect the company's liability for late lodgment fees incurred before the response to the extract of particulars is lodged or continuing offences committed before that time.

Strict liability offences

- (5) An offence based on subsection (1) is an offence of strict liability.

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

Part 2N.5—Notice by proprietary companies of changes to ultimate holding company

349A Proprietary companies must notify ASIC of changes to ultimate holding company

- (1) If an event mentioned in section 349B, 349C or 349D happens in relation to a proprietary company, the proprietary company must notify ASIC, in the prescribed form and within 28 days after the event, of the details required by that section.
- (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*.

349B Another company becomes an ultimate holding company

If another company becomes an ultimate holding company in relation to a proprietary company, the proprietary company must notify ASIC of:

- (a) the other company's name; and
- (b) either:
 - (i) if the other company is registered in Australia—its ABN, ACN or ARBN; or
 - (ii) if the other company is not registered in Australia—the place at which it was incorporated or formed; and
- (c) the date on which the other company became an ultimate holding company in relation to the proprietary company.

349C A company ceases to be an ultimate holding company

If a company ceases to be an ultimate holding company in relation to a proprietary company, the proprietary company must notify ASIC of:

- (a) the name of the company that ceased to be an ultimate holding company in relation to the proprietary company; and
- (b) the date the cessation occurred.

349D Ultimate holding company changes its name

If an ultimate holding company in relation to a proprietary company changes its name, the proprietary company must notify ASIC of the new name of the ultimate holding company.

31 Paragraph 601AB(1)(a)

Omit “the company’s annual return”, substitute “the response to a return of particulars given to the company”.

32 After subsection 601AB(1)

Insert:

- (1A) ASIC may also decide to deregister a company if the company's review fee in respect of a review date has not been paid in full at least 12 months after the due date for payment.

33 After subparagraph 601BC(2)(I)(ii)

Insert:

- (iia) whether the shares each member already holds or has agreed, in writing, to take up will be fully paid on registration;

34 At the end of paragraph 601BC(2)(I)

Add:

- (iv) whether or not the shares each member agrees in writing to take up will be beneficially owned by the member on registration;
- (v) on registration, the classes into which shares will be divided;
- (vi) for each class of share on issue on registration—the number of shares in the class on registration;
- (vii) for each class of share on issue on registration—the total amount paid up for the class on registration;
- (viii) for each class of share on issue on registration—the total amount unpaid for the class on registration;

35 After paragraph 601BC(2)(I)

Insert:

- (la) whether or not, on registration, the company will have an ultimate holding company;
- (lb) if, on registration, the company will have an ultimate holding company—the following:
 - (i) the name of the ultimate holding company;
 - (ii) if the ultimate holding company is registered in Australia—its ABN, ACN or ARBN;
 - (iii) if the ultimate holding company is not registered in Australia—the place at which it was incorporated or formed;
- (lc) for a body proposed to be registered as a company limited by shares or an unlimited company—the top 20 members of each class (worked out according to the number and class of shares each member holds and has agreed, in writing, to take up);

Note: See also section 107.

36 Subparagraph 601PB(1)(e)(i)

Omit “the annual return for the scheme”, substitute “the response to a return of particulars given to the responsible entity of the scheme”.

37 After paragraph 601PB(1)(e)

Insert:

- (ea) the scheme’s review fee in respect of a review date has not been paid in full at least 12 months after the due date for payment; or

38 Subparagraph 1274(10)(a)(ii)

Omit “annual return or”.

39 Part 9.10 (heading)

Repeal the heading, substitute:

**Part 9.10—Fees imposed by the Corporations
(Fees) Act 2001 and the Corporations
(Review Fees) Act 2003**

40 Section 1351

Repeal the section, substitute:

1351 Fees are payable to the Commonwealth

- (1) The fees imposed under the *Corporations (Fees) Act 2001* are payable to the Commonwealth.
- (2) The fees imposed under the *Corporations (Review Fees) Act 2003* are payable to the Commonwealth.
- (3) The date on which a fee imposed under the *Corporations (Review Fees) Act 2003* becomes due and payable is worked out under this table.

| Due date for review fees | | |
|---------------------------------|--|---|
| Item | For a review fee imposed on... | The due date is... |
| 1 | a company | 2 months after the review date to which the fee relates |
| 2 | a registered scheme | 2 months after the review date to which the fee relates |
| 3 | a registered Australian body | the date prescribed by the regulations |
| 4 | a natural person registered as an auditor under Part 9.2 | the date prescribed by the regulations |
| 5 | a natural person registered as a liquidator under Part 9.2 | the date prescribed by the regulations |
| 6 | a person holding an Australian financial services licence under Part 7.6 | the date prescribed by the regulations |

41 Section 1359

Omit “or the *Corporations (Fees) Act 2001*”, substitute “, the *Corporations (Fees) Act 2001* or the *Corporations (Review Fees) Act 2003*”.

42 After paragraph 1364(2)(m)

Insert:

- (n) prescribing penalties for late payment of a review fee imposed by the *Corporations (Review Fees) Act 2003*; and

43 At the end of Part 10.3 of Chapter 10

Add:

1447 Application of sections 601AB and 601PB

If a company or responsible entity had an obligation to lodge an annual return before the commencement of items 31 and 36 of Schedule 1 to the *Corporations Legislation Amendment Act 2003*, sections 601AB and 601PB continue to apply to the annual return, as if the amendments made by those items had not been made.

44 Schedule 3 (after table item 29)

Insert:

| | | |
|-----|--------------------|------------------|
| 29A | Subsection 178A(1) | 5 penalty units. |
| 29B | Subsection 178C(1) | 5 penalty units. |

45 Schedule 3 (table item 118)

Repeal the item, substitute:

| | | |
|-----|--------------------------------|------------------|
| 118 | Subsections 346C(1) and (2) | 5 penalty units. |
|-----|--------------------------------|------------------|

46 Schedule 3 (table item 119)

Repeal the item, substitute:

| | | |
|------|--------------------|-------------------|
| 119 | Section 347A | 10 penalty units. |
| 119A | Section 347B | 10 penalty units. |
| 119B | Subsection 348D(1) | 5 penalty units. |
| 119C | Subsection 349A(1) | 5 penalty units. |

Schedule 2—Use of ABN

Corporations Act 2001

1 Section 9

Insert:

ABN (short for “Australian Business Number”) has the meaning given by section 41 of the *A New Tax System (Australian Business Number) Act 1999*.

2 Paragraph 4.1 of the Small Business Guide in Part 1.5

After “its ACN”, insert “or ABN (if the last 9 digits are the same, and in the same order, as the last 9 digits of its ACN)”.

3 Section 7 of the Small Business Guide in Part 1.5

After “its ACN”, insert “or ABN (if the last 9 digits are the same, and in the same order, as the last 9 digits of its ACN)”.

4 Paragraph 123(1)(b)

Repeal the paragraph, substitute:

(b) otherwise—the company’s name and either:

- (i) the expression “Australian Company Number” and the company’s ACN; or
- (ii) if the last 9 digits of the company’s ABN are the same, and in the same order, as the last 9 digits of its ACN—the expression “Australian Business Number” and the company’s ABN.

5 Subsection 149(1) (at the end of the table)

Add:

| | | |
|---|----------------------------|-----|
| 9 | Australian Business Number | ABN |
|---|----------------------------|-----|

6 Subsection 153(2)

Repeal the subsection, substitute:

(2) Subject to sections 154 and 155, if the company's ACN is not used in its name, the company must also set out with its name, or with 1 of the references to its name, either:

- (a) the expression "Australian Company Number" followed by the company's ACN; or
- (b) if the last 9 digits of the company's ABN are the same, and in the same order, as the last 9 digits of its ACN—the words "Australian Business Number" followed by the company's ABN.

If the company's name appears on 2 or more pages of the document or instrument, this must be done on the first of those pages.

- Note 1: If a company has a common seal, its name and ACN or ABN must be set out on the seal (see section 123).
- Note 2: A public company must display its name at its registered office. Every company must display its name at places at which the company carries on business and that are open to the public (see section 144).
- Note 3: Section 149 provides that "ACN" is an acceptable abbreviation of "Australian Company Number", and that "ABN" is an acceptable abbreviation of "Australian Business Number".
- Note 4: In any case where the company's ACN would be used, the company's ABN may be used instead if section 1344 is satisfied.

7 Paragraph 601DE(1)(b)

Repeal the paragraph, substitute:

- (b) either:
 - (i) the expression "Australian Registered Body Number" followed by the body's ARBN; or
 - (ii) if the last 9 digits of the body's ABN are the same, and in the same order, as the last 9 digits of its ARBN—the words "Australian Business Number" followed by the body's ABN;

8 At the end of subsection 601DE(1)

Add:

- Note: In any case where the body's ARBN would be used, the body's ABN may be used instead if section 1344 is satisfied.

9 Section 601EC

Repeal the section, substitute:

601EC All documents etc. lodged with ASIC to bear ARSN or ABN

After a managed investment scheme is registered, all documents relating to the scheme that are lodged with ASIC must set out:

- (a) the scheme's ARSN; or
- (b) if the last 9 digits of the scheme's ARSN are the same, and in the same order, as the last 9 digits of its ABN—the scheme's ABN.

Note: In any case where the scheme's ARSN would be used, the scheme's ABN may be used instead if section 1344 is satisfied.

10 Before section 1345A of Part 9.9 of Chapter 9

Insert in Part 9.9:

1344 Use of ABN

Despite any provision in this Act or any other Act, in any case where:

- (a) the ACN of a company; or
- (b) the ARBN of a registered body; or
- (c) the ARSN of a registered scheme;

is required or permitted to be used under a law of the Commonwealth administered by ASIC, the ABN of the company, body or scheme may be used instead if the last 9 digits of the ABN are the same, and in the same order, as the last 9 digits of the ACN, ARBN or ARSN.

Schedule 3—Electronic lodgments

Corporations Act 2001

1A At the end of subsection 205G(1)

Add:

Note: Under section 353, ASIC may determine conditions that must be complied with when lodging documents electronically under this subsection.

1B At the end of subsection 205G(3)

Add:

Note: Under section 353, ASIC may determine conditions that must be complied with when lodging documents electronically under this subsection.

1C At the end of subsection 205G(4)

Add:

Note: Under section 353, ASIC may determine conditions that must be complied with when lodging documents electronically under this subsection.

1 Part 2N.2 (heading)

Repeal the heading, substitute:

Chapter 2P—Lodgments with ASIC

2 Subsection 352(2)

Repeal the subsection, substitute:

(2) Subsection (1) does not apply to a document covered by section 353.

3 Before Chapter 5

Insert:

353 Electronic lodgment of certain documents

- (1) ASIC may determine conditions in relation to the electronic lodgment of documents:
 - (a) that must be given to a relevant market operator under section 205G; or
 - (b) that must be given to ASIC under section 792C.
- (2) The electronic lodgment of a document covered by a determination under subsection (1) is only effective if the lodgment complies with the conditions determined.
- (3) ASIC must publish in the *Gazette* a copy of any determination under subsection (1).

354 Telephone notice of certain changes

- (1) ASIC may, in its discretion, accept telephone notice of a change to a particular in relation to a company or a registered scheme if:
 - (a) either:
 - (i) the change relates to a misspelling or other minor typographical error; or
 - (ii) the change is to a particular included on a list published by ASIC on the Internet for the purposes of this section; and
 - (b) the notice satisfies the authentication requirements published by ASIC on the Internet for the purposes of this section.
- (2) If ASIC accepts telephone notice of a change to a particular under subsection (1), any obligation elsewhere in this Act to lodge a prescribed form in relation to the change is satisfied by the telephone notice. However, this does not affect the company's liability for late lodgment fees incurred before the notice is given or continuing offences committed before that time.

4 Paragraph 1311(1A)(c)

After "2N", insert ", 2P".

5 Before paragraph 1364(2)(s)

Insert:

- (o) prescribing that, in relation to the payment of a fee imposed by the *Corporations (Fees) Act 2001* or the *Corporations (Review Fees) Act 2003*, in the event that the fee is paid by electronic means, a refund of an amount or proportion of the fee is payable; and

Schedule 4—Extension of lodgment periods

Corporations Act 2001

1 Subsection 142(2)

Omit “14 days”, substitute “28 days”.

2 Subsection 146(1)

Omit “14 days”, substitute “28 days”.

3 Subsection 205B(1)

Omit “14 days”, substitute “28 days”.

4 Subsection 205B(2)

Omit “14 days”, substitute “28 days”.

5 Subsection 205B(4)

Omit “14 days”, substitute “28 days”.

6 Subsection 205B(5)

Omit “14 days”, substitute “28 days”.

7 Subsection 254X(1)

Omit “1 month”, substitute “28 days”.

8 At the end of Part 10.3 of Chapter 10

Add:

**1448 Application of amendments made by Schedule 4 to the
Corporations Legislation Amendment Act 2002**

If, at the time the amendments made by Schedule 4 to the
Corporations Legislation Amendment Act 2002 commence:

- (a) a company is required to lodge a notice under a provision amended by Schedule 4; and

Schedule 4 Extension of lodgment periods

(b) the time within which the company must lodge the notice has not expired;
the amendments made by Schedule 4 apply to the company's requirement to lodge the notice.

Schedule 5—Other amendments

Australian Securities and Investments Commission Act 2001

1 Paragraph 137(1)(a)

Omit “\$250,000”, substitute “\$1 million”.

2 After subsection 153(1)

Insert:

(1A) The Chairperson of ASIC may nominate in writing a person to attend a particular meeting, or all meetings, of CAMAC at which the Chairperson is not present.

(1B) The Chairperson may only nominate a person who is:

- (a) a member of ASIC; or
- (b) an SES employee or acting SES employee of ASIC.

Corporations Act 2001

3 Section 9 (definition of marketable securities)

Omit “prescribed interest”, substitute “interest in a managed investment scheme”.

4 Subsection 169(5A) (note)

Repeal the note, substitute:

Note: See also section 1072H (in particular, subsection 1072H(8) which contains relevant presumptions about beneficial ownership).

5 Subsection 169(6)

Omit “subsection (5)”, substitute “subsection (5A)”.

6 Subsection 169(6)

Omit “section 1096A”, substitute “section 1072H”.

7 Section 201C

Repeal the section.

8 At the end of paragraph 262(1)(g)

Add:

; or (iii) a charge where there is an agreement in force under which the chargee (or a person who has agreed to act on the instructions of the chargee) controls the sending of some or all electronic messages or other electronic communications by which the marketable security could be transferred;

9 At the end of Chapter 10

Add:

**Part 10.3—Transitional provisions relating to the
Corporations Legislation Amendment Act
2003**

1446 Application of subparagraph 262(1)(g)(iii)

The amendment made by item 8 of Schedule 5 to the *Corporations Legislation Amendment Act 2003* applies only to charges created after the commencement of that item.

[Minister's second reading speech made in—
House of Representatives on 12 December 2002
Senate on 26 March 2003]