





# **Corporations Amendment (No. 1) Act 2010**

**No. 131, 2010**

**An Act to amend the law relating 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 (No. 1) Act 2010

No. 131, 2010

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

[Assented to 24 November 2010]

The Parliament of Australia enacts:

### 1 Short title

This Act may be cited as the *Corporations  
Amendment (No. 1) 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.

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<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.	24 November 2010
2. Schedule 1	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

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Note: This table relates only to the provisions of this Act as originally enacted.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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Amendments**

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

#### **1 Subsection 35(1)**

Repeal the subsection, substitute:

- (1) Where a member or staff member has reasonable grounds to suspect that there are, or may be within the next 3 days, on particular premises in Australia, books whose production could be required under this Division, he or she may:
  - (a) lay before a magistrate an information on oath or affirmation setting out those grounds; and
  - (b) apply for the issue of a warrant to search the premises for those books.

Note: The heading to section 35 is altered by omitting “**not produced**”.

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

Repeal the subsection, substitute:

- (1) This section applies where, on an application under section 35, the magistrate is satisfied that there are reasonable grounds to suspect that there are, or may be within the next 3 days, on particular premises, particular books whose production could be required under this Division.

#### **3 After section 36**

Insert:

##### **36A Execution of warrant**

- (1) Before any person enters premises under a search warrant issued under section 36, a member of the Australian Federal Police must:
  - (a) announce that the member is authorised to enter the premises; and
  - (b) give any person at the premises an opportunity to allow entry to the premises.

- (2) However, the member of the Australian Federal Police is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure that the effective execution of the warrant is not frustrated.
- (3) If the occupier of the premises is present at the premises:
  - (a) the member of the Australian Federal Police must make available to the occupier a copy of the warrant; and
  - (b) the occupier is entitled to observe the search being conducted.
- (4) The occupier's right to observe the search being conducted ends if the occupier impedes the search.
- (5) This section does not prevent 2 or more areas of the premises being searched at the same time.
- (6) If books are seized under the warrant, the member of the Australian Federal Police or a person assisting the member must provide a receipt for the books.
- (7) If 2 or more books are seized, they may be covered in the one receipt.

### ***Corporations Act 2001***

#### **4 Subsection 173(1)**

Omit "a hard copy of the information on the register", substitute "the register by computer".

#### **5 Subsection 173(1A)**

Repeal the subsection.

#### **6 Paragraph 173(3)(a)**

Repeal the paragraph, substitute:

- (a) makes an application to the company or registered scheme in accordance with subsection (3A); and

#### **7 Subsection 173(3)**

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Omit “and the person asks for the data on floppy disk, the company or scheme must give the data to the person on floppy disk. The data must be readable but the floppy disk need not be formatted for the person’s preferred operating system”, substitute “, the company or registered scheme must give the copy to the person in the prescribed form”.

### **8 After subsection 173(3)**

Insert:

- (3A) An application is in accordance with this subsection if:
- (a) the application states each purpose for which the person is accessing the copy; and
  - (b) none of those purposes is a prescribed purpose; and
  - (c) the application is in the prescribed form.

Note: Sections 137.1 and 137.2 of the *Criminal Code* create offences for providing false or misleading information or documents.

### **9 After subsection 177(1)**

Insert:

- (1AA) A person must not:
- (a) use information obtained from a register kept under this Chapter for any purpose prescribed by regulations made for the purposes of paragraph 173(3A)(b); or
  - (b) disclose information of that kind knowing that the information is likely to be used for any such purpose.

### **10 Subsections 177(1B), (2) and (3)**

After “subsection (1)”, insert “or (1AA)”.

### **11 Section 761A**

Insert:

***annual turnover***, of a body corporate during a 12-month period, means the sum of the values of all the supplies that the body corporate, and any body corporate related to the body corporate, have made, or are likely to make, during the 12-month period, other than:

- (a) supplies made from any of those bodies corporate to any other of those bodies corporate; or

- (b) supplies that are input taxed; or
- (c) supplies that are not for consideration (and are not taxable supplies under section 72-5 of the *A New Tax System (Goods and Services Tax) Act 1999*); or
- (d) supplies that are not made in connection with an enterprise that the body corporate carries on; or
- (e) supplies that are not connected with Australia.

Expressions used in this definition that are also used in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning as in that Act.

## **12 Subsection 1019G(1)**

Repeal the subsection, substitute:

- (1) An offer to which this Division applies:
  - (a) must remain open for at least 1 month after the date of offer; and
  - (b) cannot remain open for more than 12 months after the date of offer.

## **13 Paragraph 1019K(1)(b)**

Omit “subsection 1019G(1)”, substitute “paragraph 1019G(1)(b)”.

## **14 Paragraph 1021P(3)(c)**

Repeal the paragraph, substitute:

- (c) any of the following apply:
  - (i) the offer does not remain open for the period required by paragraph 1019G(1)(a);
  - (ii) the offer remains open for longer than is permitted by paragraph 1019G(1)(b);
  - (iii) in purporting to withdraw the offer, the person fails to comply with a requirement of subsection 1019G(2) or (3).

## **15 After subsection 1041B(1)**

Insert:

- (1A) For the purposes of the application of the *Criminal Code* in relation to an offence based on subsection (1):

- (a) intention is the fault element for the physical element consisting of doing or omitting to do an act as mentioned in that subsection; and
- (b) recklessness is the fault element for the physical element consisting of having, or being likely to have, the effect of creating, or causing the creation of, a false or misleading appearance as mentioned in that subsection.

Note 1: For *intention*, see section 5.2 of the *Criminal Code*.

Note 2: For *recklessness*, see section 5.4 of the *Criminal Code*.

## **16 Section 1312**

Before “Where”, insert “(1)”.

## **17 At the end of Section 1312**

Add:

- (2) Subsection (1) does not apply in relation to the following provisions of this Act:
  - (a) section 1041A;
  - (b) subsection 1041B(1);
  - (c) subsection 1041C(1);
  - (d) section 1041D;
  - (e) subsection 1041E(1);
  - (f) subsection 1041F(1);
  - (g) subsection 1041G(1);
  - (h) subsection 1043A(1);
  - (i) subsection 1043A(2).

Note: The penalties applicable to these provisions in relation to bodies corporate are set out in the relevant item of the table in Schedule 3.

## **18 At the end of Chapter 10**

Add:

## Part 10.16—Transitional provisions relating to the Corporations Amendment (No. 1) Act 2010

### 1516 Application of amendments

- (1) The amendments made by items 4 to 8 of Schedule 1 to the *Corporations Amendment (No. 1) Act 2010* apply in relation to requests made after the commencement of that Schedule to inspect, or receive a copy of, a register.
- (2) The amendment made by item 9 of that Schedule applies in relation to information obtained from a register before, at or after the commencement of that Schedule.
- (3) The amendments made by items 12 to 14 of that Schedule apply in relation to offers made after the commencement of that Schedule.

### 19 Schedule 3 (table item 29)

Repeal the item, substitute:

29	Subsection 177(1)	50 penalty units.
29AA	Subsection 177(1AA)	50 penalty units.

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### 20 Schedule 3 (table items 309B to 312A)

Repeal the items, substitute:

310	Section 1041A, subsections 1041B(1), and 1041C(1), section 1041D and subsections 1041E(1), 1041F(1), 1041G(1), 1043A(1) and 1043A(2)	<p>In the case of an individual, imprisonment for 10 years or a fine the greater of the following:</p> <ol style="list-style-type: none"><li>(a) 4,500 penalty units;</li><li>(b) if the court can determine the total value of the benefits that have been obtained by one or more persons and are reasonably attributable to the commission of the offence—3 times that total value;</li></ol> <p>or both.</p> <p>In the case of a body corporate, a fine the greatest of the following:</p> <ol style="list-style-type: none"><li>(a) 45,000 penalty units;</li><li>(b) if the court can determine the total value of the benefits that have been obtained by one or more persons and are reasonably attributable to the commission of the</li></ol>
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- offence—3 times that total value;
- (c) if the court cannot determine the total value of those benefits—10% of the body corporate's annual turnover during the 12-month period ending at the end of the month in which the body corporate committed, or began committing, the offence.

### ***Telecommunications (Interception and Access) Act 1979***

#### **21 After subsection 5D(5B)**

Insert:

*Market misconduct*

- (5C) An offence is also a *serious offence* if it is an offence against any of the following provisions of the *Corporations Act 2001*:
  - (a) section 1041A;
  - (b) subsection 1041B(1);
  - (c) subsection 1041C(1);
  - (d) section 1041D;
  - (e) subsection 1041E(1);
  - (f) subsection 1041F(1);
  - (g) subsection 1041G(1);
  - (h) subsection 1043A(1);
  - (i) subsection 1043A(2).

#### **22 Application of amendment**

The amendment made by item 3 of this Schedule applies in relation to warrants issued after the commencement of this Schedule.

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*[Minister's second reading speech made in—  
House of Representatives on 29 September 2010  
Senate on 27 October 2010]*

(201/10)

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