

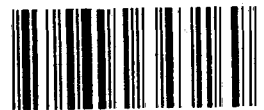
**THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA**

**HOUSE OF REPRESENTATIVES**

**CORPORATIONS LAW AMENDMENT BILL 1995**

**EXPLANATORY MEMORANDUM**

(Circulated by authority of the Attorney-General,  
the Honourable Michael Lavarch MP)



# CORPORATIONS LAW AMENDMENT BILL 1995

## OUTLINE

1. The voluntary administration scheme contained in Part 5.3A of the Corporations Law, which commenced on 23 June 1993, allows for certain companies in financial difficulty to enter into a deed of company arrangement as an alternative to other forms of external administration. It is possible for companies to continue trading while under a deed of company arrangement and then be placed in liquidation following termination of the deed.
2. The amendments proposed by the Corporations Law Amendment Bill 1995 ('the Bill') are designed to ensure that debts incurred by a company while under a deed of company arrangement are admissible to proof against the company in a subsequent liquidation of the company.
3. Further, the proposed amendments will validate acts done by liquidators, prior to commencement of the amendments, on the assumption that debts incurred by a company under a deed of company arrangement are admissible to proof.

## FINANCIAL IMPACT STATEMENT

4. The Bill will financially benefit creditors, including Government creditors, of companies which are liquidated immediately following a period under a deed of company arrangement.
5. In particular, the amendments will ensure that creditors who have dealt with a company under a deed of company arrangement will be able to prove in a liquidation of the company following termination of the deed for outstanding debts and claims arising while the company was under the deed.
6. The Bill will have no impact on Government expenditures.

## CLAUSE BY CLAUSE COMMENTARY

### Preliminary

#### Clause 1 – Short title etc

7. Upon enactment, the Bill will be known as the *Corporations Law Amendment Act 1995*.

8. Clause 1 defines the abbreviation ‘Corporations Law’ used throughout the Bill.

#### Clause 2 – Commencement

9. The Bill will commence on the day on which it receives Royal Assent.

#### Clause 3 – Amendments

10. Clause 3 provides for the Corporations Law to be amended in the manner set out in the Schedule.

### The Schedule

#### Item 1 – Proposed amendment to section 9 (definition of “relevant date”)

11. The proposed amendment to section 9 will add a note to the definition of “relevant date” to the effect that the definition is modified in relation to certain debts and claims arising while a company is under a deed of company arrangement by proposed new subsection 553(1B).

#### Item 2 – Proposed amendment to section 553 – Debts or claims that are provable in a winding up

12. Existing subsection 553(1) provides that, subject to other provisions in Division 6 of Part 5.6, debts and claims which arise before the relevant date are admissible to proof against the company in a winding up.

13. Proposed new subsection 553(1A) will provide that a debt or claim incurred by a company while under a deed of company arrangement is admissible to proof against the company in a liquidation which immediately follows the deed of company arrangement, even if the debt or claim arises on or after the relevant date.

14. Proposed new subsection 553(1A) does not address the admissibility of debts and claims incurred where liquidation does not follow immediately upon termination of the deed of company arrangement, since such debts and claims

would be incurred prior to the relevant date and would be covered by existing subsection 553(1).

15. Like existing subsection 553(1), proposed new subsection 553(1A) will apply subject to other provisions in Division 6 of Part 5.6. Accordingly, debts and claims which currently rank as priority payments under section 556 will retain that status. Further, debts and claims which are currently specifically excluded from admissibility pursuant to other provisions in Division 6, such as penalties and fines, will not become provable by operation of the new subsection.

16. Proposed new subsection 553(1B) will modify the definition of “relevant date” for the purposes of applying the other provisions of Division 6 to debts and claims admissible under proposed new subsection 553(1A). The term “relevant date” is currently defined in section 9 and used throughout Division 6 for various purposes, particularly in relation to computing the value of debts and claims.

17. As debts and claims admissible to proof under proposed new subsection 553(1A) will be incurred after the relevant date, proposed new subsection 553(1B) will provide that the relevant date, for the purposes of applying the other provisions in Division 6, will be the date on which the deed of company arrangement terminates rather than the date which would otherwise apply under the definition of “relevant date” in section 9.

**Item 3 – Proposed new section 1411 – Effect of amendments on distributions etc before commencement**

18. Proposed new section 1411 will provide that where a liquidator has acted consistently with the terms of the proposed amendments contained in the Bill prior to their commencement, the validity of any action taken in this regard may not be called into question in any proceedings. This provision will protect decisions by liquidators to admit to proof debts and claims incurred by a company under a deed of company arrangement prior to commencement of the amendments on the basis that this is how Part 5.3A of the Corporations Law was intended to operate.