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The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**Corporations Amendment (Improving  
Accountability on Termination  
Payments) Bill 2009**

**No.     , 2009**

*(Treasury)*

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



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**Commencement information**

<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 on which this Act receives the Royal Assent.	
2. Schedule 1, Part 1	The day after this Act receives the Royal Assent.	
3. Schedule 1, Part 2	Immediately after the commencement of the provision(s) covered by table item 2.	
4. Schedule 1, Part 3	The day after this Act receives the Royal Assent.	

1 Note: This table relates only to the provisions of this Act as originally  
2 passed by both Houses of the Parliament and assented to. It will not be  
3 expanded to deal with provisions inserted in this Act after assent.

4 (2) Column 3 of the table contains additional information that is not  
5 part of this Act. Information in this column may be added to or  
6 edited in any published version of this Act.

7 **3 Schedule(s)**

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9 repealed as set out in the applicable items in the Schedule  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

1 **Schedule 1—Amendments**

2 **Part 1—Main amendments**

3 ***Corporations Act 2001***

4 **1 Section 9**

5 Insert:

6 *base salary* has the meaning specified in regulations made for the  
7 purposes of this definition.

8 **2 Section 9 (paragraph (b) of the definition of *benefit*)**

9 Repeal the paragraph, substitute:

10 (b) when used in Division 2 of Part 2D.2 (sections 200 to  
11 200J)—has the meaning given by section 200AB.

12 **3 Section 9 (definition of *board or managerial office*)**

13 Repeal the definition.

14 **4 Section 9**

15 Insert:

16 *managerial or executive office* has the meaning given by  
17 section 200AA.

18 **5 Section 9 (definition of *payment*)**

19 Omit “200A”, substitute “200”.

20 **6 Section 9 (definition of *person*)**

21 Omit “200A”, substitute “200”.

22 **7 Before section 200A**

23 Insert:

24 **200 Interpreting this Division**

25 For the purposes of this Division, in determining whether a benefit  
26 is given:

- 1 (a) give a broad interpretation to benefits being given, even if  
2 criminal or civil penalties may be involved; and  
3 (b) the economic and commercial substance of conduct is to  
4 prevail over its legal form.

5 **200AA Meaning of *managerial or executive office***

6 *If the company is a disclosing entity*

- 7 (1) For a company to which section 300A applies for the previous  
8 financial year for the company, a person holds a ***managerial or***  
9 ***executive office*** in the company during the current financial year if  
10 the person's details were included in the directors' report for that  
11 previous financial year for the company in accordance with  
12 paragraph 300A(1)(c).

13 Note: A person holding a managerial or executive office ceases to do so if  
14 the person's details are not included in the next directors' report.  
15 However, this is not relevant to whether the person has retired from an  
16 office or position in the company (see paragraph 200A(1)(f)).

- 17 (2) The person is taken to hold the managerial or executive office for  
18 the whole of the current financial year unless and until the person  
19 retires from an office or position in the company before the end of  
20 that year.

21 Note: *Retires* has an extended meaning (see section 200A).

22 *Otherwise*

- 23 (3) For a body corporate not covered by subsection (1), a ***managerial***  
24 ***or executive office*** for the body corporate is:  
25 (a) an office of director of the body corporate; or  
26 (b) any other office or position in connection with the  
27 management of the body corporate's affairs that is held by a  
28 person who also holds an office of director of the body  
29 corporate or a related body corporate.

30 **200AB Meaning of *benefit***

- 31 (1) For the purposes of this Division, a ***benefit*** includes any of the  
32 following:  
33 (a) a payment or other valuable consideration;  
34 (b) any kind of real or personal property;
-

- 1 (c) any legal or equitable estate or interest in real or personal  
2 property;  
3 (d) any legal or equitable right;  
4 (e) a thing specified in regulations made for the purposes of this  
5 paragraph.

6 Note: For specification by class, see subsection 13(3) of the *Legislative*  
7 *Instruments Act 2003*.

- 8 (2) However, for the purposes of this Division, a **benefit** does not  
9 include a thing specified in regulations made for the purposes of  
10 this subsection.

11 Note: For specification by class, see subsection 13(3) of the *Legislative*  
12 *Instruments Act 2003*.

13 Note: The heading to section 200A is altered by omitting “**office**” and substituting “**an office**  
14 **or position**”.

### 15 **8 Subsection 200A(1)**

16 After “office” (wherever occurring), insert “or position”.

17 Note: The following heading to subsection 200A(1) is inserted “*General rules*”.

### 18 **9 At the end of subsection 200A(1)**

19 Add:

- 20 ; and (f) when working out whether a person has retired from an  
21 office or position, disregard whether or not the person’s  
22 details are included in a directors’ report in accordance with  
23 paragraph 300A(1)(c).

### 24 **10 After subsection 200A(1)**

25 Insert:

26 *Rules in regulations*

- 27 (1A) Without limiting subsection (1), a benefit is given in connection  
28 with a person’s retirement from an office or position if the benefit  
29 is given in circumstances specified in regulations made for the  
30 purposes of this subsection.

31 Note: For specification by class, see subsection 13(3) of the *Legislative*  
32 *Instruments Act 2003*.

### 33 **11 Subsection 200A(2)**

1 After “office” (wherever occurring), insert “or position”.

2 Note: The following heading to subsection 200A(2) is inserted “*Related benefits*”.

3 **12 Subsection 200B(1)**

4 Repeal the subsection, substitute:

5 *Benefits in connection with retirement if person has held a*  
6 *managerial or executive office*

7 (1) An entity mentioned in subsection (1AA) must not give a person a  
8 benefit in connection with a person’s (the *retiree*’s) retirement  
9 from an office, or position of employment, in a company or a  
10 related body corporate if:

- 11 (a) the office or position is a managerial or executive office; or  
12 (b) the retiree has, at any time during the last 3 years before his  
13 or her retirement, held a managerial or executive office in the  
14 company or a related body corporate;

15 unless there is member approval under section 200E for the giving  
16 of the benefit.

17 Note 1: This subsection extends to benefits given by way of compensation for,  
18 or otherwise in connection with, a person’s loss of an office or  
19 position (see subsections 200A(1) and (3)).

20 Note 2: Sections 200F, 200G and 200H provide for exceptions to this  
21 subsection.

22 Note 3: The recipient of the benefit need not be the retiree.

23 (1AA) The entities are as follows:

- 24 (a) the company;  
25 (b) an associate of the company (other than a body corporate that  
26 is related to the company and is itself a company);  
27 (c) a prescribed superannuation fund in relation to the company.

28 **13 Subsection 200B(1A)**

29 Omit “person’s”, substitute “retiree’s”.

30 **14 Subsection 200B(3)**

31 Omit “a person’s retirement from an office” (wherever occurring),  
32 substitute “the retiree’s retirement from an office or position”.

33 **15 Paragraph 200C(1)(a)**

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1 Omit “board or managerial office”, substitute “managerial or executive  
2 office”.

3 **16 Subsection 200C(1) (note)**

4 Repeal the note.

5 **17 Paragraph 200D(1)(a)**

6 Omit “board or managerial office”, substitute “managerial or executive  
7 office”.

8 **18 Subsection 200D(1) (note)**

9 Repeal the note.

10 **19 Subsection 200E(1)**

11 Repeal the subsection, substitute:

12 *Conditions for member approval*

13 (1) For the purposes of section 200B, the conditions set out in  
14 subsections (1B), (2) and (2A) must be satisfied for there to be  
15 member approval under this section for the giving of the benefit to  
16 the person in connection with the retiree’s retirement from the  
17 office or position.

18 (1A) For the purposes of section 200C, the conditions set out in  
19 subsections (1B) and (2) must be satisfied for there to be member  
20 approval under this section for the giving of the benefit.

21 *First condition*

22 (1B) The first condition is that the giving of the benefit be approved by  
23 a resolution passed at a general meeting of:

24 (a) the company; and

25 (b) if the company is a subsidiary of a listed domestic  
26 corporation—the listed corporation; and

27 (c) if the company has a holding company that:

28 (i) is a domestic corporation that is not listed; and

29 (ii) is not itself a subsidiary of a domestic corporation;  
30 the holding company.

31 **20 Subsection 200E(2) (first sentence)**

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**Schedule 1** Amendments  
**Part 1** Main amendments

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1 Repeal the sentence, substitute: “The second condition is that details of  
2 the benefit must be set out in, or accompany, the notice of the general  
3 meeting that is to consider the resolution.”.

4 Note: The following heading to subsection 200E(2) is inserted “*Second condition*”.

5 **21 Subparagraph 200E(2)(b)(i)**

6 Omit “prescribed”.

7 **22 After subsection 200E(2)**

8 Insert:

9 *Third condition—for approvals relating to section 200B*

10 (2A) The third condition is that at the general meeting, a vote on the  
11 resolution must not be cast (in any capacity) by or on behalf of:

- 12 (a) the retiree; or  
13 (b) an associate of the retiree.

14 (2B) Subsection (2A) does not prevent the casting of a vote if:

- 15 (a) it is cast by a person as a proxy appointed by writing that  
16 specifies how the proxy is to vote on the resolution; and  
17 (b) it is not cast on behalf of the retiree or an associate of the  
18 retiree.

19 (2C) The regulations may prescribe cases where subsection (2A) does  
20 not apply.

21 **23 Subsection 200E(3)**

22 Omit “The approval extends to”, substitute “For the purposes of  
23 subsection (1B), the resolution may give approval by approving”.

24 Note: The following heading to subsection 200E(3) is inserted “*Meeting may approve a lesser*  
25 *benefit*”.

26 **24 Subsection 200E(4)**

27 Omit “The approval”, substitute “Member approval under this section”.

28 Note: The following heading to subsection 200E(4) is inserted “*Effect of approval on*  
29 *directors’ duties*”.

30 **25 Paragraph 200F(1)(a)**

31 After “office”, insert “or position”.

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1 **26 Subsection 200F(2)**

2 After “an office”, insert “or position”.

3 **27 Subparagraph 200F(2)(a)(ii)**

4 After “office” (wherever occurring), insert “or position”.

5 **28 Paragraph 200F(2)(b)**

6 Omit “other payments (if any) already made or payable”, substitute  
7 “other benefits (if any) already given”.

8 **29 Paragraph 200F(2)(b)**

9 Omit “board or managerial offices”, substitute “offices or positions”.

10 **30 Paragraph 200F(2)(b)**

11 Omit all the words after “exceed”, substitute “the amount worked out  
12 under whichever of subsections (3) and (4) is applicable”.

13 **31 Subsections 200F(3) and (4)**

14 Repeal the subsections, substitute:

15 (3) This subsection applies if the relevant period for the person is less  
16 than 1 year. The amount worked out under this subsection is:

17 
$$\frac{\text{Estimated annual base salary} \times \text{Number of days in relevant period}}{365}$$

18 where:

19 *estimated annual base salary* is a reasonable estimate of the base  
20 salary that the person would have received from the company and  
21 related bodies corporate during the relevant period if the relevant  
22 period had been 1 year.

23 Note: The *relevant period* for the person is defined in subsection (5).

24 (4) This subsection applies in every other case. The amount worked  
25 out under this subsection is:

26 (a) if the relevant period is 1 year—the base salary that the  
27 person received from the company and related bodies  
28 corporate during the relevant period; or

- 1 (b) if the relevant period is more than 1 year but less than 2  
2 years—the average annual base salary that the person  
3 received from the company and related bodies corporate  
4 during the relevant period, worked out as if:  
5 (i) the relevant period were 2 years; and  
6 (ii) the person’s annual base salary for the second year were  
7 a reasonable estimate of what the person would have  
8 received as base salary after the first year of the relevant  
9 period had the relevant period been 2 years; or  
10 (c) if the relevant period is 2 years—the average annual base  
11 salary that the person received from the company and related  
12 bodies corporate during the relevant period; or  
13 (d) if the relevant period is more than 2 years but less than 3  
14 years—the average annual base salary that the person  
15 received from the company and related bodies corporate  
16 during the relevant period, worked out as if:  
17 (i) the relevant period were 3 years; and  
18 (ii) the person’s annual base salary for the third year were a  
19 reasonable estimate of what the person would have  
20 received as base salary after the second year of the  
21 relevant period had the relevant period been 3 years; or  
22 (e) if the relevant period is 3 years or more—the average annual  
23 base salary that the person received from the company and  
24 related bodies corporate during the last 3 years of the relevant  
25 period.

26 **32 Subsection 200F(5)**

27 Omit “an office”, substitute “a managerial or executive office”.

28 **33 Paragraph 200G(1)(a)**

29 Omit “a board or managerial office (the *relevant office*)”, substitute “an  
30 office or position”.

31 **34 Paragraph 200G(1)(c)**

32 Omit “other payments (if any) already made or payable”, substitute  
33 “other benefits (if any) already given”.

34 **35 Paragraph 200G(1)(c)**

35 Omit “board or managerial offices”, substitute “offices or positions”.

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1 **36 Paragraph 200G(1)(c)**

2 Omit “the payment limit set by subsection (2)”, substitute “the amount  
3 worked out under whichever of subsections (2) and (3) is applicable”.

4 **37 Subsections 200G(2) and (3)**

5 Repeal the subsections, substitute:

- 6 (2) This subsection applies if the relevant period for the person is less  
7 than 1 year. The amount worked out under this subsection is:

8 
$$\frac{\text{Estimated annual base salary} \times \text{Number of days in relevant period}}{365}$$

9 where:

10 *estimated annual base salary* is a reasonable estimate of the base  
11 salary that the person would have received from the company and  
12 related bodies corporate during the relevant period if the relevant  
13 period had been 1 year.

14 Note: The *relevant period* for the person is defined in subsection (6).

- 15 (3) This subsection applies in every other case. The amount worked  
16 out under this subsection is:

- 17 (a) if the relevant period is 1 year—the base salary that the  
18 person received from the company and related bodies  
19 corporate during the relevant period; or  
20 (b) if the relevant period is more than 1 year but less than 2  
21 years—the average annual base salary that the person  
22 received from the company and related bodies corporate  
23 during the relevant period, worked out as if:  
24 (i) the relevant period were 2 years; and  
25 (ii) the person’s annual base salary for the second year were  
26 a reasonable estimate of what the person would have  
27 received as base salary after the first year of the relevant  
28 period had the relevant period been 2 years; or  
29 (c) if the relevant period is 2 years—the average annual base  
30 salary that the person received from the company and related  
31 bodies corporate during the relevant period; or  
32 (d) if the relevant period is more than 2 years but less than 3  
33 years—the average annual base salary that the person

1 received from the company and related bodies corporate  
2 during the relevant period, worked out as if:  
3 (i) the relevant period were 3 years; and  
4 (ii) the person's annual base salary for the third year were a  
5 reasonable estimate of what the person would have  
6 received as base salary after the second year of the  
7 relevant period had the relevant period been 3 years; or  
8 (e) if the relevant period is 3 years or more—the average annual  
9 base salary that the person received from the company and  
10 related bodies corporate during the last 3 years of the relevant  
11 period.

12 **38 Subsection 200G(5)**

13 Repeal the subsection.

14 **39 Subsection 200G(6)**

15 Insert:

16 *relevant period*: if a person has held a managerial or executive  
17 office in the company or a related body corporate:

- 18 (a) throughout a period; or  
19 (b) throughout a number of periods;

20 the *relevant period* for that person is that period or the period  
21 consisting of those periods.

22 **40 Subsection 200J(1)**

23 Repeal the subsection, substitute:

- 24 (1) If an entity (the *giver*) contravenes section 200B by giving a  
25 benefit to a person (the *recipient*), then the amount of the benefit,  
26 or the money value of the benefit if it is not a payment:  
27 (a) is taken to be received by the recipient on trust for the giver;  
28 and  
29 (b) must be immediately repaid by the recipient to the giver.
- 30 (1A) An amount repayable under subsection (1) to the giver:  
31 (a) is a debt due to the giver; and  
32 (b) may be recovered by the giver in a court of competent  
33 jurisdiction.

1 Note: The heading to section 200J is altered by omitting “**in trust for company**” and  
2 substituting “**on trust and repaid**”.

3 **41 Schedule 3 (table items 35, 36 and 37)**

4 Omit “25 penalty units”, substitute “180 penalty units”.

5

1 **Part 2—Other amendments**

2 ***Corporations Act 2001***

3 **42 Paragraph 200F(1)(a)**

4 Repeal the paragraph, substitute:

- 5 (a) a benefit that is a payment made in respect of leave of  
6 absence to which the person is entitled under an industrial  
7 instrument; or  
8

1 **Part 3—Application**

2 **43 Application**

- 3 (1) The amendments made by Part 1 apply in relation to a retirement from  
4 an office, or position of employment, held under:  
5 (a) an agreement entered into; or  
6 (b) an agreement renewed or extended; or  
7 (c) an agreement, for which a variation of a condition of the  
8 agreement happens;  
9 on or after the commencement of that Part.
- 10 (2) If the amendments made by Part 1 apply in relation to a person's  
11 retirement from an office or position in a company, the person's  
12 relevant period for the purposes of section 200F or 200G of the  
13 *Corporations Act 2001* applies to managerial or executive offices held  
14 by the person:  
15 (a) in the company or related bodies corporate; and  
16 (b) before, on or after the commencement of that Part.
- 17 (3) Despite the amendment made by Part 2 (the **Part 2 amendment**),  
18 paragraph 200F(1)(a) of the *Corporations Act 2001* (as amended by  
19 Part 1 of this Schedule) continues to apply, in relation to agreements  
20 entered into before 1 January 1991, as if the Part 2 amendment had not  
21 been made.