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## BILLS DIGEST

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## Corporations Amendment (Auditor Registration) Bill 2016

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Law and Bills Digest Section

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**Date introduced:** 16 March 2016

**House:** House of Representatives

**Portfolio:** Treasury

**Commencement:** The day after Royal Assent.

**Links:** The links to the [Bill](#), its [Explanatory Memorandum](#) and [second reading speech](#) can be found on the Bill's home page, or through the [Australian Parliament website](#).

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the [Federal Register of Legislation website](#).

**All hyperlinks in this Bills Digest are correct as at April 2016.**

## Purpose of the Bill

The purpose of the Corporations Amendment (Auditor Registration) Bill 2016 (the Bill) is to address the legal consequences of not registering, contrary to the terms of the [Legislation Act 2003](#), the approval by the Australian Securities and Investments Commission (ASIC) in November 2004 of an auditing competency standard. The amendments in the Bill will ensure the validity of all decisions taken by auditors, ASIC and businesses on the basis of the approval.

## Background

### *The Bill and the Legislative Instruments Act*

The [Legislative Instruments Act 2003](#) (since renamed the *Legislation Act*) was enacted:

to establish a regime to reform and manage procedures for the making, scrutiny and publication of Commonwealth legislative instruments by:

- establishing a Federal Register of Legislative Instruments
- encouraging rule-makers to undertake appropriate consultation
- encouraging high standards in drafting legislative instruments to promote their legal effectiveness, clarity and their intelligibility to users
- providing public access to legislative instruments
- establishing improved mechanisms for Parliamentary scrutiny of legislative instruments and
- establishing 'sunsetting' mechanisms to ensure periodic review of legislative instruments and if they no longer have a continuing purpose, to repeal them.<sup>1</sup>

The *Legislative Instruments Act* was amended by the [Acts and Instruments \(Framework Reform\) Act 2015](#), the operative parts of which commenced on 5 March 2016.

Section 5 of the *Legislative Instruments Act* defined the term **legislative instrument** as an instrument of a legislative character that is, or was, made under a delegation of power from Parliament. An instrument has a legislative character if it determines or alters the content of the law rather than applying the law in a particular case; and if it affects a privilege or interest, imposes an obligation, or creates, varies or removes a right. The amendments in the *Acts and Instruments (Framework Reform) Act* operate to more clearly define 'legislative instruments and legislative character', but these concepts were not 'substantially changed by the amendments'.<sup>2</sup> Although the *Legislative Instruments Act* was enacted in 2003, its operative provisions did not commence until 1 January 2005. Subsection 29(1) of the [Legislative Instruments Act](#) (as enacted) required all legislative instruments which had been made in the five years prior to 1 January 2005 to be formally registered on the Federal Register of Legislative Instruments by 1 December 2005.

Where a legislative instrument was not registered by 1 December 2005 subsection 32(2) of the *Legislative Instruments Act* (as enacted) provided that it ceased to be enforceable by or against the Commonwealth, or by or against any other person or body and was taken to have been repealed by the *Legislative Instruments Act*.

### *Approval of the auditing competency standard*

Paragraph 1280(2)(a) of the [Corporations Act 2001](#) (as enacted) provided for ASIC to register a person as an auditor if, amongst other things, the person:

- was a member of the Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or any other prescribed body or
- held certain specified educational qualifications or
- had other qualifications and experience which in the opinion of ASIC were equivalent to those above.

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1. M Coombs, [Legislative Instruments Bill 2003](#), Bills digest, 26, 2003–04, Parliamentary Library, Canberra, 2003, p. 1.

2. [Explanatory Memorandum](#), Acts and Instruments (Framework Reform) Bill 2014, p. 10.

Paragraph 1280(2)(b) contained an additional criterion that ASIC was satisfied that the applicant had the prescribed practical experience in auditing.

However, the [Corporate Law Economic Reform Program \(Audit Reform and Corporate Disclosure\) Act 2004](#)<sup>3</sup> amended the *Corporations Act*:

- **first**, to amend subsection 1280(2) to require a person seeking registration as an auditor to not only meet educational or experiential requirements, but to also meet an auditing competency standard approved by ASIC and
- **second**, to insert section 1280A into the *Corporations Act* to empower ASIC to approve an auditing competency standard.

Those amendments took effect from 1 July 2004.

Accordingly, on 24 November 2004, ASIC announced that it had approved the first auditing competency standard under subsection 1280A(1) of the *Corporations Act 2001*. The competency standard was produced by CPA Australia and the Institute of Chartered Accountants in Australia.<sup>4</sup>

According to the Explanatory Memorandum for this Bill, 'it is likely that the relevant approval is a legislative instrument'.<sup>5</sup> If so, it was required under the *Legislative Instruments Act* (as in force from 1 January 2005) to be registered on the Federal Register of Legislative Instruments, but this did not occur. That being the case, the approval may be taken to have been repealed by the *Legislative Instruments Act* on 2 December 2005.

### Attempted correction

On 7 August 2014, ASIC registered [class order \[CO 14/784\]](#). The purpose of the class order was to ensure that ASIC was able to 'register auditors in reliance on the CPA/ICAA standard from the date of registration of the class order'.<sup>6</sup> The effect of the class order was to reinstate the *Auditing Competency Standard for Registered Company Auditors*<sup>7</sup> 'as criteria that may be applied by ASIC in deciding whether to register a person as an auditor, if the approval in 2004 was repealed by the *Legislative Instruments Act*'.<sup>8</sup> Whilst the class order provided the necessary power to ASIC to register auditors in reliance on the relevant standard from 7 August 2014, it left some uncertainty about the period between 2 December 2005 and that date.

The Bill operates to end that uncertainty by 'amend[ing] the *Corporations Act* so that auditors registered from 1 December 2005 on the basis of the CPA/ICAA competency standard...are validly registered with effect from the date of their purposed registration'.<sup>9</sup>

## Committee consideration

### Selection of Bills Committee

On 17 March 2016, the Selection of Bills Committee deferred consideration of the Bill until its next meeting.<sup>10</sup>

### Senate Standing Committee for the Scrutiny of Bills

At the time of writing this Bills Digest, the Senate Standing Committee for the Scrutiny of Bills had not commented on the Bill.

## Policy position of non-government parties/independents

At the time of writing this Bills Digest, no public comments had been made about the Bill by non-government parties or independent members of the Parliament.

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3. For information about the originating Bill, agreed amendments and explanatory memoranda see Parliament of Australia, '[Corporate Law Economic Reform Program \(Audit Reform and Corporate Disclosure\) Bill 2004 homepage](#)', Australian Parliament website.

4. Australian Securities and Investments Commission, [ASIC approves CPA-ICAA auditor competency standard](#), media release, 24 November 2004; CPA Australia, '[Audit competency standard](#)', CPA Australia website.

5. [Explanatory Memorandum](#), Corporations Amendment (Auditor Registration) Bill 2016, p. 3.

6. [Explanatory Statement](#), ASIC Class Order [CO 14/784], paragraph 2.

7. CPA Australia, [Auditing Competency Standard for Registered Company Auditors](#), 24 November 2004.

8. [Explanatory Statement](#), ASIC Class Order [CO 14/784], paragraph 3.

9. [Explanatory Memorandum](#), Corporations Amendment (Auditor Registration) Bill 2016, p. 6.

10. Selection of Bills Committee, [Report](#), 4, 2016, The Senate, Canberra, 17 March 2016.

## Position of major interest groups

At the time of writing this Bills Digest, no public comments had been made about the Bill by interest groups.

## Financial implications

According to the Explanatory Memorandum for the Bill, there is no compliance cost impact.<sup>11</sup>

## Statement of Compatibility with Human Rights

As required under Part 3 of the [Human Rights \(Parliamentary Scrutiny\) Act 2011](#) (Cth), the Government has assessed the Bill's compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill does not engage any of the applicable rights or freedoms and is, therefore, compatible.<sup>12</sup>

## Parliamentary Joint Committee on Human Rights

At the time of writing this Bills Digest, the Parliamentary Joint Committee on Human Rights had not commented on the Bill.

## Key issues and provisions

### Approvals are legislative instruments

**Item 1** of the Bill inserts **proposed subsection 1280A(5)** into the [Corporations Act](#) to put beyond doubt that an approval, an approval of a variation, and a revocation of an approval, of an auditing competency standard are legislative instruments. This removes any doubt as to the nature of these documents and means that the requirement to register them on the Federal Register of Legislation is clear. It also means that any future approval will be subject to disallowance if either a Senator, or Member of the House of Representatives, moves a motion of disallowance within 15 sitting days of the day that the legislative instrument is tabled. The motion to disallow must be resolved or withdrawn within a further 15 sitting days of the day that the notice of motion is given.<sup>13</sup>

### Validation of approval

**Item 2** of the Bill inserts **proposed sections 1298P and 1298Q** into Part 9.2 of the *Corporations Act* (about registration of auditors and liquidators).<sup>14</sup>

**Proposed section 1298P** of the *Corporations Act* applies to the auditing competency standard approved by ASIC on 24 November 2004 under section 1280A.

**Proposed subsection 1298P(2)** provides that the *Legislation Act* has effect, and is taken always to have had effect, as if:

- the approval had been lodged for registration immediately after the approval was given
- the approval had been registered immediately after it was lodged for registration and
- any other requirement imposed by that Act in relation to the approval had been met.

### Compensation for acquisition

**Proposed section 1298Q** of the *Corporations Act* operates so that if proposed section 1298P would result in an acquisition of property from a person otherwise than on just terms in accordance with section 51(xxxi) of the [Constitution](#), then the Commonwealth is liable to pay a reasonable amount of compensation to the person.

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11. [Explanatory Memorandum](#), Corporations Amendment (Auditor Registration) Bill 2016, p. 3.

12. The Statement of Compatibility with Human Rights can be found at page 9 of the [Explanatory Memorandum](#) to the Bill.

13. *Legislation Act*, [section 42](#).

14. Note that item 217 of Part 2 of Schedule 2 of the [Insolvency Law Reform Act 2016](#) amends the heading of Part 9.2 of the *Corporations Act* so that it will cease to apply to liquidators upon commencement. The provision will commence on the earlier of a single day to be fixed by Proclamation or 29 February 2017.

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