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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CORPORATIONS AMENDMENT (AUDITOR REGISTRATION) BILL 2016

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Minister for Small Business and Assistant Treasurer, the Hon Kelly O'Dwyer MP)

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Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
ASIC	Australian Securities and Investments Commission
Bill	Corporations Amendment (Auditor Registration) Bill 2016
Legislation Act	<i>Legislation Act 2003</i>

General outline and financial impact

Validation of approval of auditing competency standard

The Corporations Amendment (Auditor Registration) Bill 2016 (Bill) amends the *Corporations Act 2001* (Corporations Act) to address the legal consequences arising from an approval issued by the Australian Securities and Investments Commission (ASIC) in November 2004 which approved an auditing competency standard (CPA/ICAA standard) produced by CPA Australia and the Institute of Chartered Accountants in Australia.

It is likely that the relevant approval is a legislative instrument for the purposes of the *Legislation Act 2003* (Legislation Act). Because certain requirements of the Legislation Act were not met, the validity of the registration of an auditor on the basis of the CPA/ICAA standard after 1 December 2005 is uncertain.

Parts of the Bill have retrospective operation. The retrospective effect of the amendments will not add any new regulatory requirements. Rather, the retrospective effect of the amendments is necessary to ensure that decisions and actions taken by auditors, the regulator and business which relied upon the enforceability and integrity of the Legislative Instrument are valid, and the retrospective effect of the Bill is necessary to provide certainty for those decisions and actions.

Date of effect: The day after the Bill receives Royal Assent.

Financial impact: The Bill provides for a right to compensation in the event that the measures contained in the Bill could affect any property rights so as to amount to an acquisition of property.

Human rights implications: This Bill does not raise human rights issues. See *Statement of Compatibility with Human Rights* — Chapter 2.

Compliance cost impact: Nil.

Chapter 1

Amendments validating auditor registration

Outline of chapter

1.1 Schedule 1 to the Bill amends the Corporations Act to address the legal consequences arising from a legislative instrument issued by ASIC in November 2004 which approved an auditing competency standard (CPA/ICAA standard) produced by CPA Australia and the Institute of Chartered Accountants in Australia.

Context of amendments

1.2 Section 1280 of the Corporations Act gives ASIC the power to register a person as an auditor in response to an application made by the person.

1.3 Subparagraph 1280(2)(b)(i) makes it a condition of ASIC's approval that the applicant has satisfied all the components of an auditing competency standard approved by ASIC.

1.4 Section 1280A of the Corporations Act provides that ASIC may, on application by any person, approve an auditing competency standard for the purposes of paragraph 1280(2)(b).

1.5 In November 2004 ASIC approved an auditing competency standard (CPA/ICAA standard) produced by CPA Australia and the Institute of Chartered Accountants in Australia under section 1280A of the Corporations Act.

1.6 The instrument approving the CPA/ICAA standard may be a legislative instrument for the purposes of the Legislation Act. The Legislation Act requires that legislative instruments be registered within a certain period for it to be valid.

1.7 However, the instrument was not lodged for registration by 1 December 2005 as required by the Legislation Act, and on this basis it may be taken to have been repealed by section 32 of the Legislation Act on 2 December 2005.

1.8 As a result, the validity of the registration of an auditor on the basis of this competency standard since 1 December 2005 is uncertain.

Summary of new law

1.9 The Bill amends the Corporations Act so that auditors registered from 1 December 2005 on the basis of the CPA/ICAA competency standard, as approved by ASIC in 2004 under section 1280A of the Corporations Act, are validly registered with effect from the date of their purported registration.

Detailed explanation of new law

1.10 For the avoidance of doubt, the Bill amends the Corporations Act so that it holds that an approval, an approval of a variation or revocation of an approval of an auditing competency standard are legislative instruments. [*Schedule 1, item 1, subsection 1280A(5)*]

1.11 The Bill amends the Corporations Act to retrospectively ensure that the Legislation Act has effect, and has always had effect, as if approval of the CPA/ICAA competency standard had been lodged and registered immediately after it was given, and that all other requirements of the Legislation Act are taken to have been met. [*Schedule 1, item 2, section 1298P*]

1.12 This has the effect of validating the registration of auditors who had applied for registration under the CPA/ICAA competency standard after 1 December 2005.

1.13 The Bill also amends the Corporations Act to displace the operation of section 1350 in circumstances where the effects of section 1298P may result in the acquisition of property from a person otherwise than on just terms. [*Schedule 1, item 2, section 1298Q*]

Consequential amendments

1.14 Nil

Application and transitional provisions

1.15 The amendments in this Bill will apply from the date of Royal Assent.

Chapter 2

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Corporations Amendment (Auditor Registration) Bill 2016

2.1 This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

2.2 The Bill amends the Corporations Act to address the legal consequences arising from a legislative instrument issued by ASIC in November 2004 which approved the CPA/ICAA standard.

2.3 The amendments in this Bill validate the initial approval of the CPA/ICAA standard.

Human rights implications

2.4 This Bill does not engage any of the applicable rights or freedoms

Conclusion

2.5 The Bill is compatible with human rights as it does not raise any human rights issues.

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Schedule 1: Amendments

<i>Bill reference</i>	<i>Paragraph number</i>
Item 1, subsection 1280A(5)	1.10
Item 2, section 1298P	1.11
Item 2, section 1298Q	1.13