



Companies Amendment Act 1985

No. 140 of 1985

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Companies Amendment Act 1985

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An Act to amend the *Companies Act 1981*

[Assented to 4 December 1985]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title, &c.

1. (1) This Act may be cited as the *Companies Amendment Act 1985*.
- (2) The *Companies Act 1981*¹ is in this Act referred to as the Principal Act.

Commencement

2. (1) Sections 1 and 2 shall come into operation on the day on which this Act receives the Royal Assent.
- (2) Sections 3 to 12 (inclusive) shall come into operation on a day to be fixed by Proclamation.

Persons having dealings with companies, &c.

3. Section 68A of the Principal Act is amended by omitting from paragraph (3) (b) "or with the Registrar of Companies under the" and substituting "or 263 or with the Registrar of Companies under a".

Register of directors, principal executive officers and secretaries

4. Section 238 of the Principal Act is amended—

- (a) by inserting in sub-section (9) “or section 263” after “under this section”; and
- (b) by omitting from sub-section (10) “or lodged with the Registrar of Companies pursuant to a corresponding provision of a previous law of the Territory” and substituting “or section 263, or lodged with the Registrar of Companies pursuant to a provision of a previous law of the Territory with which this section corresponds”.

Annual return

5. Section 263 of the Principal Act is amended—

- (a) by omitting sub-section (1) and substituting the following sub-sections:

“(1) A company shall, after the end of a financial year of the company and before the end of the period of one month commencing immediately after—

- (a) unless paragraph (b) applies—the day of the annual general meeting of the company that is held in relation to that financial year; or
- (b) if no annual general meeting of the company is held in relation to that financial year within the period within which section 240 requires it to be so held—the end of the last-mentioned period,

lodge with the Commission an annual return of the company in the prescribed form, containing a list of members and such other particulars as are prescribed and accompanied by the prescribed documents.

“(1A) The Commission may serve on a company a partly completed annual return of the company that is in the prescribed form and in which the Commission has set out particulars on the basis of information previously received by the Commission.

“(1B) Where the Commission, under sub-section (1A), serves on a company a partly completed annual return of the company in which the Commission has set out particulars (in this sub-section referred to as the ‘relevant particulars’), the company may—

- (a) delete such (if any) of the relevant particulars as are incorrect and insert in the return as required the correct particulars of the matters to which the deleted particulars related; and
- (b) complete and lodge the return in accordance with this Division, and, if the company lodges the return with the Commission, the company shall be deemed, except for the purposes of sub-section (1A) and this sub-section, to have set out in the return such (if any) of the relevant particulars as the company has not deleted.”; and

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(b) by adding at the end the following sub-sections:

“(4) Sub-sections (1), (1A) and (1B) of this section, as in force after the commencement of section 5 of the *Companies Amendment Act 1985*, apply in relation to a company in relation to a financial year of the company that ends at or after that commencement.

“(5) Notwithstanding the amendments made by sections 5 and 7 of the *Companies Amendment Act 1985* and the repeal effected by section 6 of that Act, this Division, as in force immediately before the commencement of sections 5, 6 and 7 of that Act, continues to apply in relation to a company in relation to a financial year of the company that ended before that commencement, and the forms that were, immediately before that commencement, the forms prescribed for the purposes of sub-section (1) of this section shall be deemed, for the purposes of this Act, to be the forms prescribed for the purposes of that sub-section as it applies by virtue of this sub-section.”

Repeal of section 264

6. Section 264 of the Principal Act is repealed.

Exemption of certain companies

7. Section 265 of the Principal Act is amended by omitting from sub-section (1) “if there is included in the annual return a certificate by the secretary that the company is of a kind to which this sub-section applies”.

8. After section 265 of the Principal Act the following section is inserted in Division 5 of Part V:

Information in annual return deemed to satisfy certain other lodgment requirements

“265A. Where—

- (a) a company is or was required by or under a provision of this Act to lodge a document with the Commission; and
- (b) without having so lodged the document, the company lodges with the Commission in accordance with this Division an annual return of the company that sets out all the particulars that are or were required by or under that provision to be set out in the document,

then, for the purposes of this Act—

- (c) the company shall be deemed to lodge the document with the Commission at the time when the company so lodges the annual return; and
- (d) the document shall be deemed to consist of so much of the annual return as sets out the particulars referred to in paragraph (b).”

Profit and loss account, balance-sheet and group accounts

9. Section 269 of the Principal Act is amended—

- (a) by omitting from sub-section (9) “, before the auditor reports on the accounts under this Part,”;
- (b) by omitting from sub-paragraph (9) (c) (ii) “and”;
- (c) by inserting after paragraph (9) (c) the following paragraph:

“(ca) where the company, pursuant to section 279, did not appoint an auditor to audit the accounts—stating whether the company has, in respect of the financial year—

- (i) kept such accounting records as correctly record and explain the transactions and financial position of the company;
- (ii) kept its accounting records in such a manner as would enable true and fair accounts of the company to be prepared from time to time; and
- (iii) kept its accounting records in such a manner as would enable the accounts of the company to be conveniently and properly audited in accordance with this Act,

and whether the accounts have been properly prepared by a competent person; and”;

- (d) by inserting after sub-section (9) the following sub-section:

“(9A) The directors of a company shall comply with sub-section (9) in relation to accounts of the company—

- (a) unless paragraph (b) applies—before the auditor reports on the accounts under this Part; or
- (b) if the company, pursuant to section 278 or 279, did not appoint an auditor to audit the accounts—not less than 14 days before the annual general meeting of the company that is held in relation to the financial year of the company to which the accounts relate or, if no annual general meeting of the company is held in relation to that financial year within the period within which it is required by section 240 to be so held, not less than 14 days before the end of that period.”;

- (e) by omitting from sub-section (10) “, before the auditor reports on the group accounts under this Part,”;
- (f) by omitting from sub-paragraph (10) (c) (ii) “and”;
- (g) by inserting after paragraph (10) (c) the following paragraph:

“(ca) where the company, pursuant to section 279, did not appoint an auditor to audit the group accounts—stating whether the group accounts have been properly prepared by a competent person; and”;

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(h) by inserting after sub-section (10) the following sub-section:

“(10A) The directors of a holding company shall comply with sub-section (10) in relation to group accounts of the holding company—

(a) unless paragraph (b) applies—before the auditor reports on the group accounts under this Part; or

(b) if the holding company, pursuant to section 278 or 279, did not appoint an auditor to audit the group accounts—not less than 14 days before the annual general meeting of the holding company that is held in relation to the financial year of the holding company to which the group accounts relate or, if no annual general meeting of the holding company is held in relation to that financial year within the period within which it is required by section 240 to be so held, not less than 14 days before the end of that period.”;

(j) by omitting from sub-section (13) “This section, as amended and in force at any time” and substituting “Subject to sub-section (14), this section, as in force”; and

(k) by adding at the end the following sub-section:

“(14) Sub-sections (9) and (9A) of this section, as in force after the commencement of section 9 of the *Companies Amendment Act 1985*, apply in relation to a company in relation to accounts of the company that relate to a financial year of the company that ends at or after that commencement, and sub-sections (10) and (10A) of this section, as so in force, apply in relation to a holding company in relation to group accounts of the holding company that relate to a financial year of the holding company that ends at or after that commencement.”.

10. After section 275 of the Principal Act the following section is inserted:

Commission may require company to lodge accounts, &c.

“275A. (1) The Commission may, by notice in writing served on a company (not being an exempt proprietary company that is an unlimited company), require the company to lodge with the Commission a copy of the relevant documents of the company in relation to a specified financial year, or specified financial years, of the company.

“(2) Subject to sub-sections (3) and (4), a company on which the Commission has served a notice under sub-section (1) shall, within 14 days after receiving the notice, lodge with the Commission a copy of the relevant documents of the company in relation to the financial year of the company that is, or each of the financial years of the company that are, specified in the notice.

“(3) A company is not required to lodge a copy of a particular document with the Commission pursuant to a notice under sub-section (1) if the company has previously lodged the document, or a copy of the document, with the Commission.

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“(4) A company is not required to lodge a copy of a particular document with the Commission pursuant to a notice under sub-section (1) if, as at the time when the notice is served, the document has not been made out, but, if the document is made out after that time, the company shall lodge a copy of the document with the Commission within 14 days after the document is made out.

“(5) In this section—

- (a) a reference to the relevant documents of a company in relation to a financial year of the company is a reference to the documents copies of which section 275 requires the directors of the company to cause to be laid before the annual general meeting of the company that is required to be held in relation to that financial year; and
- (b) a reference to a financial year of a company is a reference to a financial year of the company the company’s accounts relating to which were not required to be audited under this Part and includes a reference to such a financial year of the company that commenced before the commencement of section 10 of the *Companies Amendment Act 1985*.”.

Failure to comply with Division

11. Section 276 of the Principal Act is amended by inserting in sub-section (1) “or 275A” after “267”.

Exempt proprietary company need not appoint auditor in certain circumstances

12. Section 279 of the Principal Act is amended by omitting sub-sections (5) and (6) and substituting the following sub-sections:

“(6) Where—

- (a) a directors’ statement relating to accounts of a company contains a statement to the effect that, in respect of a financial year of the company—
 - (i) the company did not keep such accounting records as correctly record and explain the transactions and financial position of the company;
 - (ii) the company did not keep its accounting records in such a manner as would enable true and fair accounts of the company to be prepared from time to time; or
 - (iii) the company did not keep its accounting records in such a manner as would enable the accounts of the company to be conveniently and properly audited in accordance with this Act;
- (b) a directors’ statement relating to accounts of a company contains a statement to the effect that the accounts have not been properly prepared by a competent person;
- (c) a directors’ statement relating to group accounts of a holding company contains a statement to the effect that the group accounts have not been properly prepared by a competent person; or

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- (d) a director of a company or holding company is convicted of an offence under sub-section 563 (2) or 564 (1) in relation to a matter that, pursuant to paragraph 269 (9) (ca) or (10) (ca), has been stated in a directors' statement relating to accounts of the company, or group accounts of the holding company, as the case may be,

there shall be deemed to be a vacancy in the office of the auditor of the company or holding company, as the case may be, and sub-section 280 (5) applies in relation to that vacancy.

“(6A) In sub-section (6)—

- (a) a reference to a directors' statement relating to accounts of a company is a reference to a statement that the directors of the company have, pursuant to sub-section 269 (9), caused to be attached to the accounts; and
- (b) a reference to a directors' statement relating to group accounts of a holding company is a reference to a statement that the directors of the holding company have, pursuant to sub-section 269 (10), caused to be attached to the group accounts.

“(6B) Sub-sections (6) and (6A) of this section, as in force after the commencement of section 12 of the *Companies Amendment Act 1985*, apply in relation to—

- (a) accounts of a company that relate to a financial year of the company that ends at or after that commencement; and
- (b) group accounts of a holding company that relate to a financial year of the holding company that ends at or after that commencement,

and, notwithstanding the amendments made by that section—

- (c) sub-section (5) of this section, as in force immediately before that commencement, continues to apply in relation to—
 - (i) accounts of a company that relate to a financial year of the company that ended before that commencement; and
 - (ii) group accounts of a holding company that relate to a financial year of the holding company that ended before that commencement; and
- (d) sub-section (6) of this section, as in force immediately before that commencement, continues to apply in relation to a company in relation to a financial year of the company that ended before that commencement.”.

NOTE

1. No. 89, 1981, as amended. For previous amendments, see No. 153, 1981; Nos. 26 and 80, 1982; No. 108, 1983; and No. 13, 1984.

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*[Minister's second reading speech made in—
House of Representatives on 8 May 1985
Senate on 16 May 1985]*