

CORPORATIONS LAW  
SIMPLIFICATION PROGRAM

PLAN OF ACTION  
STAGE 3

TASK FORCE  
APRIL 1995

Simplification Task Force  
Attorney-General's Department  
BARTON ACT 2600

## STAGE 3 PRIORITY AREAS

This paper reports on progress with the first 2 stages of the program to simplify the Corporations Law, and identifies the topics which the Task Force proposes to address during the third stage of the program.

### Stage 1

The first stage of the program resulted in the First Corporate Law Simplification Bill 1994, which was passed by the House of Representatives in March 1995 and is now awaiting consideration by the Senate.

The First Bill addresses the topics of:

- Share buy-backs
- Small business – proprietary companies
- Company registers.

### Stage 2

Proposals outlining how the Task Force would simplify areas identified in the Plan of Action - Stage 2 (August 1994) have been published on:

- Annual returns and financial reporting to shareholders
- Defunct companies – deregistration and reinstatement
- Accounts and audit (including investment companies)
- Share capital rules
- Company names
- Forming a company
- Company meetings.

The Task Force has allowed some months for public comments on each Stage 2 proposal, and submissions on some of the proposals are still being analysed. The Task Force anticipates addressing the Stage 2 areas in a Second Corporate Law Simplification Bill, which will be released for public exposure in mid-1995.

### Stage 3 Priorities

The Stage 3 priorities are:

- Officers
- Related parties
- Fundraising
- Takeovers

### Criteria for Selecting Stage 3 Priorities

In its Plan of Action – Stage 2 the Task Force indicated that its general intention would be to complete first the core company law provisions in Chapters 2, 3 and 4 of the Corporations Law and then turn to the chapters in the Corporations Law which deal with the securities markets.

There are 4 main areas of the core company law chapters in the Corporations Law which will not have been simplified at the end of Stage 2. These are:

- Officers
- Related parties
- Charges
- Insolvency.

Of these, the Task Force intends to proceed now with officers and related parties, but to defer action on charges and insolvency.

### Scope of Projects on Officers and Related Parties

The officers and related party provisions have been the subject of recent law reform measures. As these changes were prepared after wide-ranging consultations, the Task Force does not propose to revisit the fundamental conclusions of those reviews. Nevertheless, these parts of the Corporations Law could be improved and clarified without affecting their fundamental policy settings.

### Recent Developments on Charges and Insolvency

The Task Force notes that there are currently major law reform proposals before the Standing Committee of Attorneys-General and the Ministerial Council for Corporations concerning changes to the law on personal property securities, which if adopted could have a major impact on the law relation to company charges. These proposals follow a report by a number of law reform commissions concerning personal property securities. The Department has released a discussion paper on these proposals, seeking submissions by the end of April 1995

The insolvency provisions have recently been the subject of a detailed review, with the amended provisions commencing operation in June 1993. In addition, a Working Party established by the Attorney-General is reviewing the regulation of insolvency practitioners. The Working Party released a discussion paper on options for reform and is now reviewing submissions received from the public.

The Task Force considers that it would be better to leave the areas of charges and insolvency until a more thorough assessment has been made of the proposed law reform changes on charges and the practical operation of the recent insolvency reforms.

### Securities Law Topics

To maintain the momentum of the simplification program, and in response to suggestions made in consultations, The Task Force considers that it should also commence work on the law dealing with securities. Interested organisations and individuals have identified 2 areas where simplification would have significant practical benefits:

- Fundraising
- Takeovers.

The rules concerning fundraising by companies have been the subject of a number of recommendations in recent years and have been substantially reformed. The Task Force is not aware of any need to revisit the fundamental outcomes of reforms, in particular the general requirement to provide all necessary information in prospectuses (section 1002) and the continuous disclosure requirements. However, the Task Force proposes to tackle a number of problems which remain with the operation of the fundraising provisions.

In their report on anomalies in the takeover provisions in Law, the Companies and Securities Advisory Committee and its Legal Committee is also considering the rules on compulsory acquisitions. The Task Force will draw on this work in simplifying the takeover provisions.

### Implementation

The central objective of the program is to simplify the Corporations Law so that users can act on their rights and carry out their responsibilities. Stage 3 will focus on the same 3 interlocking components which underlie the first 2 stages of the program:

- Simplification of content
- Clarification of drafting
- Comprehensive consultation.

The Task Force anticipates releasing proposals on the stage 3 priorities during the second half of 1995, with a view a third a Third Simplification Bill during the first half of 1996.

### Improving the Organisation of the Law

The Corporations Law has a number of structural defects which make it hard to use. In many areas, provisions on related topics are located far apart from one another. In some areas, the Law has lost any logical flow.

As part of the simplification process, the structural of the Law will be made more coherent by, for example, bringing all the definitions together and moving the transitional provisions to the end of the Law. Structural improvements will be introduced progressively as the Task Force reaches relevant areas of the Law. This will be done in a way that minimises disruption to users of the Law.

### Community Consultation

The Task Force welcomes comments on any aspect of the simplification program and on its plan of action.