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## **Government to introduce legislation to reverse effect of *Sons of Gwalia* decision**

The Minister for Financial Services, Chris Bowen, has announced amendments to the Corporations Act which will reverse the effect of the 2007 High Court decision in the *Sons of Gwalia v Margaretic* case which resulted in claims by shareholders being placed on a par with other creditors in some instances in a corporate winding up.

Having advocated just such an amendment, Chartered Secretaries Australia is very pleased that the government is taking this step to restore certainty to the relative rights of shareholders and creditors, which had discouraged lenders from offering finance, as well as cases of external administration.

A discussion paper, entitled *Insolvent trading: A safe harbour for reorganisation attempts outside of external administration*, was also issued to set out possible areas for reform of Australia's business judgment rule in cases of insolvency. The three options canvassed are:

- maintaining the status quo
- introducing a modified business judgment rule to s 180 of the *Corporations Act 2001* in relation to directors' duties to avoid insolvent trading
- imposing a moratorium on insolvent trading prohibitions while informal reorganisations are attempted outside of administration (also known as work-outs) in order to protect the interests of creditors, shareholders and employees of troubled businesses.

Interested parties can make submissions to the Treasury until 2 March. The issues paper is available for review at the Treasury website, [www.treasury.gov.au](http://www.treasury.gov.au)