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Government releases draft legislation to effect reversal of *Sons of Gwalia* decision

The Minister for Financial Services, Superannuation and Corporate Law, Chris Bowen, has issued an exposure draft of the Corporations Amendment (No 2) Bill 2010 which proposes to amend the *Corporations Act 2001* to reverse the effect of the High Court's decision in *Sons of Gwalia v Margaretic* [2007] HCA 1.

In *Sons of Gwalia*, a shareholder alleged that he had been induced to buy shares in an ASX listed company as a result of the company's misleading conduct. The decision resulted in the claims of that shareholder being ranked equally with unsecured creditors in the subsequent winding up of the company.

Concern has been expressed by some parties that reversing the *Sons of Gwalia* decision will disadvantage shareholders and in some fashion curtail their rights. However, the exposure draft, in reversing the *Sons of Gwalia* decision, merely restores the position, well understood by the market, creditors and shareholders as to priorities of payment in the event of insolvency, to the way it was prior to the *Sons of Gwalia* decision. Existing shareholders' rights and investor protection provisions under the Corporations Act and other legislation will not change.

The existing corporate law framework provides investor protection in the case of any breach of directors' duties, including misrepresentation by directors or a failure to comply with the continuous disclosure regime. Reversing the *Sons of Gwalia* decision does not curtail these rights or disadvantage shareholders, but rather restores certainty to creditors by confirming their rights as they have long been established by both statute and common law. The exposure draft restores priority to creditors over shareholders in having access to the company's equity base.

The bill also proposes to reform shareholder voting to streamline external administration and clarifies the position of shareholders bringing damages claims against companies.

The exposure draft is available for review at the Treasury website, www.treasury.gov.au.

Interested parties may make submissions until 18 May.