

**Australian Securities and Investments Commission
Corporations Act 2001 — Subsection 341(1) — Order**

Enabling provision

1. The Australian Securities and Investments Commission makes this order under subsection 341(1) of the *Corporations Act 2001* (the *Act*).

Title

2. This order is ASIC Class Order [CO 06/105].

Commencement

3. This order commences on the date it is registered under the *Legislative Instruments Act 2003*.

Note: An instrument is registered when it is recorded on the Federal Register of Legislative Instruments (*FRLI*) in electronic form: see *Legislative Instruments Act 2003*, s 4 (definition of *register*). The FRLI may be accessed at <http://www.frli.gov.au/>.

Relief in relation to determination and categorisation of remuneration/compensation and relocation of alternate disclosure

Financial report—Alternative to applying AASB 124

4. A listed company does not have to comply with subsection 292(1) of the Act to the extent that subsection 296(1) of the Act requires a financial report that it must prepare for a financial year (a **relevant financial year**) ending between 31 December 2005 and 31 March 2006 (both inclusive) to include the disclosures required by paragraph Aus25.4 of accounting standard AASB 124 *Related Party Disclosures (AASB 124)* as made in December 2005.
5. The relief in paragraph 4 is available only where either:
 - (a) the financial report includes the disclosures (the **alternative disclosures**) that would be required if paragraph Aus25.4 of AASB 124 read:

“Aus25.4 For each key management person, the following details must be disclosed:

- (a) **total remuneration for the reporting period, remuneration being determined in accordance with paragraph 5.1 of AASB 1046 *Director and Executive Disclosures by Disclosing Entities (AASB 1046)* as in force at the commencement of regulation 2M.3.03 of the *Corporations Regulations 2001*, and measured in accordance with section 6 of AASB 1046; and**

(b) **the components of each individual’s remuneration, as categorised and prescribed in paragraph 5.2 of AASB 1046.”; or**

- (b) the remuneration report (the *relevant remuneration report*) in the directors’ report for the relevant financial year includes the alternative disclosures in accordance with paragraph 8.
6. Where paragraph 5(b) is satisfied, the listed company also does not have to comply with subsection 292(1) of the Act to the extent that subsection 296(1) of the Act requires the financial report that it must prepare for the relevant financial year to include the disclosures (the *other transferable disclosures*) required by paragraphs Aus25.5 to Aus25.7.2 of AASB 124.
7. The relief in paragraph 6 is only available where the other transferable disclosures are also included in the relevant remuneration report in accordance with paragraph 8.
8. All of the following must be satisfied in relation to the inclusion of the alternative disclosures and any other transferable disclosures in the relevant remuneration report:
- (a) the report must include the disclosures (disregarding any requirement about where the disclosures have to be put) for each person who, at any time during the relevant financial year held:
- (i) a position as one of the key management personnel as defined in AASB 124; or
- (ii) a position mentioned in paragraph 300A(1)(c) of the Act in the company or the consolidated entity of which the company is a member, as if they were such personnel;
- (b) the auditor who conducts an audit of the financial report under section 307 of the Act must form an opinion whether the disclosures that are contained in the relevant remuneration report comply with:
- (i) in the case of the alternative disclosures—the alternative wording for paragraph Aus25.4 that appears in subparagraph 5(a) of this order; and
- (ii) in the case of the other transferable disclosures—paragraphs Aus25.5 to Aus25.7.2 of AASB 124 (other than as to the location of the disclosures);
- and must include a specific statement of that opinion in the report on that audit under section 308 of the Act;
- (c) the report must include, in relation to each person mentioned in paragraph (a):
- (i) the person’s name; and

- (ii) each position covered by paragraph (a) that was held by the person during the financial year; and
- (iii) for any position the person held for less than the whole financial year:
 - (A) where the person started to hold the position during the financial year—the date on which they started to hold the position; and
 - (B) where the person ceased to hold the position during the financial year—the date on which they ceased to hold the position; and
- (iv) for each bonus or grant mentioned in paragraph Aus25.5 of AASB 124:
 - (A) the percentage of the bonus or grant that was paid to the person, or that vested in the person, in the financial year; and
 - (B) the percentage of the bonus or grant that was forfeited by the person in the financial year because the person did not meet the service and performance criteria for the bonus or grant; and
 - (C) the financial years, after the financial year to which the disclosures relates, for which the bonus or grant will be payable if the person meets the service and performance criteria for the bonus or grant; and
 - (D) estimates of the maximum and minimum possible total value of the bonus or grant for financial years after the financial year to which the disclosures relates, measured in accordance with section 6 of AASB 1046 *Director and Executive Disclosures by Disclosing Entities (AASB 1046)* as in force at the commencement of regulation 2M.3.03 of the *Corporations Regulations 2001* (the **Regulations**); and
- (v) for any position the person started to hold during the financial year—details of payments (if any) made to the person before the person started to hold the position, as part of the consideration for the person agreeing to hold the position, including the monetary value of the payment and the date of payment.

9. The relief in paragraphs 4 and 6 is not available where the relief in paragraphs 10 or 13 is relied on.

Directors' report—Alternative to applying AASB 1046

10. A listed company does not have to comply with subsection 292(1) of the Act to the extent that paragraph 300A(1)(c) of the Act together with paragraph 2M.3.03(1)(d) of the Regulations requires a directors' report that it must prepare for the relevant financial year to include the details mentioned in paragraph 7.1 of AASB 1046.
11. The relief in paragraph 10 is available only where:

- (a) the directors' report includes:
- (i) the details that would be required if subparagraphs 7.1(a) and (b) of AASB 1046 read:
- “(a) total remuneration for the reporting period, remuneration being:**
- (i) **determined in accordance with the definition of *compensation* in paragraph 9 of AASB 124 *Related Party Disclosures* (AASB 124); and**
- (ii) **measured in accordance with the measurement requirements in AASB 2 *Share-based payment* and AASB 119 *Employee Benefits* (except that the measurement requirements of these standards may be modified as is reasonable to apply them to the disclosure of compensation of individuals rather than determining expense or income); and**
- (b) the components of each individual's remuneration, as categorised and prescribed in paragraph Aus25.4 of AASB 124.**
- Note: For the avoidance of doubt (if any), “determined” in subparagraph (a)(i) has its ordinary meaning. It does not include “measured”. Measurement of remuneration and components of remuneration is governed by subparagraph (a)(ii).”; and
- (ii) an explanation of the differences between using the measurement requirements under subparagraph (i) and the measurement requirements of section 6 of AASB 1046 (for the avoidance of doubt, these differences need not be quantified); and
- (b) in complying with paragraph Aus25.4 of AASB 124 compensation is measured in accordance with the measurement requirements in accounting standard AASB 2 *Share-based payment* (AASB 2) and accounting standard AASB 119 *Employee Benefits* (AASB 19) but if those measurement requirements have been modified in accordance with subparagraph (a)(i)—as modified in the same manner.

12. The relief in paragraph 10 is not available where the relief in paragraph 4 is being relied on.

Financial report—Avoidance of doubt about application of AASB 2 and AASB 119

13. For the avoidance of doubt (if any), a listed company does not have to comply with subsection 292(1) of the Act to the extent (if any) that subsection 296(1) of the Act requires the disclosures (the ***compensation disclosures***) relating to compensation of key management personnel which because of paragraph Aus25.4 of AASB 124 must

be included in a financial report that the company must prepare for the relevant financial year, to be measured in accordance with the measurement requirements in AASB 2 and AASB 119.

14. The relief in paragraph 13 is available only where the compensation disclosures are measured in accordance with the measurement requirements in AASB 2 and AASB 119 modified as is reasonable to apply those requirements to the disclosure of compensation of individuals rather than determining expense or income of the company.
15. Where a listed company purports to rely on the relief in paragraph 13, the company also does not have to comply with subsection 292(1) of the Act to the extent that subsection 296(1) of the Act requires the financial report that it must prepare for the relevant financial year to include the disclosures (the *transferable disclosures*) required by paragraph Aus25.4 of AASB 124 (as affected by paragraphs 13 and 14) or by paragraphs Aus25.5 to Aus25.7.2 of AASB 124.
16. The relief in paragraph 15 is available only where all of the following are satisfied:
 - (a) the relevant remuneration report includes the transferable disclosures (disregarding any requirement about where the disclosures have to be put) for each person who, at any time during the financial year held:
 - (i) a position as one of the key management personnel as defined in AASB 124; or
 - (ii) a position mentioned in paragraph 300A(1)(c) of the Act in the company or the consolidated entity of which the company is a member, as if they were such personnel;
 - (b) the auditor who conducts an audit of the financial report under section 307 of the Act forms an opinion whether the transferable disclosures that are contained in the relevant remuneration report comply with:
 - (i) paragraph Aus25.4 (other than as to the location of the disclosures and, for the avoidance of doubt, subject to paragraphs 13 and 14 of this order); and
 - (ii) paragraphs Aus25.5 to Aus25.7.2 of AASB 124 (other than as to the location of the disclosures);

and includes a specific statement of that opinion in the report on that audit under section 308 of the Act;
 - (c) the relevant remuneration report includes, in relation to each person mentioned in paragraph (a):
 - (i) the person's name; and
 - (ii) each position covered by paragraph (a) that was held by the person during the financial year; and

- (iii) for any position the person held for less than the whole financial year:
 - (A) where the person started to hold the position during the financial year—the date on which they started to hold the position; and
 - (B) where the person ceased to hold the position during the financial year—the date on which they ceased to hold the position; and
- (iv) for each bonus or grant mentioned in paragraph Aus25.5 of AASB 124:
 - (A) the percentage of the bonus or grant that was paid to the person, or that vested in the person, in the financial year; and
 - (B) the percentage of the bonus or grant that was forfeited by the person in the financial year because the person did not meet the service and performance criteria for the bonus or grant; and
 - (C) the financial years, after the financial year to which the disclosures relates, for which the bonus or grant will be payable if the person meets the service and performance criteria for the bonus or grant; and
 - (D) estimates of the maximum and minimum possible total value of the bonus or grant for financial years after the financial year to which the disclosures relates, measured in accordance with the measurement requirements specified in paragraph 14 of this order;
- (v) for any position the person started to hold during the financial year—details of payments (if any) made to the person before the person started to hold the position, as part of the consideration for the person agreeing to hold the position, including the monetary value of the payment and the date of payment.

17. The relief in paragraphs 13 and 15 is not available where the relief in paragraph 4 is relied on.

Dated this 17th day of February 2006

Signed by Brendan Byrne
as a delegate of the Australian Securities and Investments Commission