



Media Release

Government Decision Restores Certainty to Capital Market

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The Government's decision to amend the Corporations Act to reverse the effect of the High Court's decision in *Sons of Gwalia v Margaretic* will restore the proper relationship between the rights of lenders and shareholders in the event of company failure.

The decision will make it less costly for listed companies to borrow money and invest in the development of their business by removing one significant negative factor from the range of matters that banks and other creditors take into account in deciding whether to lend to a company and the terms on which the loan is made.

In particular, it will make offshore creditors more comfortable about lending to listed Australian companies on an unsecured basis.

The Sons of Gwalia ruling set a disturbing precedent by giving equal standing to certain compensation claims by shareholders and unsecured creditors in the event of company failure, overturning the long held principle that unsecured creditors should have priority in the distribution of assets over shareholders who, as owners of the company, stand last in line.

It disadvantaged Australian companies seeking funding in the international debt market because lenders were reluctant to advance funds on an unsecured basis if the chances of recovering their money in the event of a company going into administration were diminished.

While credit decisions have become more complex as a result of the global financial crisis, the Government's decision removes a harmful element of uncertainty in this process.

It is a clear signal that Australia encourages investment from off-shore.

Notes for Editors:

Australian Financial Markets Association (AFMA):

The Australian Financial Markets Association is the peak industry association for Australia's wholesale banking and financial markets. These markets play a pivotal role in the Australian economy by making it possible for

Australian financial institutions and companies to conduct business with each other and with their counterparts overseas.

AFMA represents industry participants in the wholesale banking and financial markets, including Australian and foreign banks, securities companies, state government treasury corporations, fund managers, traders in electricity and other specialised markets and industry service providers.

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