



Financial Sector (Shareholdings) Act 1998

No. 55, 1998

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About this compilation

This compilation

This is a compilation of the *Financial Sector (Shareholdings) Act 1998* that shows the text of the law as amended and in force on 1 April 2019 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act relating to shareholdings in certain financial sector companies, and for related purposes

Part 1—Preliminary

1 Short title

This Act may be cited as the *Financial Sector (Shareholdings) Act 1998*.

2 Commencement

This Act commences on the commencement of the *Australian Prudential Regulation Authority Act 1998*.

3 Definitions

In this Act, unless the contrary intention appears:

100% subsidiary has the same meaning as in the *Income Tax Assessment Act 1997*.

agreement means any agreement, whether formal or informal and whether express or implied.

APRA means the Australian Prudential Regulation Authority.

assets threshold has the meaning given by subsections 14A(6) and (7).

Australia, when used in a geographical sense, includes the external Territories.

authorised deposit-taking institution has the same meaning as in the *Banking Act 1959*.

authorised insurance company means:

Section 3

- (a) a company authorised under the *Insurance Act 1973* to carry on insurance business; or
- (b) a company registered under section 21 of the *Life Insurance Act 1995*.

civil penalty provision has the same meaning as in the Regulatory Powers Act.

company means a body corporate.

Federal Court means the Federal Court of Australia.

financial sector company means:

- (a) an authorised deposit-taking institution; or
- (b) an authorised insurance company; or
- (c) a holding company of a company covered by paragraph (a) or (b).

holding company has the meaning given by section 4.

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

relevant licensed company, in relation to an approval under paragraph 14(1)(b), means the company to which subsection 14A(3) or (4) applied in granting the approval.

rules means rules made under subsection 45A(1).

scheme means:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

total resident assets has the meaning given by subsection 14A(5).

unacceptable shareholding situation has the meaning given by section 10.

Note: Schedule 1 sets out definitions of expressions used in Part 2 (which deals with restrictions on shareholdings).

4 Holding companies

For the purposes of this Act, a company (the ***first company***) is the ***holding company*** of another company if the other company is a 100% subsidiary of the first company.

5 Crown to be bound

- (1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory.
- (2) This Act does not make the Crown liable to be prosecuted for an offence.

6 External Territories

This Act extends to all the external Territories.

7 Extra-territorial operation

This Act extends to acts, omissions, matters and things outside Australia.

Part 2—Restrictions on shareholdings in financial sector companies

Division 1—Introduction

8 Simplified outline of this Part

If a person holds a stake in a financial sector company that exceeds the allowed percentage, the Federal Court may make orders to ensure that the situation ceases to exist.

A person commits an offence if, by acquiring shares in a company (alone or under an arrangement with others), the person causes or worsens such a situation.

A person's stake is the percentage of voting power in the company controlled by the person and the person's associates.

The allowed percentage is 20% or a higher percentage approved by the Treasurer for the person either:

- (a) on national interest grounds; or
- (b) on the basis that the person is a fit and proper person and the company concerned is new or recently established, with assets below a certain threshold amount.

A person who holds a stake of no more than 20% of a financial sector company may be declared by the Treasurer to have practical control of the company. The person must then take steps to end that control.

The regulations may require records to be kept, and information to be given, for purposes relating to these restrictions.

9 Definitions in Schedule 1

Schedule 1 sets out definitions of expressions used in this Part.

Division 2—20% shareholding limit

10 Meaning of *unacceptable shareholding situation*

For the purposes of this Act, an *unacceptable shareholding situation* exists in relation to a particular financial sector company and in relation to a particular person if the person holds a stake in the company of more than:

- (a) 20%; or
- (b) if an approval of a higher percentage is in force under Division 3 in relation to the company and in relation to the person—that higher percentage.

Note: A person's *stake* includes the interests of the person's associates—see Schedule 1.

11 Acquisitions of shares

If:

- (a) a person, or 2 or more persons under an arrangement, acquire shares in a company; and
- (b) the acquisition has the result, in relation to a financial sector company, that:
 - (i) an unacceptable shareholding situation comes into existence in relation to the company and in relation to a person; or
 - (ii) if an unacceptable shareholding situation already exists in relation to the company and in relation to a person—there is an increase in the stake held by the person in the company; and

(c) the person or persons mentioned in paragraph (a) were reckless as to whether the acquisition would have that result; the person or persons mentioned in paragraph (a) commit an offence punishable on conviction by a fine not exceeding 400 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

12 Remedial orders

- (1) If an unacceptable shareholding situation exists in relation to a financial sector company, the Federal Court may, on application by the Treasurer or the company, make such orders as the court considers appropriate for the purpose of ensuring that that situation ceases to exist.
- (2) If an unacceptable shareholding situation has existed in relation to a financial sector company, the Federal Court may, on application by the Treasurer or the company, make such orders as the court considers appropriate.
- (3) The Federal Court's orders include:
 - (a) an order directing the disposal of shares; or
 - (b) an order restraining the exercise of any rights attached to shares; or
 - (c) an order prohibiting or deferring the payment of any sums due to a person in respect of shares held by the person; or
 - (d) an order that any exercise of rights attached to shares be disregarded.
- (4) Subsection (3) does not, by implication, limit subsection (1) or (2).
- (5) In addition to the Federal Court's powers under subsections (1), (2) and (3), the court:
 - (a) has power, for the purpose of securing compliance with any other order made under this section, to make an order directing any person to do or refrain from doing a specified act; and

Part 2 Restrictions on shareholdings in financial sector companies

Division 2 20% shareholding limit

Section 12

- (b) has power to make an order containing such ancillary or consequential provisions as the court thinks just.
- (6) The Federal Court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or be published in such manner as it thinks fit, or both.
- (7) The Federal Court may, by order, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

Division 3—Approval to exceed 20% shareholding limit

13 Application for approval to exceed 20% shareholding limit

- (1) A person may apply to the Treasurer for approval to hold a stake in a particular financial sector company of more than 20%.
- (1A) The application may be in relation to a company that is not a financial sector company at the time the application is made.
- (2) The application must:
 - (aa) specify whether the applicant is seeking for the approval to be granted on the basis of either paragraph 14(1)(a) or (b); and
 - (a) specify the percentage of the stake (if any) the person currently holds in the company concerned; and
 - (b) specify the percentage of the stake the person is seeking approval to hold in the company; and
 - (c) set out the person's reasons for making the application; and
 - (d) be accompanied by the prescribed fee (if any).

14 Approval of application

- (1) The Treasurer may grant the application if:
 - (a) the applicant satisfies the Treasurer that it is in the national interest to approve the applicant holding a stake in the company of more than 20%; or
 - (b) the applicant satisfies the Treasurer that the criteria in subsection 14A(1) are met in relation to the applicant and the company.

Grant of application

- (2) If the Treasurer grants the application, the Treasurer must:
 - (a) give written notice of the approval to the applicant; and

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Division 3 Approval to exceed 20% shareholding limit

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- (b) specify the percentage of the stake the Treasurer approves the applicant holding in the company (which may not be the percentage the applicant applied for); and
- (c) if the application is granted under paragraph (1)(a)—either:
 - (i) specify the period during which the approval remains in force; or
 - (ii) specify that the approval remains in force indefinitely; and
- (d) if the application is granted under paragraph (1)(b)—specify that the approval remains in force for the period worked out under section 15A.

Refusal of application

- (3) If the Treasurer refuses the application, the Treasurer must give written notice of the refusal to the applicant.

Notification of approval

- (4) The Treasurer must arrange for a copy of a notice of approval under this section to be:
 - (a) published in the *Gazette*; and
 - (b) given to the company concerned; and
 - (c) in the case of an approval granted under paragraph (1)(b), if the company concerned is not the relevant licensed company for the approval—given to the relevant licensed company for the approval.

14A Criteria for applications relating to new or recently established financial sector companies

- (1) For the purposes of paragraph 14(1)(b), the criteria are:
 - (a) the applicant is a fit and proper person to hold a stake in the company of more than 20%; and
 - (b) the company is:
 - (i) a company to which subsection (3) or (4) applies; or

- (ii) a holding company of a company to which subsection (3) or (4) applies.

Fit and proper person

- (2) The rules may prescribe matters that must be considered in determining whether a person is a fit and proper person for the purposes of paragraphs (1)(a) and 18(1)(d). However, such rules do not limit the matters that may be considered.

New or recently established financial sector company

- (3) This subsection applies to a company if:
- (a) the company is a body corporate incorporated in Australia; and
 - (b) the company has applied for one of the following, but that application has not yet been decided:
 - (i) authority under the *Banking Act 1959* to carry on banking business;
 - (ii) authorisation under the *Insurance Act 1973* to carry on insurance business;
 - (iii) registration under section 21 of the *Life Insurance Act 1995*; and
 - (c) the value of the total resident assets of the company is less than the assets threshold for the company (assuming the company is granted the authority, authorisation or registration concerned).
- (4) This subsection applies to a company if:
- (a) the company is a body corporate incorporated in Australia; and
 - (b) the company is:
 - (i) an authorised deposit-taking institution; or
 - (ii) a company that is authorised under the *Insurance Act 1973* to carry on insurance business; or
 - (iii) a company that is registered under section 21 of the *Life Insurance Act 1995*; and

Part 2 Restrictions on shareholdings in financial sector companies

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- (c) at the time of the application under subsection 13(1), the company has been such an institution, or so authorised or registered (whichever is applicable), for less than 5 years; and
- (d) the value of the total resident assets of the company is less than the assets threshold for the company.

Total resident assets

- (5) The rules must prescribe the meaning of **total resident assets** in relation to a financial sector company.

Note: The rules may prescribe different meanings for different classes of financial sector company (see subsection 13(3) of the *Legislation Act 2003*).

Assets threshold

- (6) If a company is:
 - (a) an authorised deposit-taking institution; or
 - (b) registered under section 21 of the *Life Insurance Act 1995*;the **assets threshold** for the company is:
 - (c) \$200 million; or
 - (d) if another amount is determined in an instrument under subsection (8)—that other amount.
- (7) If a company is authorised under the *Insurance Act 1973* to carry on insurance business, the **assets threshold** for the company is:
 - (a) \$50 million; or
 - (b) if another amount is determined in an instrument under subsection (8)—that other amount.
- (8) The Treasurer may, by legislative instrument, determine an amount for the purposes of paragraph (6)(d) or (7)(b).

15 Duration of approval granted on national interest grounds

- (1) An approval under paragraph 14(1)(a) remains in force:
-

- (a) if the notice of approval specifies a period during which the approval remains in force—until the end of that period, or if the Treasurer extends that period, until the end of that extended period; or
- (b) otherwise—indefinitely.

Note: See also section 18 (revoking an approval).

Extension of approval

- (2) A person who holds an approval under paragraph 14(1)(a) that is in force for a specified period may apply to the Treasurer to extend that period.
- (3) The application must:
 - (a) set out the person's reasons for making the application; and
 - (b) be accompanied by the prescribed fee (if any).
- (4) If the applicant satisfies the Treasurer that it is in the national interest to grant the extension, the Treasurer may grant the application.
- (5) If the Treasurer grants the application, the Treasurer must:
 - (a) give written notice of the extension to the applicant; and
 - (b) specify the extended period during which the approval remains in force (which may not be the period the applicant applied for).
- (6) If the Treasurer refuses the application, the Treasurer must give written notice of the refusal to the applicant.

Notification of extension

- (7) The Treasurer must arrange for a copy of a notice of extension under this section to be:
 - (a) published in the *Gazette*; and
 - (b) given to the financial sector company concerned.

15A Duration of approval granted in relation to a new or recently established financial sector company

- (1) An approval under paragraph 14(1)(b), in relation to a person and in relation to a financial sector company, remains in force until the end of 2 years after the day (the *threshold day*) that the value of the total resident assets of the relevant licensed company for the approval first exceeds the assets threshold for the relevant licensed company.
- (2) However, if the person applies within 90 days of the threshold day for an approval under paragraph 14(1)(a) in relation to the financial sector company, the approval under paragraph 14(1)(b) remains in force:
 - (a) if the application is refused—until the end of 2 years after the day the refusal was notified to the person; or
 - (b) if subsection 20(4) applies to the application—until the end of 2 years after the day the application is taken to be withdrawn under that subsection; or
 - (c) if the application is granted—until the approval under paragraph 14(1)(a) comes into force.
- (3) Also, if:
 - (a) the person applies for an approval under paragraph 14(1)(a) in relation to the financial sector company more than 90 days after the threshold day; and
 - (b) the application is granted within 2 years of the threshold day; the approval under paragraph 14(1)(b) remains in force until the approval under paragraph 14(1)(a) comes into force.

Note: See also section 18 (revoking an approval).

When approval for new financial sector company comes into force

- (4) An approval under paragraph 14(1)(b) that is granted on the basis that subsection 14A(3) applies to a company does not come into force until the company is a financial sector company.

Notification of approval ceasing to be in force

- (5) If an approval ceases to be in force because of the operation of this section, the Treasurer must arrange for notice of the cessation of the approval:
- (a) to be published in the Gazette; and
 - (b) given to the financial sector company concerned.

16 Conditions of approval

- (1) An approval under section 14 is subject to such conditions (if any) as are specified in the notice of approval.
- (2) The Treasurer may, by written notice given to a person who holds an approval under section 14:
- (a) impose one or more conditions or further conditions to which the approval is subject; or
 - (b) revoke or vary any condition:
 - (i) imposed under paragraph (a); or
 - (ii) specified in the notice of approval; or
 - (iii) to which the approval is subject under section 16A.

Procedures

- (3) The Treasurer's power under subsection (2) may be exercised:
- (a) on the Treasurer's own initiative; or
 - (b) on application made to the Treasurer by the person who holds the approval.
- (4) An application made by a person under paragraph (3)(b) must:
- (a) set out the person's reasons for making the application; and
 - (b) be accompanied by the prescribed fee (if any).
- (5) If the Treasurer refuses an application under paragraph (3)(b), the Treasurer must give written notice of the refusal to the applicant.

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Notification

- (6) The Treasurer must arrange for a copy of a notice under subsection (2) to be:
- (a) published in the *Gazette*; and
 - (b) given to the financial sector company concerned.

16A Additional conditions for approval granted in relation to a new or recently established financial sector company

- (1) An approval under paragraph 14(1)(b) is also subject to the conditions set out in this section, in addition to any conditions to which the approval is subject under section 16.

Notification if assets threshold exceeded

- (2) If the holder of the approval receives a notice under section 21A from the relevant licensed company for the approval, the holder must give a written notice to the Treasurer within 30 days that specifies whether the holder intends to either:
- (a) reduce the stake held in the financial sector company to which the approval relates, to ensure an unacceptable shareholding situation does not come into existence when the approval ceases to be in force; or
 - (b) apply for an approval under paragraph 14(1)(a) in relation to the financial sector company.

Note 1: The relevant licensed company for an approval is required to notify the holder of the approval if the assets threshold for the company is exceeded (see section 21A).

Note 2: See section 15A in relation to the duration of the approval once the assets threshold is exceeded.

5 yearly review of approval

- (3) After the end of every 5 year period following the approval coming into force, the holder of the approval must undergo a review by APRA of the approval.

Yearly report of relevant information to APRA

- (4) The holder of the approval must give to APRA a yearly report of prudential information relevant to the ongoing operation of the approval.
- (5) The report must:
 - (a) be in the approved form; and
 - (b) contain the information (if any) prescribed by the rules; and
 - (c) be provided to APRA within 30 days of the end of each financial year, or such longer period as agreed by APRA.

Functions and powers of APRA

- (6) The functions of APRA include conducting reviews mentioned in subsection (3).
- (7) APRA may, in writing, approve a form for the purposes of paragraph (5)(a).

17 Varying percentage stake approved

Application by holder of approval

- (1) A person who holds an approval under section 14 may apply to the Treasurer to vary the percentage specified in the approval.
- (2) The application must:
 - (a) specify the percentage of the stake the person currently holds in the financial sector company concerned; and
 - (b) specify the percentage of the stake the person is seeking approval to hold in the company; and
 - (c) set out the person's reasons for making the application; and
 - (d) be accompanied by the prescribed fee (if any).
- (3) If the applicant satisfies the Treasurer that it is in the national interest to vary the percentage, the Treasurer may grant the application.

Section 17

- (4) If the Treasurer grants the application, the Treasurer must:
- (a) give written notice of the variation to the applicant; and
 - (b) specify the variation granted (which may not be the variation the applicant applied for).
- (5) If the Treasurer refuses an application, the Treasurer must give written notice of the refusal to the applicant.

Treasurer's own initiative

- (6) The Treasurer may, by written notice given to a person who holds an approval under section 14, vary the percentage specified in the approval if the Treasurer is satisfied that it is in the national interest to do so.

Percentage varied upwards

- (7) If the Treasurer varies a percentage upwards, the variation takes effect on the day the notice of variation is given.

Percentage varied downwards

- (8) If the Treasurer varies a percentage downwards, the variation takes effect on the day specified in the notice of variation. The specified day must be a day at least 90 days after the day on which the notice is given.

Notification of variation

- (9) The Treasurer must arrange for a copy of a notice of variation under this section to be:
- (a) published in the *Gazette*; and
 - (b) given to the financial sector company concerned.

18 Revoking an approval

Revocation on specified grounds

- (1) The Treasurer may, by written notice given to a person who holds an approval under section 14 in relation to a financial sector company, revoke the approval if the Treasurer is satisfied that:
 - (a) it is in the national interest to do so; or
 - (b) an unacceptable shareholding situation exists in relation to the financial sector company and in relation to the person; or
 - (c) there has been a contravention of a condition to which the approval is subject; or
 - (d) if the approval was granted under paragraph 14(1)(b)—the person is no longer a fit and proper person to hold the approval.
- (2) The revocation takes effect on the day specified in the notice of revocation. The specified day must be a day at least 90 days after the day on which the notice is given.

Revocation on request

- (3) If a person who holds an approval under section 14 requests the Treasurer to revoke the approval, the Treasurer must, by written notice given to the person, revoke the approval. The revocation takes effect on the day specified in the notice of revocation.

Notification of revocation

- (4) The Treasurer must arrange for a copy of a notice of revocation under this section to be:
 - (a) published in the *Gazette*; and
 - (b) given to the financial sector company concerned.

19 Flow-on approvals—approval granted on national interest grounds

100% subsidiaries of holding company

- (1) If:
- (a) at a particular time, a person holds an approval under paragraph 14(1)(a) to hold a stake in a financial sector company of more than 20%; and
 - (b) the financial sector company is a holding company of an authorised deposit-taking institution or an authorised insurance company;
- there are taken to be in force at that time approvals of the Treasurer, under section 14, for the person to hold the same percentage stake in each financial sector company that is a 100% subsidiary of the holding company.
- (2) If, on a particular day, a financial sector company that is a 100% subsidiary of the holding company ceases to be a 100% subsidiary of the holding company, the approval that is taken to be in force, because of subsection (1), in relation to that financial sector company continues in force until:
- (a) the end of 90 days after that day; or
 - (b) if, during that period of 90 days, the person becomes the holder of another approval under section 14 in relation to the financial sector company—that other approval comes into force.

Officers of company

- (3) If, at a particular time, a company (the **approval company**) holds an approval under paragraph 14(1)(a) to hold a stake in a financial sector company of more than 20%, there is taken to be in force at that time an approval of the Treasurer, under section 14, for each officer of the approval company to hold the same percentage stake in the financial sector company.

19A Flow-on approvals—approval granted in relation to new or recently established financial sector company

100% subsidiaries of holding company

- (1) If:
- (a) at a particular time, a person holds an approval under paragraph 14(1)(b) to hold a stake in a financial sector company of more than 20%; and
 - (b) the financial sector company is a holding company of the relevant licensed company for the approval;
- there are taken to be in force at that time approvals of the Treasurer, under section 14, for the person to hold the same percentage stake in:
- (c) the relevant licensed company; and
 - (d) each financial sector company that is both:
 - (i) a 100% subsidiary of the holding company; and
 - (ii) a holding company of the relevant licensed company.
- (2) If, on a particular day, the relevant licensed company for the approval ceases to be a 100% subsidiary of the holding company, the approval that is taken to be in force, because of subsection (1), in relation to that relevant licensed company continues in force until:
- (a) the end of 90 days after that day; or
 - (b) if, during that period of 90 days, the person becomes the holder of another approval under section 14 in relation to the relevant licensed company—that other approval comes into force.
- (3) If, on a particular day, a financial sector company that is covered by paragraph (1)(d):
- (a) ceases to be a 100% subsidiary of the holding company; or
 - (b) ceases to be a holding company of the relevant licensed company for the approval;
- the approval that is taken to be in force, because of subsection (1), in relation to that financial sector company continues in force until:

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- (c) the end of 90 days after that day; or
- (d) if, during that period of 90 days, the person becomes the holder of another approval under section 14 in relation to the financial sector company—that other approval comes into force.

Officers of company

- (4) If, at a particular time, a company (the *approval company*) holds an approval under paragraph 14(1)(b) to hold a stake in a financial sector company of more than 20%, there is taken to be in force at that time an approval of the Treasurer, under section 14, for each officer of the approval company to hold the same percentage stake in the financial sector company.

20 Further information about applications

- (1) This section applies to an application under this Division.
- (2) The Treasurer may, by written notice given to the applicant, require the applicant to give the Treasurer, within a specified period, further information about the application.
- (3) The Treasurer may refuse to consider the application until the applicant gives the Treasurer the information.
- (4) If the applicant does not provide the specified information before the end of the specified period or any longer period agreed to in writing by the Treasurer, the application is taken to be withdrawn.
- (5) A notice under subsection (2) must include a statement about the effect of subsections (3) and (4).

21 Electronic lodgment of applications

- (1) The Treasurer may require or permit an application under this Division to be given, in accordance with specified software requirements and specified authentication requirements:
 - (a) on a specified kind of data storage device; or

- (b) by way of a specified kind of electronic transmission.
- (2) If an application is given by way of electronic transmission, the application is taken to be accompanied by a fee if the fee is paid within 7 days after the transmission.
- (3) In this section:

data storage device means any article or material (for example, a disk) from which information is capable of being reproduced with or without the aid of any other article or device.

Division 3A—Reporting by the relevant licensed company for an approval

21A Reporting when assets threshold exceeded

- (1) This section applies to the relevant licensed company for an approval under paragraph 14(1)(b).
- (2) The company must give written notice, in accordance with subsection (3), to APRA and the holder of the approval within 10 days of the day that the value of the total resident assets of the company first exceeds the assets threshold for the company.

Civil penalty: 60 penalty units.

- (3) The notice must specify the day on which the threshold was exceeded.

Note: An approval under paragraph 14(1)(b) is subject to a condition that the holder of the approval take certain actions if a notice is received under this section (see subsection 16A(2)).

Division 4—Practical control where 20% shareholding limit not exceeded

22 Meaning of *control*

In this Division:

control includes control as a result of, or by means of, trusts, agreements, arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights.

23 Treasurer may declare person to have practical control of a financial sector company

Declaration

- (1) If:
- (a) the Treasurer is satisfied that:
 - (i) the directors of a financial sector company are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of a person (either alone or together with associates); or
 - (ii) a person (either alone or together with associates) is in a position to exercise control over a financial sector company; and
 - (b) the Treasurer is satisfied that:
 - (i) the person does not hold a stake in the company; or
 - (ii) if the person holds a stake in the company—that stake is not more than 20%; and
 - (c) the Treasurer is satisfied that it is in the national interest to declare that the person has practical control of the company for the purposes of this Act;
- the Treasurer may declare that the person has ***practical control*** of the company for the purposes of this Act.

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Declaration has effect

- (2) A declaration under this section has effect accordingly.

Revocation of declaration

- (3) The Treasurer must revoke a declaration under this section if the Treasurer ceases to be satisfied of the matters referred to in paragraphs (1)(a), (b) and (c).

Notification of declaration

- (4) If a declaration under this section is made or revoked, the Treasurer must arrange for a copy of the declaration or revocation to be given to the financial sector company and the person concerned.

24 Requirement to relinquish practical control or reduce stake

- (1) If a person has practical control of a financial sector company, the person must take such steps as are necessary to ensure that:
- (a) the directors of the company are not accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person (either alone or together with associates); and
 - (b) the person (either alone or together with associates) is not in a position to exercise control over the company; and
 - (c) either:
 - (i) the person does not hold a stake in the company; or
 - (ii) if the person holds a stake in the company—that stake is not more than 20%.

Note: **Practical control** has the meaning given by section 23.

- (2) The person must take those steps:
- (a) within 90 days after receiving the copy of the most recent declaration under section 23 relating to the practical control of the company; or

- (b) if the Treasurer, by written notice given to the person, allows a longer period for compliance—before the end of that longer period.
- (3) A person commits an offence if:
 - (a) the person is subject to a requirement under this section; and
 - (b) the person intentionally or recklessly contravenes the requirement.

Penalty: 400 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

25 Remedial orders

- (1) If:
 - (a) a declaration under section 23 is in force in relation to a person and in relation to a financial sector company; and
 - (b) the Federal Court is satisfied that:
 - (i) the directors of the company are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person (either alone or together with associates); or
 - (ii) the person (either alone or together with associates) is in a position to exercise control over the company; and
 - (c) the Federal Court is satisfied that:
 - (i) the person does not hold a stake in the company; or
 - (ii) if the person holds a stake in the company—that stake is not more than 20%;

the court may, on application by the Treasurer, make such orders as the court considers appropriate to ensure that:

- (d) the directors of the company are not accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person (either alone or together with associates); and
- (e) the person (either alone or together with associates) is not in a position to exercise control over the company; and

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- (f) either:
 - (i) the person does not hold a stake in the company; or
 - (ii) if the person holds a stake in the company—that stake is not more than 20%.
- (2) The Federal Court's orders include:
 - (a) an order directing the disposal of shares; or
 - (b) an order restraining the exercise of any rights attached to shares; or
 - (c) an order prohibiting or deferring the payment of any sums due to a person in respect of shares held by the person; or
 - (d) an order that any exercise of rights attached to shares be disregarded.
- (3) Subsection (2) does not, by implication, limit subsection (1).
- (4) In addition to the Federal Court's powers under subsections (1) and (2), the court:
 - (a) has power, for the purpose of securing compliance with any other order made under this section, to make an order directing any person to do or refrain from doing a specified act; and
 - (b) has power to make an order containing such ancillary or consequential provisions as the court thinks just.
- (5) The Federal Court may, before making an order under this section, direct that notice of the Treasurer's application be given to such persons as it thinks fit or be published in such manner as it thinks fit, or both.
- (6) The Federal Court may, by order, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

Division 5—Record-keeping and giving of information

26 Record-keeping and giving of information

- (1) The regulations may make provision for and in relation to requiring a person:
- (a) to keep and retain records, where the records are relevant to an ownership matter; and
 - (b) to give information to the Treasurer that is relevant to an ownership matter; or
 - (c) to give information to a financial sector company, where the information is relevant to an ownership matter that concerns the company.

Note: **Ownership matter** is defined by subsection (6).

Statutory declarations

- (2) The regulations may provide that information given in accordance with a requirement covered by paragraph (1)(b) or (c) must be verified by statutory declaration.

No self-incrimination

- (3) An individual is not required to give information in accordance with a requirement covered by paragraph (1)(b) or (c) if the information might tend to incriminate the individual or expose the individual to a penalty.

Offence

- (4) A person commits an offence if:
- (a) the person is subject to a requirement covered by paragraph (1)(a), (b) or (c); and

- (b) the person intentionally or recklessly contravenes the requirement.

Penalty: 50 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Regulations may confer discretionary powers on the Treasurer

- (5) Regulations made for the purposes of this section may make provision for or in relation to a matter by conferring a power on the Treasurer. For example, the regulations could provide that the Treasurer may, by written notice given to a financial sector company, require the company to give the Treasurer, within the period and in the manner specified in the notice, specified information about an ownership matter relating to the company.

Definition

- (6) For the purposes of this section, each of the following matters is an **ownership matter**:
- (a) whether a person holds a stake in a financial sector company and, if so, the percentage of that stake;
 - (b) whether the directors of a financial sector company are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of a person (either alone or together with associates);
 - (c) whether a person (either alone or together with associates) is in a position to exercise control over a financial sector company.

For this purpose, **control** has the same meaning as in section 22.

Division 6—Ancillary matters

27 Provision to attract the corporations power, the banking power and the insurance power

- (1) This Part does not apply in relation to a financial sector company unless the company is:
- (a) a constitutional corporation (other than a corporation that carries on State banking, or State insurance, not extending beyond the limits of the State concerned); or
 - (b) a body corporate that carries on the business of banking; or
 - (c) a body corporate that carries on the business of insurance.

Severability

- (2) Without prejudice to its effect apart from this subsection, subsection (1) also has the effect it would have if:
- (a) the reference in paragraph (1)(b) to a body corporate that carries on the business of banking were, by express provision, confined to a body corporate that carries on as its sole or principal business the business of banking; and
 - (b) the reference in paragraph (1)(c) to a body corporate that carries on the business of insurance were, by express provision, confined to a body corporate that carries on as its sole or principal business the business of insurance.

Definitions

- (3) In this section:

business of banking does not include State banking not extending beyond the limits of the State concerned.

business of insurance does not include State insurance not extending beyond the limits of the State concerned.

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

28 Concurrent operation of State/Territory laws

It is the intention of the Parliament that this Part is not to apply to the exclusion of a law of a State or Territory to the extent that that law is capable of operating concurrently with this Part.

29 Validity of acts done in contravention of this Part

An act is not invalidated by the fact that it constitutes an offence against this Part.

30 Acquisition of property

- (1) The Federal Court must not make an order under this Part if:
 - (a) the order would result in the acquisition of property from a person otherwise than on just terms; and
 - (b) the order would be invalid because of paragraph 51(xxxi) of the Constitution.
- (2) In this section:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

Part 3—Anti-avoidance

31 Anti-avoidance

- (1) If:
- (a) one or more persons enter into, begin to carry out or carry out a scheme; and
 - (b) it would be concluded that the person, or any of the persons, who entered into, began to carry out or carried out the scheme or any part of the scheme did so for the sole or dominant purpose of avoiding the application of any provision of Part 2 in relation to any person or persons (whether or not mentioned in paragraph (a)); and
 - (c) as a result of the scheme or a part of the scheme, a person (the **stakeholder**) increases the stake the stakeholder holds in a financial sector company;
- the Treasurer may give the stakeholder a written direction to cease holding that stake within a specified time.

Offence

- (2) A person commits an offence if:
- (a) the person is subject to a direction under subsection (1); and
 - (b) the person intentionally contravenes the direction.

Penalty: 400 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Definitions

- (3) In this section:

hold, in relation to a stake in a company, has the same meaning as in Schedule 1.

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increase, in relation to a stake held in a company, includes an increase from a starting point of nil.

stake, in relation to a company, has the same meaning as in Schedule 1.

Part 4—Injunctions

32 Injunctions

Restraining injunctions

- (1) If a person has engaged, is engaging or is proposing to engage in any conduct in contravention of section 11, the Federal Court may, on the application of the Treasurer, grant an injunction:
 - (a) restraining the person from engaging in the conduct; and
 - (b) if, in the court's opinion, it is desirable to do so—requiring the person to do something.

- (2) If:
 - (a) a person has engaged, is engaging or is proposing to engage in any conduct in contravention of section 11; and
 - (b) the contravention relates to the existence of an unacceptable shareholding situation in relation to a financial sector company;the Federal Court may, on the application of the company, grant an injunction:
 - (c) restraining the person from engaging in the conduct; and
 - (d) if, in the court's opinion, it is desirable to do so—requiring the person to do something.

- (3) If a person has engaged, is engaging or is proposing to engage in any conduct in contravention of a condition to which an approval under section 14 is subject, the Federal Court may, on the application of the Treasurer, grant an injunction:
 - (a) restraining the person from engaging in the conduct; and
 - (b) if, in the court's opinion, it is desirable to do so—requiring the person to do something.

Performance injunctions

- (4) If:
- (a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and
 - (b) the refusal or failure was, is or would be a contravention of section 26 or 31;
- the Federal Court may, on the application of the Treasurer, grant an injunction requiring the person to do that act or thing.
- (5) If:
- (a) a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and
 - (b) the refusal or failure was, is or would be a contravention of subsection 26(4) that relates to a requirement covered by paragraph 26(1)(c) to give information to a financial sector company;
- the Federal Court may, on the application of the company, grant an injunction requiring the person to do that act or thing.
- (6) If:
- (a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and
 - (b) the refusal or failure was, is or would be a contravention of a condition to which an approval under section 14 is subject;
- the Federal Court may, on the application of the Treasurer, grant an injunction requiring the person to do that act or thing.

33 Interim injunctions

Grant of interim injunction

- (1) If an application is made to the court for an injunction under section 32, the court may, before considering the application, grant an interim injunction restraining a person from engaging in conduct of a kind referred to in that section.

No undertakings as to damages

- (2) The court is not to require an applicant for an injunction under section 32, as a condition of granting an interim injunction, to give any undertakings as to damages.

34 Discharge etc. of injunctions

The court may discharge or vary an injunction granted under this Part.

35 Certain limits on granting injunctions not to apply*Restraining injunctions*

- (1) The power of the court under this Part to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised:
- (a) if the court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
 - (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the person engages in conduct of that kind.

Performance injunctions

- (2) The power of the court under this Part to grant an injunction requiring a person to do an act or thing may be exercised:
- (a) if the court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or

- (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the person refuses or fails to do that act or thing.

36 Other powers of the court unaffected

The powers conferred on the court under this Part are in addition to, and not instead of, any other powers of the court, whether conferred by this Act or otherwise.

Part 5—Offences

38 Incorrect records

A person commits an offence if:

- (a) the person is subject to a requirement covered by paragraph 26(1)(a); and
- (b) in purported compliance with that requirement, the person makes a record of any matter or thing; and
- (c) the person makes the record in such a way that it does not correctly record the matter or thing.

Penalty: Imprisonment for 6 months.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

39 Indictable offences

An offence against section 11, 24 or 31 is an indictable offence.

40 Application of *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

41 Service of summons or process on foreign corporations—criminal proceedings

- (1) This section applies to a summons or process in any criminal proceedings under this Act, where:
 - (a) service of the summons or process is required to be served on a body corporate incorporated outside Australia; and
 - (b) the body corporate does not have a registered office or a principal office in Australia; and
 - (c) the body corporate has an agent in Australia.

Part 5 Offences

Section 41

(2) Service of the summons or process may be effected by serving it on the agent.

(3) Subsection (2) has effect in addition to section 28A of the *Acts Interpretation Act 1901*.

Note: Section 28A of the *Acts Interpretation Act 1901* deals with the service of documents.

(4) In this section:

criminal proceeding includes a proceeding to determine whether a person should be tried for an offence.

Part 6—Civil liability

Division 1—Civil liability in certain civil proceedings

41A Application of this Division

This Division does not apply to a civil proceeding in relation to a civil penalty provision of this Act.

42 Civil liability of corporations

State of mind

- (1) If, in a civil proceeding under this Act in respect of conduct engaged in by a corporation, it is necessary to establish the state of mind of the corporation, it is sufficient to show that:
 - (a) a director, employee or agent of the corporation engaged in that conduct; and
 - (b) the director, employee or agent was, in engaging in that conduct, acting within the scope of his or her actual or apparent authority; and
 - (c) the director, employee or agent had that state of mind.

Conduct

- (2) If:
 - (a) conduct is engaged in on behalf of a corporation by a director, employee or agent of the corporation; and
 - (b) the conduct is within the scope of his or her actual or apparent authority;the conduct is taken, for the purposes of a civil proceeding under this Act, to have been engaged in by the corporation unless the corporation establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.

Extended meaning of state of mind

- (3) A reference in subsection (1) to the *state of mind* of a person includes a reference to:
- (a) the knowledge, intention, opinion, belief or purpose of the person; and
 - (b) the person's reasons for the intention, opinion, belief or purpose.

Extended meaning of director

- (4) A reference in this section to a *director* of a corporation includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, a State or a Territory.

Extended meaning of engaging in conduct

- (5) A reference in this section to *engaging in conduct* includes a reference to failing or refusing to engage in conduct.

43 Civil liability of persons other than corporations

State of mind

- (1) If, in a civil proceeding under this Act in respect of conduct engaged in by a person other than a corporation, it is necessary to establish the state of mind of the person, it is sufficient to show that:
- (a) the conduct was engaged in by an employee or agent of the person within the scope of his or her actual or apparent authority; and
 - (b) the employee or agent had that state of mind.

Conduct

- (2) If:
- (a) conduct is engaged in on behalf of a person other than a corporation by an employee or agent of the person; and

(b) the conduct is within the employee's or agent's actual or apparent authority;
the conduct is taken, for the purposes of a civil proceeding under this Act, to have been engaged in by the person unless the person establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.

*Extended meaning of **state of mind***

- (3) A reference in this section to the **state of mind** of a person includes a reference to:
- (a) the knowledge, intention, opinion, belief or purpose of the person; and
 - (b) the person's reasons for the intention, opinion, belief or purpose.

*Extended meaning of **engaging in conduct***

- (4) A reference in this section to **engaging in conduct** includes a reference to failing or refusing to engage in conduct.

Division 2—Civil penalties

43A Civil penalty provisions

Enforceable civil penalty provisions

- (1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant

- (2) For the purposes of Part 4 of the Regulatory Powers Act, each of the following persons is an authorised applicant in relation to the civil penalty provisions of this Act:

- (a) the Treasurer;
- (b) APRA.

Relevant court

- (3) For the purposes of Part 4 of the Regulatory Powers Act, the Federal Court is a relevant court in relation to the civil penalty provisions of this Act.

Extension to external Territories etc.

- (4) Part 4 of the Regulatory Powers Act, as it applies in relation to the civil penalty provisions of this Act, extends to:

- (a) every external Territory; and
- (b) acts, omissions, matters and things outside Australia.

Liability of Crown

- (5) Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, does not make the Crown liable to a pecuniary penalty.

Part 7—Miscellaneous

44 Delegation by Treasurer

- (1) Subject to subsection (1A), the Treasurer may, by writing, delegate any or all of the Treasurer's powers under this Act to:
 - (a) APRA; or
 - (b) an APRA member (within the meaning of the *Australian Prudential Regulation Authority Act 1998*); or
 - (c) an APRA staff member (within the meaning of the *Australian Prudential Regulation Authority Act 1998*).
- (1A) The Treasurer must not delegate the Treasurer's power under subsection 45A(2) (power to consent to APRA making rule).
- (2) The delegate is, in the exercise of any power delegated under subsection (1), subject to the directions of the Treasurer.

45 *Foreign Acquisitions and Takeovers Act 1975* and this Act to operate independently of each other

- (1) This Act and the *Foreign Acquisitions and Takeovers Act 1975* operate independently of each other.
- (2) In particular, a decision under either Act has effect only for the purposes of the Act concerned.

45A Rules

- (1) APRA may, by legislative instrument, make rules prescribing matters:
 - (a) required or permitted by this Act to be prescribed by the rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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Ministerial consent to rules required

- (2) APRA must not make a rule under subsection (1) unless the Treasurer has consented, in writing, to the making of the rule.
- (3) A consent under subsection (2) is not a legislative instrument.

Incorporation of other instruments

- (4) Despite subsection 14(2) of the *Legislation Act 2003*, the rules may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

Scope of the rule-making power

- (5) To avoid doubt, the rules may not do the following:
 - (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of this Act.
- (6) Rules that are inconsistent with the regulations have no effect to the extent of the inconsistency, but rules are taken to be consistent with the regulations to the extent that the rules are capable of operating concurrently with the regulations.

46 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

47 Transitional—pre-commencement stakes in financial sector companies

- (1) This section applies if, immediately before the commencement of this section:
- (a) a person held a stake in a particular financial sector company of more than 15%; and
 - (b) the holding of that stake did not, to any extent, involve a contravention of a provision of the *Banks (Shareholdings) Act 1972* or the *Insurance Acquisitions and Takeovers Act 1991*.
- (2) This Act has effect as if the Treasurer had, immediately after the commencement of this section, by written notice under section 14, approved the person holding the same percentage stake in the company.
- Note: This approval can be varied or revoked in accordance with the provisions of Division 3 of Part 2.
- (3) For the purposes of this section, Part 1 and Schedule 1 are taken to have been in force immediately before the commencement of this section.
- (4) For the purposes of this section, a company that is an authorised deposit-taking institution immediately after the commencement of this section is taken to have been an authorised deposit-taking institution immediately before the commencement of this section.

Schedule 1—Ownership definitions

Note: See section 9.

1 Object

The object of this Schedule is to define terms used in Part 2 (which deals with restrictions on shareholdings).

2 Definitions

(1) In Part 2 and this Schedule, unless the contrary intention appears:

acquisition includes an agreement to acquire, but does not include:

- (a) an acquisition by will or by devolution by operation of law;
or
- (b) an acquisition by way of enforcement of a loan security.

arrangement has a meaning affected by clause 3.

associate has the meaning given by clause 4.

child: without limiting who is a child of a person for the purposes of this Act, someone is the **child** of a person if he or she is a child of the person within the meaning of the *Family Law Act 1975*.

constituent document, in relation to a company, means:

- (a) the memorandum and articles of association of the company;
or
- (b) any rules or other documents constituting the company or governing its activities.

direct control interest has the meaning given by clause 11.

director includes any person occupying the position of director of a company, by whatever name called.

discretionary trust means a trust where:

- (a) a person (who may include the trustee) is empowered (either unconditionally or on the fulfilment of a condition) to exercise any power of appointment or other discretion; and
- (b) the exercise of the power or discretion, or the failure to exercise the power or discretion, has the effect of determining, to any extent, either or both of the following:
 - (i) the identities of those who may benefit under the trust;
 - (ii) how beneficiaries are to benefit, as between themselves, under the trust.

hold, in relation to a stake in a company, has the meaning given by subclause 10(1A).

increase, in relation to a stake held in a company, includes an increase from a starting point of nil.

interest in a share has the meaning given by clause 7.

lender, in relation to a loan security, means the person who is entitled to enforce the security.

lending money includes providing non-equity finance where the provision of the finance may reasonably be regarded as equivalent to lending money.

loan security means a security held solely for the purposes of a moneylending agreement.

management employee, in relation to a company, means an employee of the company who is concerned in, or takes part in, the management of the company.

moneylending agreement means an agreement entered into in good faith in the ordinary course of carrying on a business of lending money, but does not include an agreement dealing with any matter unrelated to the carrying on of that business.

officer, in relation to a company, means:

- (a) a director, secretary or management employee of the company; or

Clause 2

- (b) a receiver and manager of any part of the undertaking of the company appointed under a power contained in any instrument; or
- (c) a liquidator of the company appointed in a voluntary winding-up.

ownership provisions means Part 2 and this Schedule.

parent: without limiting who is a parent of a person for the purposes of this Act, someone is the **parent** of a person if the person is his or her child because of the definition of **child** in this clause.

power to appoint a director of a company has a meaning affected by clause 5.

practical control, in relation to a financial sector company, has the meaning given by section 23.

relative, in relation to a person, means:

- (a) the person's spouse; or
- (b) the de facto partner of the person within the meaning of the *Acts Interpretation Act 1901*; or
- (c) a parent or remoter lineal ancestor of the person; or
- (d) a child or remoter issue of the person; or
- (e) a brother or sister of the person.

Note: See also subclause (2).

share, in relation to a company, means a share in the share capital of the company, and includes:

- (a) stock into which any or all of the share capital of the company has been converted; or
- (b) an interest in such a share or in such stock.

stake, in relation to a company, has the meaning given by clause 10.

voting power has the meaning given by clause 9.

- (2) For the purposes of paragraphs (c), (d) and (e) of the definition of **relative** in subclause (1), if one person is the child of another
-

person because of the definition of *child* in that subclause, relationships traced to or through the person are to be determined on the basis that the person is the child of the other person.

3 Entering into an agreement or arrangement

- (1) For the purposes of the ownership provisions, a person is taken to have proposed to enter into an agreement or arrangement if the person takes part in, or proposes to take part in, negotiations with a view to entering into the agreement or arrangement.
- (2) A reference in the ownership provisions to *entering into an agreement or arrangement* includes a reference to altering or varying an agreement or arrangement.
- (3) A reference in the ownership provisions to *entering into an arrangement* is a reference to entering into any formal or informal scheme, arrangement or understanding, whether expressly or by implication and, without limiting the generality of the foregoing, includes a reference to:
 - (a) entering into an agreement; or
 - (b) creating a trust, whether express or implied; or
 - (c) entering into a transaction;and a reference in the ownership provisions to an arrangement is to be construed accordingly.
- (4) A reference in the ownership provisions to an *arrangement* does not include a reference to a moneylending agreement.

4 Associates

- (1) For the purposes of the ownership provisions, the following persons are *associates* of a person:
 - (a) a relative of the person;
 - (b) a partner of the person;
 - (c) a company of which the person is an officer;
 - (d) if the person is a company—an officer of the company;
 - (e) an officer of a company of which the person is an officer;

Clause 4

- (f) an employee of an individual of whom the person is an employee;
 - (g) the trustee of a discretionary trust where the person or another person who is an associate of the person by virtue of another paragraph of this subclause benefits, or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust, either directly or through any interposed companies, partnerships or trusts;
 - (h) a company whose directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person;
 - (i) a company where the person is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the company;
 - (j) a company in which the person has, apart from this paragraph, a stake of not less than 20%;
 - (k) if the person is a company—a person who holds, apart from this paragraph, a stake in the company of not less than 20%;
 - (l) a person who is, because of this subclause, an associate of any other person who is an associate of the person (including a person who is an associate of the person by any other application or applications of this paragraph).
- (2) If a person (the *first person*) enters, or proposes to enter, into an arrangement with another person (the *second person*) that relates to any of the following matters:
- (a) the first person and the second person being in a position, by acting together, to control any of the voting power in a company;
 - (b) the power of the first person and the second person, by acting together, to appoint or remove a director of a company;
 - (c) the situation where one or more of the directors of a company are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the first person and the second person acting together;

then, the second person is taken to be an *associate* of the first person for the purposes of the application of a provision of the ownership provisions in relation to the matter concerned.

5 Power to appoint director

- (1) A reference in the ownership provisions to a *power to appoint a director* includes a reference to such a power whether exercisable with or without the consent or concurrence of any other person.
- (2) For the purposes of the ownership provisions, a person is taken to have the power to appoint a director if:
 - (a) the person has the power (whether exercisable with or without the consent or concurrence of any other person) to veto such an appointment; or
 - (b) a person's appointment as a director of the company follows necessarily from that person being a director or other officer of the first-mentioned person.

6 Meaning of *entitled to acquire*

For the purposes of the ownership provisions, a person is *entitled to acquire* anything if the person is absolutely or contingently entitled to acquire it, whether because of any constituent document of a company, the exercise of any right or option or for any other reason.

7 Meaning of *interest in a share*

- (1) Subject to this clause, a person holds an *interest in a share* if the person has any legal or equitable interest in the share.
- (2) A person is taken to hold an interest in a share if:
 - (a) the person has entered into a contract to purchase the share; or
 - (b) the person has a right (otherwise than because of having an interest under a trust) to have the share transferred to the person or to the person's order (whether the right is exercisable presently or in the future and whether or not on the fulfilment of a condition); or

Clause 8

- (c) the person has a right to acquire the share, or an interest in the share, under an option (whether the right is exercisable presently or in the future and whether or not on the fulfilment of a condition); or
 - (d) the person is otherwise entitled to acquire the share or an interest in the share; or
 - (e) the person is entitled (otherwise than because of having been appointed as a proxy or representative to vote at a meeting of members of the company or of a class of its members) to exercise or control the exercise of a right attached to the share.
- (3) Subclause (2) does not, by implication, limit subclause (1).
- (4) A person is taken to hold an interest in a share even if the person holds the interest in the share jointly with another person.
- (5) For the purpose of determining whether a person holds an interest in a share, it is immaterial that the interest cannot be related to a particular share.
- (6) An interest in a share is not to be disregarded only because of:
- (a) its remoteness; or
 - (b) the manner in which it arose; or
 - (c) the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to restraint or restriction.

8 Certain interests in shares to be disregarded

- (1) For the purposes of the ownership provisions, the following interests must be disregarded:
- (a) an interest in a share held by a person whose ordinary business includes the lending of money if the person holds the interest as a loan security;
 - (b) an interest in a share held by a person, being an interest held by the person because the person holds a prescribed office;
 - (c) an interest of a prescribed kind in a share, being an interest held by such persons as are prescribed.

- (2) For the purposes of the ownership provisions, if:
- (a) a person holds an interest in a share as a loan security; and
 - (b) the ordinary business of the person includes the lending of money; and
 - (c) the loan security is enforced; and
 - (d) as a result of the enforcement of the loan security, the person becomes the holder of the share; and
 - (e) the person holds the share for a continuous period (the **holding period**) beginning at the time when the security was enforced;
- the person's interest in the share must be disregarded at all times during so much of the holding period as occurs during whichever of the following periods is applicable:
- (f) the period of 90 days beginning when the security was enforced;
 - (g) if the Treasurer, by written notice given to the person, allows a longer period—the end of that longer period.

9 Voting power

- (1) A reference in the ownership provisions to the **voting power** in a company is a reference to the total rights of shareholders to vote, or participate in any decision-making, concerning any of the following:
- (a) the making of distributions of capital or profits of the company to its shareholders;
 - (b) the constituent document of the company;
 - (c) any variation of the share capital of the company;
 - (d) any appointment of a director of the company.
- (2) A reference in the ownership provisions to **control of the voting power** in a company is a reference to control that is direct or indirect, including control that is exercisable as a result of or by means of arrangements or practices:
- (a) whether or not having legal or equitable force; and
 - (b) whether or not based on legal or equitable rights.

Clause 10

- (3) If the percentage of total rights to vote or participate in decision-making differs as between different types of voting or decision-making, the highest of those percentages applies for the purposes of this clause.
- (4) If a company:
 - (a) is limited both by shares and by guarantee; or
 - (b) does not have a share capital;this clause has effect as if the members or policy holders of the company were shareholders in the company.

10 Holding a stake in a company

- (1A) A person *holds* a stake in a company at a particular time only if the person holds a direct control interest in the company.
- (1) The *stake* that a person holds in a company at a particular time is the aggregate of:
 - (a) the direct control interests in the company that the person holds at that time; and
 - (b) the direct control interests in the company held at that time by associates of the person.
- (2) In calculating the stake that a person holds in a company, a direct control interest held because of subclause 11(2) is not to be counted under paragraph (1)(a) to the extent to which it is calculated by reference to a direct control interest in the company that is taken into account under paragraph (1)(b).

11 Direct control interests in a company

- (1) A person holds a *direct control interest* in a company at a particular time equal to the percentage of the voting power in the company that the person is in a position to control at that time.
- (2) If:
 - (a) a person holds a direct control interest (including a direct control interest that is taken to be held because of one or more previous applications of this subclause) in a company (the *first level company*); and

(b) the first level company holds a direct control interest in another company (the ***second level company***); the person is taken to hold a direct control interest in the second level company equal to the percentage worked out using the formula:

First level percentage × Second level percentage

where:

first level percentage means the percentage of the direct control interest held by the person in the first level company.

second level percentage means the percentage of the direct control interest held by the first level company in the second level company.

Endnotes

Endnote 1—About the endnotes

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

Endnote 1—About the endnotes

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Financial Sector (Shareholdings) Act 1998	55, 1998	29 June 1998	1 July 1998 (s 2)	
Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999	44, 1999	17 June 1999	Sch 7 (item 45): 1 July 1999 (s 3(2)(e) and gaz 1999, No S283) Sch 8 (items 22, 23): 17 June 1999 (s 3(1))	Sch 8 (items 22, 23)
as amended by				
Financial Sector Legislation Amendment Act (No. 1) 2000	160, 2000	21 Dec 2000	Sch 4 (items 4, 5): 18 Jan 2001 (s 2(1))	—
Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000	137, 2000	24 Nov 2000	Sch 2 (items 204, 418, 419): 24 May 2001 (s 2(3))	Sch 2 (items 418, 419)
Treasury Legislation Amendment (Application of Criminal Code) Act (No. 1) 2001	31, 2001	28 Apr 2001	Sch 1 (items 1–4): 28 Apr 2001 (s 2(1))	—
Treasury Legislation Amendment (Application of Criminal Code) Act (No. 3) 2001	117, 2001	18 Sept 2001	s 4: 15 Dec 2001 (s 2(1)) Sch 3 (items 1–4): 19 Sept 2001 (s 2(5))	s 4
Australian Prudential Regulation Authority Amendment Act 2003	42, 2003	24 June 2003	Sch 2 (items 6, 7) and Sch 3: 1 July 2003 (s 2(1) item 2 and gaz 2003, No S230)	Sch 3

Financial Sector (Shareholdings) Act 1998

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Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008	144, 2008	9 Dec 2008	Sch 14 (items 97–104): 10 Dec 2008 (s 2(1) item 36)	Sch 14 (item 104)
Financial Sector Legislation Amendment (Enhancing Supervision and Enforcement) Act 2009	75, 2009	27 Aug 2009	Sch 1 (item 204): 27 Feb 2010 (s 2(1) item 2)	—
Treasury Legislation Amendment (Repeal Day) Act 2015	2, 2015	25 Feb 2015	Sch 3: 25 Feb 2015 (s 2(1) item 6)	Sch 3 (item 17)
Norfolk Island Legislation Amendment Act 2015	59, 2015	26 May 2015	Sch 2 (item 158): 1 July 2016 (s 2(1) item 5) Sch 2 (items 356–396): 18 June 2015 (s 2(1) item 6)	Sch 2 (items 356– 396)
as amended by				
Territories Legislation Amendment Act 2016	33, 2016	23 Mar 2016	Sch 2: 24 Mar 2016 (s 2(1) item 2)	—
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 169, 170, 387): 10 Mar 2016 (s 2(1) item 6)	—
Treasury Laws Amendment (Financial Sector Regulation) Act 2018	142, 2018	29 Nov 2018	Sch 1: 1 Apr 2019 (s 2(1) item 2)	Sch 1 (items 48– 52)

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s 3	am No 75, 2009; No 142, 2018
s 5	am No 59, 2015
Part 2	
Division 1	
s 8	rs No 2, 2015 am No 142, 2018
Division 2	
Division 2 heading.....	am No 142, 2018
s 10	am No 142, 2018
s 11	am No 4, 2016
Division 3	
Division 3 heading.....	am No 142, 2018
s 13	am No 142, 2018
s 14	am No 142, 2018
s 14A.....	ad No 142, 2018
s 15	am No 142, 2018
s 15A.....	ad No 142, 2018
s 16	am No 142, 2018
s 16A.....	ad No 142, 2018
s 17	am No 142, 2018
s 18	am No 142, 2018
s 19	am No 142, 2018
s 19A.....	ad No 142, 2018
s 20	am No 142, 2018
Division 3A	
Division 3A.....	ad No 142, 2018
s 21A.....	ad No 142, 2018

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
Division 4	
Division 4 heading.....	am No 142, 2018
s 23	am No 2, 2015; No 142, 2018
s 24	am No 31, 2001; No 117, 2001; No 2, 2015; No 4, 2016; No 142, 2018
s 25	am No 2, 2015; No 142, 2018
Division 5	
s 26	am No 31, 2001; No 117, 2001; No 4, 2016
Part 3	
s 31	am No 2, 2015; No 4, 2016
Part 5	
s 37	rep No 137, 2000
s 38	am No 4, 2016
Part 6	
Division 1	
Division 1 heading.....	ad No 142, 2018
s 41A.....	ad No 142, 2018
Division 2	
Division 2	ad No 142, 2018
s 43A.....	ad No 142, 2018
Part 7	
s 44	am No 42, 2003; No 142, 2018
s 45A.....	ad No 142, 2018
s 48	ad No 44, 1999
	rep No 142, 2018
s 49	ad No 44, 1999
	rep No 142, 2018
Schedule 1	
c 2	am No 144, 2008; No 2, 2015
c 4	am No 142, 2018
c 10.....	am No 2, 2015
