



Corporate Law Economic Reform Program Act 1999

No. 156, 1999



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**An Act to amend the Corporations Law and the
*Australian Securities and Investments Commission
Act 1989*, and for related purposes**

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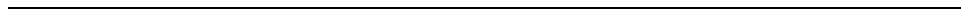
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Corporate Law Economic Reform Program Act 1999

No. 156, 1999

An Act to amend the Corporations Law and the *Australian Securities and Investments Commission Act 1989*, and for related purposes

[Assented to 24 November 1999]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Corporate Law Economic Reform
Program Act 1999*.

2 Commencement

- (1) Sections 1 and 2 commence on the day on which this Act receives the Royal Assent.
- (2) The following provisions commence on a day or days to be fixed by Proclamation:
 - (a) section 3;
 - (b) the items in Schedules 1 to 7 (other than item 18 of Schedule 7);
 - (c) the items in Schedules 10, 11 and 12.
- (3) If any of the following provisions does not commence under subsection (2) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period:
 - (a) section 3;
 - (b) an item in Schedules 1 to 7 (other than item 18 of Schedule 7);
 - (c) an item in Schedule 10.
- (4) If an item in Schedule 11 or 12 does not commence under subsection (2) within the period of 12 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.
- (5) Item 18 of Schedule 7 is taken to have commenced on the day on which the *Financial Sector Reform (Consequential Amendments) Act 1998* received the Royal Assent.
- (6) The items in Schedule 8 (other than item 3) are taken to have commenced immediately after the *Managed Investments Act 1998*.
- (7) Item 3 of Schedule 8 is taken to have commenced immediately after section 27 of the *Corporate Law Reform Act 1992*.
- (8) Item 1 of Schedule 9 is taken to have commenced on the day on which the *Company Law Review Act 1998* received the Royal Assent.

- (9) Item 2 of Schedule 9 is taken to have commenced on the day on which the *Managed Investments Act 1998* received the Royal Assent.

3 Schedule(s)

- (1) Subject to section 2, the Corporations Law set out in section 82 of the *Corporations Act 1989* is amended as set out in Schedules 1, 3, 6, 8 and 11 to this Act, and any other item in those Schedules has effect according to its terms.
- (2) Subject to section 2, each Act that is specified in another Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in the Schedule has effect according to its terms.

Schedule 1—Main amendments of the Corporations Law

1 Chapters 2D and 2E

Repeal the Chapters, substitute:

Chapter 2D—Officers and employees

Part 2D.1—Duties and powers

179 Background to duties of directors, other officers and employees

- (1) This Part sets out some of the most significant duties of directors, secretaries, other officers and employees of corporations. Other duties are imposed by other provisions of this Law and other laws (including the general law).
- (2) Section 9 defines both *director* and *officer*. *Officer* includes, as well as directors and secretaries, some other people who manage the corporation or its property (such as receivers and liquidators).

Division 1—General duties

180 Care and diligence—civil obligation only

Care and diligence—directors and other officers

- (1) A director or other officer of a corporation must exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise if they:
 - (a) were a director or officer of a corporation in the corporation's circumstances; and
 - (b) occupied the office held by, and had the same responsibilities within the corporation as, the director or officer.

Note: This subsection is a civil penalty provision (see section 1317E).

Business judgment rule

- (2) A director or other officer of a corporation who makes a business judgment is taken to meet the requirements of subsection (1), and their equivalent duties at common law and in equity, in respect of the judgment if they:
- (a) make the judgment in good faith for a proper purpose; and
 - (b) do not have a material personal interest in the subject matter of the judgment; and
 - (c) inform themselves about the subject matter of the judgment to the extent they reasonably believe to be appropriate; and
 - (d) rationally believe that the judgment is in the best interests of the corporation.

The director's or officer's belief that the judgment is in the best interests of the corporation is a rational one unless the belief is one that no reasonable person in their position would hold.

Note: This subsection only operates in relation to duties under this section and their equivalent duties at common law or in equity (including the duty of care that arises under the common law principles governing liability for negligence)—it does not operate in relation to duties under any other provision of this Law or under any other laws.

- (3) In this section:

business judgment means any decision to take or not take action in respect of a matter relevant to the business operations of the corporation.

181 Good faith—civil obligations

Good faith—directors and other officers

- (1) A director or other officer of a corporation must exercise their powers and discharge their duties:
- (a) in good faith in the best interests of the corporation; and
 - (b) for a proper purpose.

Note 1: This subsection is a civil penalty provision (see section 1317E).

Schedule 1 Main amendments of the Corporations Law

Chapter 2D Officers and employees

Part 2D.1 Duties and powers

Section 182

Note 2: Section 187 deals with the situation of directors of wholly-owned subsidiaries.

- (2) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Note 1: Section 79 defines *involved*.

Note 2: This subsection is a civil penalty provision (see section 1317E).

182 Use of position—civil obligations

Use of position—directors, other officers and employees

- (1) A director, secretary, other officer or employee of a corporation must not improperly use their position to:
- (a) gain an advantage for themselves or someone else; or
 - (b) cause detriment to the corporation.

Note: This subsection is a civil penalty provision (see section 1317E).

- (2) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Note 1: Section 79 defines *involved*.

Note 2: This subsection is a civil penalty provision (see section 1317E).

183 Use of information—civil obligations

Use of information—directors, other officers and employees

- (1) A person who obtains information because they are, or have been, a director or other officer or employee of a corporation must not improperly use the information to:
- (a) gain an advantage for themselves or someone else; or
 - (b) cause detriment to the corporation.

Note 1: This duty continues after the person stops being an officer or employee of the corporation.

Note 2: This subsection is a civil penalty provision (see section 1317E).

- (2) A person who is involved in a contravention of subsection (1) contravenes this subsection.
-

Note 1: Section 79 defines *involved*.

Note 2: This subsection is a civil penalty provision (see section 1317E).

184 Good faith, use of position and use of information—criminal offences

Good faith—directors and other officers

- (1) A director or other officer of a corporation commits an offence if they:
- (a) are reckless; or
 - (b) are intentionally dishonest;
- and fail to exercise their powers and discharge their duties:
- (c) in good faith in the best interests of the corporation; or
 - (d) for a proper purpose.

Note: Section 187 deals with the situation of directors of wholly-owned subsidiaries.

Use of position—directors, other officers and employees

- (2) A director, other officer or employee of a corporation commits an offence if they use their position dishonestly:
- (a) with the intention of directly or indirectly gaining an advantage for themselves, or someone else, or causing detriment to the corporation; or
 - (b) recklessly as to whether the use may result in themselves or someone else directly or indirectly gaining an advantage, or in causing detriment to the corporation.

Use of information—directors, other officers and employees

- (3) A person who obtains information because they are, or have been, a director or other officer or employee of a corporation commits an offence if they use the information dishonestly:
- (a) with the intention of directly or indirectly gaining an advantage for themselves, or someone else, or causing detriment to the corporation; or

Section 185

- (b) recklessly as to whether the use may result in themselves or someone else directly or indirectly gaining an advantage, or in causing detriment to the corporation.

185 Interaction of sections 180 to 184 with other laws etc.

Sections 180 to 184:

- (a) have effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person because of their office or employment in relation to a corporation; and
- (b) do not prevent the commencement of civil proceedings for a breach of a duty or in respect of a liability referred to in paragraph (a).

This section does not apply to subsections 180(2) and (3) to the extent to which they operate on the duties at common law and in equity that are equivalent to the requirements of subsection 180(1).

186 Territorial application of sections 180 to 184

Sections 180 to 184 do not apply to an act or omission by a director or other officer or employee of a foreign company unless the act or omission occurred in connection with:

- (a) the foreign company carrying on business in Australia; or
- (b) an act that the foreign company does, or proposes to do, in Australia; or
- (c) a decision by the foreign company whether or not to do, or refrain from doing, an act in Australia.

187 Directors of wholly-owned subsidiaries

A director of a corporation that is a wholly-owned subsidiary of a body corporate is to be taken to act in good faith in the best interests of the subsidiary if:

- (a) the constitution of the subsidiary expressly authorises the director to act in the best interests of the holding company; and

- (b) the director acts in good faith in the best interests of the holding company; and
- (c) the subsidiary is not insolvent at the time the director acts and does not become insolvent because of the director's act.

188 Responsibility of secretaries and directors for certain contraventions

Secretary's functions

- (1) A secretary of a company contravenes this subsection if the company contravenes:
 - (a) section 142 (requirement for companies to have registered office); or
 - (b) section 145 (requirement for registered office of public company to be open to public); or
 - (c) section 345 (annual returns); or
 - (d) section 205B (lodgment of notices with ASIC).

Note: See section 203C for the circumstances in which a company must have a secretary.

Consequence if director of proprietary company without secretary does not fulfil secretary's function

- (2) Each director of a proprietary company contravenes this subsection if:
 - (a) the proprietary company contravenes section 142, 145, 205B or 345; and
 - (b) the proprietary company does not have a secretary when it contravenes that section.

Defence

- (3) A person does not contravene subsection (1) or (2) if they show that they took all reasonable steps to ensure that the company complied with the section.

Section 189

189 Reliance on information or advice provided by others

If:

- (a) a director relies on information, or professional or expert advice, given or prepared by:
 - (i) an employee of the corporation whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned; or
 - (ii) a professional adviser or expert in relation to matters that the director believes on reasonable grounds to be within the person's professional or expert competence; or
 - (iii) another director or officer in relation to matters within the director's or officer's authority; or
 - (iv) a committee of directors on which the director did not serve in relation to matters within the committee's authority; and
- (b) the reliance was made:
 - (i) in good faith; and
 - (ii) after making an independent assessment of the information or advice, having regard to the director's knowledge of the corporation and the complexity of the structure and operations of the corporation; and
- (c) the reasonableness of the director's reliance on the information or advice arises in proceedings brought to determine whether a director has performed a duty under this Part or an equivalent general law duty;

the director's reliance on the information or advice is taken to be reasonable unless the contrary is proved.

190 Responsibility for actions of delegate

- (1) If the directors delegate a power under section 198D, a director is responsible for the exercise of the power by the delegate as if the power had been exercised by the directors themselves.
- (2) A director is not responsible under subsection (1) if:

- (a) the director believed on reasonable grounds at all times that the delegate would exercise the power in conformity with the duties imposed on directors of the company by this Law and the company's constitution (if any); and
- (b) the director believed:
 - (i) on reasonable grounds; and
 - (ii) in good faith; and
 - (iii) after making proper inquiry if the circumstances indicated the need for inquiry;that the delegate was reliable and competent in relation to the power delegated.

Division 2—Disclosure of, and voting on matters involving, material personal interests

191 Material personal interest—director's duty to disclose

Director's duty to notify other directors of material personal interest when conflict arises

- (1) A director of a company who has a material personal interest in a matter that relates to the affairs of the company must give the other directors notice of the interest unless subsection (2) says otherwise.
- (2) The director does not need to give notice of an interest under subsection (1) if:
 - (a) the interest:
 - (i) arises because the director is a member of the company and is held in common with the other members of the company; or
 - (ii) arises in relation to the director's remuneration as a director of the company; or
 - (iii) relates to a contract the company is proposing to enter into that is subject to approval by the members and will not impose any obligation on the company if it is not approved by the members; or

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- (iv) arises merely because the director is a guarantor or has given an indemnity or security for all or part of a loan (or proposed loan) to the company; or
 - (v) arises merely because the director has a right of subrogation in relation to a guarantee or indemnity referred to in subparagraph (iv); or
 - (vi) relates to a contract that insures, or would insure, the director against liabilities the director incurs as an officer of the company (but only if the contract does not make the company or a related body corporate the insurer); or
 - (vii) relates to any payment by the company or a related body corporate in respect of an indemnity permitted under section 199A or any contract relating to such an indemnity; or
 - (viii) is in a contract, or proposed contract, with, or for the benefit of, or on behalf of, a related body corporate and arises merely because the director is a director of the related body corporate; or
- (b) the company is a proprietary company and the other directors are aware of the nature and extent of the interest and its relation to the affairs of the company; or
- (c) all the following conditions are satisfied:
- (i) the director has already given notice of the nature and extent of the interest and its relation to the affairs of the company under subsection (1)
 - (ii) if a person who was not a director of the company at the time when the notice under subsection (1) was given is appointed as a director of the company—the notice is given to that person
 - (iii) the nature or extent of the interest has not materially increased above that disclosed in the notice; or
- (d) the director has given a standing notice of the nature and extent of the interest under section 192 and the notice is still effective in relation to the interest.

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Note: Subparagraph (c)(ii)—the notice may be given to the person referred to in this subparagraph by someone other than the director to whose interests it relates (for example, by the secretary).

- (3) The notice required by subsection (1) must:
- (a) give details of:
 - (i) the nature and extent of the interest; and
 - (ii) the relation of the interest to the affairs of the company; and
 - (b) be given at a directors' meeting as soon as practicable after the director becomes aware of their interest in the matter.
- The details must be recorded in the minutes of the meeting.

Effect of contravention by director

- (4) A contravention of this section by a director does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.

Section does not apply to single director proprietary company

- (5) This section does not apply to a proprietary company that has only 1 director.

192 Director may give other directors standing notice about an interest

Power to give notice

- (1) A director of a company who has an interest in a matter may give the other directors standing notice of the nature and extent of the interest in the matter in accordance with subsection (2). The notice may be given at any time and whether or not the matter relates to the affairs of the company at the time the notice is given.

Note: The standing notice may be given to the other directors before the interest becomes a material personal interest.

- (2) The notice under subsection (1) must:
- (a) give details of the nature and extent of the interest; and

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(b) be given:

- (i) at a directors' meeting (either orally or in writing); or
- (ii) to the other directors individually in writing.

The standing notice is given under subparagraph (b)(ii) when it has been given to every director.

Standing notice must be tabled at meeting if given to directors individually

- (3) If the standing notice is given to the other directors individually in writing, it must be tabled at the next directors' meeting after it is given.

Nature and extent of interest must be recorded in minutes

- (4) The director must ensure that the nature and extent of the interest disclosed in the standing notice is recorded in the minutes of the meeting at which the standing notice is given or tabled.

Dates of effect and expiry of standing notice

- (5) The standing notice:
- (a) takes effect as soon as it is given; and
 - (b) ceases to have effect if a person who was not a director of the company at the time when the notice was given is appointed as a director of the company.

A standing notice that ceases to have effect under paragraph (b) commences to have effect again if it is given to the person referred to in that paragraph.

Note: The notice may be given to the person referred to in paragraph (b) by someone other than the director to whose interests it relates (for example, by the secretary).

Effect of material increase in nature or extent of interest

- (6) The standing notice ceases to have effect in relation to a particular interest if the nature or extent of the interest materially increases above that disclosed in the notice.

Effect of contravention by director

- (7) A contravention of this section by a director does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.

193 Interaction of sections 191 and 192 with other laws etc.

Sections 191 and 192 have effect in addition to, and not in derogation of:

- (a) any general law rule about conflicts of interest; and
- (b) any provision in a company's constitution (if any) that restricts a director from:
 - (i) having a material personal interest in a matter; or
 - (ii) holding an office or possessing property;involving duties or interests that conflict with their duties or interests as a director.

194 Voting and completion of transactions—directors of proprietary companies (*replaceable rule—see section 135*)

If a director of a proprietary company has a material personal interest in a matter that relates to the affairs of the company and:

- (a) under section 191 the director discloses the nature and extent of the interest and its relation to the affairs of the company at a meeting of the directors; or
- (b) the interest is one that does not need to be disclosed under section 191;

then:

- (c) the director may vote on matters that relate to the interest; and
- (d) any transactions that relate to the interest may proceed; and
- (e) the director may retain benefits under the transaction even though the director has the interest; and
- (f) the company cannot avoid the transaction merely because of the existence of the interest.

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If disclosure is required under section 191, paragraphs (e) and (f) apply only if the disclosure is made before the transaction is entered into.

Note: A director may need to give notice to the other directors if the director has a material personal interest in a matter relating to the affairs of the company (see section 191).

195 Restrictions on voting—directors of public companies only

Restrictions on voting and being present

- (1) A director of a public company who has a material personal interest in a matter that is being considered at a directors' meeting must not:
- (a) be present while the matter is being considered at the meeting; or
 - (b) vote on the matter;
- unless:
- (c) subsection (2) or (3) allows the director to be present; or
 - (d) the interest does not need to be disclosed under section 191.

Participation with approval of other directors

- (2) The director may be present and vote if directors who do not have a material personal interest in the matter have passed a resolution that:
- (a) identifies the director, the nature and extent of the director's interest in the matter and its relation to the affairs of the company; and
 - (b) states that those directors are satisfied that the interest should not disqualify the director from voting or being present.

Participation with ASIC approval

- (3) The director may be present and vote if they are so entitled under a declaration or order made by ASIC under section 196.

Director may consider or vote on resolution to deal with matter at general meeting

- (4) If there are not enough directors to form a quorum for a directors' meeting because of subsection (1), 1 or more of the directors (including those who have a material personal interest in that matter) may call a general meeting and the general meeting may pass a resolution to deal with the matter.

Effect of contravention by director

- (5) A contravention by a director of:
- (a) this section; or
 - (b) a condition attached to a declaration or order made by ASIC under section 196;
- does not affect the validity of any resolution.

196 ASIC power to make declarations and class orders

ASIC's power to make specific declarations

- (1) ASIC may declare in writing that a director of a public company who has a material personal interest in a matter that is being, or is to be, considered at a directors' meeting may, despite the director's interest, be present while the matter is being considered at the meeting, vote on the matter, or both be present and vote. However, ASIC may only make the declaration if:
- (a) the number of directors entitled to be present and vote on the matter would be less than the quorum for a directors' meeting if the director were not allowed to vote on the matter at the meeting; and
 - (b) the matter needs to be dealt with urgently, or there is some other compelling reason for the matter being dealt with at the directors' meeting, rather than by a general meeting called under subsection 195(4).
- (2) The declaration may:
- (a) apply to all or only some of the directors; or

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- (b) specify conditions that the company or director must comply with.

ASIC's power to make class orders

- (3) ASIC may make an order in writing that enables directors who have a material personal interest in a matter to be present while the matter is being considered at a directors' meeting, vote on that matter, or both be present and vote. The order may be made in respect of a specified class of public companies, directors, resolutions or interests.
- (4) The order may be expressed to be subject to conditions.
- (5) Notice of the making, revocation or suspension of the order must be published in the *Gazette*.

Division 3—Duty to discharge certain trust liabilities

197 Directors liable for debts and other obligations incurred by corporation as trustee

- (1) A person who is a director of a corporation when it incurs a liability while acting, or purporting to act, as trustee, is liable to discharge the whole or a part of the liability if the corporation:
 - (a) has not, and cannot, discharge the liability or that part of it; and
 - (b) is not entitled to be fully indemnified against the liability out of trust assets.

This is so even if the trust does not have enough assets to indemnify the trustee. The person is liable both individually and jointly with the corporation and anyone else who is liable under this subsection.

- (2) The person is not liable under subsection (1) if the person would be entitled to have been fully indemnified by 1 of the other directors against the liability had all the directors of the corporation been trustees when the liability was incurred.

- (3) This section does not apply to a liability incurred outside Australia by a foreign company.

Division 4—Powers

198A Powers of directors (*replaceable rule—see section 135*)

- (1) The business of a company is to be managed by or under the direction of the directors.

Note: See section 198E for special rules about the powers of directors who are the single director/shareholder of proprietary companies.

- (2) The directors may exercise all the powers of the company except any powers that this Law or the company's constitution (if any) requires the company to exercise in general meeting.

Note: For example, the directors may issue shares, borrow money and issue debentures.

198B Negotiable instruments (*replaceable rule—see section 135*)

- (1) Any 2 directors of a company that has 2 or more directors, or the director of a proprietary company that has only 1 director, may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- (2) The directors may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

198C Managing director (*replaceable rule—see section 135*)

- (1) The directors of a company may confer on a managing director any of the powers that the directors can exercise.
- (2) The directors may revoke or vary a conferral of powers on the managing director.

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198D Delegation

- (1) Unless the company's constitution provides otherwise, the directors of a company may delegate any of their powers to:
 - (a) a committee of directors; or
 - (b) a director; or
 - (c) an employee of the company; or
 - (d) any other person.

Note: The delegation must be recorded in the company's minute book (see section 251A).

- (2) The delegate must exercise the powers delegated in accordance with any directions of the directors.
- (3) The exercise of the power by the delegate is as effective as if the directors had exercised it.

198E Single director/shareholder proprietary companies

Powers of director

- (1) The director of a proprietary company who is its only director and only shareholder may exercise all the powers of the company except any powers that this Law or the company's constitution (if any) requires the company to exercise in general meeting. The business of the company is to be managed by or under the direction of the director.

Note: For example, the director may issue shares, borrow money and issue debentures.

Negotiable instruments

- (2) The director of a proprietary company who is its only director and only shareholder may sign, draw, accept, endorse or otherwise execute a negotiable instrument. The director may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

198F Right of access to company books

Right while director

- (1) A director of a company may inspect the books of the company (other than its financial records) at all reasonable times for the purposes of a legal proceeding:
 - (a) to which the person is a party; or
 - (b) that the person proposes in good faith to bring; or
 - (c) that the person has reason to believe will be brought against them.

Note: Section 290 gives the director a right of access to financial records.

Right during 7 years after ceasing to be director

- (2) A person who has ceased to be a director of a company may inspect the books of the company (including its financial records) at all reasonable times for the purposes of a legal proceeding:
 - (a) to which the person is a party; or
 - (b) that the person proposes in good faith to bring; or
 - (c) that the person has reason to believe will be brought against them.

This right continues for 7 years after the person ceased to be a director of the company.

Right to take copies

- (3) A person authorised to inspect books under this section for the purposes of a legal proceeding may make copies of the books for the purposes of those proceedings.

Company not to refuse access

- (4) A company must allow a person to exercise their rights to inspect or take copies of the books under this section.

Schedule 1 Main amendments of the Corporations Law

Chapter 2D Officers and employees

Part 2D.1 Duties and powers

Section 198F

Interaction with other rules

- (5) This section does not limit any right of access to company books that a person has apart from this section.

Part 2D.2—Restrictions on indemnities, insurance and termination payments

Division 1—Indemnities and insurance for officers and auditors

199A Indemnification and exemption of officer or auditor

Exemptions not allowed

- (1) A company or a related body corporate must not exempt a person (whether directly or through an interposed entity) from a liability to the company incurred as an officer or auditor of the company.

When indemnity for liability (other than for legal costs) not allowed

- (2) A company or a related body corporate must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against any of the following liabilities incurred as an officer or auditor of the company:
 - (a) a liability owed to the company or a related body corporate
 - (b) a liability for a pecuniary penalty order under section 1317G or a compensation order under section 1317H
 - (c) a liability that is owed to someone other than the company or a related body corporate and did not arise out of conduct in good faith.

This subsection does not apply to a liability for legal costs.

When indemnity for legal costs not allowed

- (3) A company or related body corporate must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against legal costs

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incurred in defending an action for a liability incurred as an officer or auditor of the company if the costs are incurred:

- (a) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under subsection (2); or
- (b) in defending or resisting criminal proceedings in which the person is found guilty; or
- (c) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established; or
- (d) in connection with proceedings for relief to the person under this Law in which the Court denies the relief.

Paragraph (c) does not apply to costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order.

Note 1: Paragraph (c)—This includes proceedings by ASIC for an order under section 206C, 206D or 206E (disqualification), section 232 (oppression), section 1317E, 1317G or 1317H (civil penalties) or section 1324 (injunction).

Note 2: The company may be able to give the person a loan or advance in respect of the legal costs (see section 212).

- (4) For the purposes of subsection (3), the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

199B Insurance premiums for certain liabilities of director, secretary, other officer or auditor

A company or a related body corporate must not pay, or agree to pay, a premium for a contract insuring a person who is or has been an officer or auditor of the company against a liability (other than one for legal costs) arising out of:

- (a) conduct involving a wilful breach of duty in relation to the company; or
- (b) a contravention of section 182 or 183.

This section applies to a premium whether it is paid directly or through an interposed entity.

199C Certain indemnities, exemptions, payments and agreements not authorised and certain documents void

- (1) Sections 199A and 199B do not authorise anything that would otherwise be unlawful.
- (2) Anything that purports to indemnify or insure a person against a liability, or exempt them from a liability, is void to the extent that it contravenes section 199A or 199B.

Division 2—Termination payments

200A When benefit given in connection with retirement from office

- (1) For the purposes of this Division:
 - (a) a benefit is given in connection with a person's retirement from an office if the benefit is given:
 - (i) by way of compensation for, or otherwise in connection with, the loss by the person of the office; or
 - (ii) in connection with the person's retirement from the office; and
 - (b) giving a benefit includes:
 - (i) if the benefit is a payment—making the payment; and
 - (ii) if the benefit is an interest in property—transferring the interest; and
 - (c) a person gives a benefit even if the person is obliged to give the benefit under a contract; and
 - (d) a pension or lump sum is paid or payable in connection with the person's retirement from an office if the pension or lump sum is paid or payable:
 - (i) by way of compensation for, or otherwise in connection with, the loss by the person of the office; or
 - (ii) in connection with the person's retirement from the office; and
 - (e) retirement from an office includes:
 - (i) loss of the office; and

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- (ii) resignation from the office; and
 - (iii) death of a person at a time when they hold the office.
- (2) For the purposes of this Division, if:
- (a) a person (*person A*) gives another person a benefit (*benefit A*); and
 - (b) person A gives benefit A for the purpose, or for purposes including the purpose, of enabling or assisting someone to give a person a benefit in connection with the retirement of a person (*person B*) from an office;
- person A is taken to give benefit A in connection with the person B's retirement from that office.

200B Retirement benefits generally need membership approval

Benefits in connection with retirement from board or managerial office

- (1) The following must not give a person a benefit in connection with that person's, or someone else's, retirement from a board or managerial office in a company, or a related body corporate, without member approval under section 200E:
- (a) the company
 - (b) an associate of the company (other than a body corporate that is related to the company and is itself a company)
 - (c) a prescribed superannuation fund in relation to the company.

Note 1: Sections 200F, 200G and 200H provide for exceptions to this rule.

Note 2: Section 9 defines *board or managerial office*.

Prescribed superannuation funds

- (2) For the purposes of this section:
- (a) a superannuation fund is taken to be a prescribed superannuation fund in relation to a company if the company, or an associate of the company, gives a benefit to the superannuation fund in prescribed circumstances; and

- (b) if a prescribed superannuation fund in relation to a company gives a benefit to another superannuation fund in prescribed circumstances, the other superannuation fund is taken to be a prescribed superannuation fund in relation to the company.

Prescribed circumstances

- (3) For the purposes of this section, if:
- (a) a company, or an associate of a company, gives a benefit to a superannuation fund solely for the purpose of enabling or assisting the superannuation fund to give to a person a benefit in connection with a person's retirement from an office in the company or a related body corporate; or
 - (b) a superannuation fund gives a benefit to another superannuation fund solely for the purpose of enabling or assisting the other superannuation fund to give to a person a benefit in connection with a person's retirement from an office in a company or a related body corporate;
- the benefit first referred to in paragraph (a) or (b) is taken to be given in prescribed circumstances.

- (4) In this section:

superannuation fund means a provident, benefit, superannuation or retirement fund.

200C Benefits on transfer of undertaking or property need membership approval

A person must not give a benefit to a person who:

- (a) holds, or has at any previous time held, a board or managerial office in a company or a related body corporate; or
- (b) is the spouse of a person referred to in paragraph (a); or
- (c) is a relative of a person referred to in paragraph (a) or of the spouse of such a person; or
- (d) is an associate of a person referred to in paragraph (a) or the spouse of an associate of such a person;

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in connection with the transfer of the whole or any part of the undertaking or property of the company without member approval under section 200E.

Note: Section 9 defines *board or managerial office*.

200D Contravention to receive benefit without member approval

A person who:

- (a) holds, or has at any previous time held, a board or managerial office in a company or related body corporate; or
- (b) is the spouse of a person referred to in paragraph (a); or
- (c) is a relative of a person referred to in paragraph (a) or of the spouse of such a person; or
- (d) is an associate of a person referred to in paragraph (a) or the spouse of an associate of such a person;

must not receive a benefit if the giving of the benefit contravenes section 200B or 200C.

Note: Section 9 defines *board or managerial office*.

200E Approval by members

- (1) If section 200B or 200C requires member approval for giving a person a benefit, it must be approved by a resolution passed at a general meeting of:
 - (a) the company; and
 - (b) if the company is a subsidiary of a listed domestic corporation—the listed corporation; and
 - (c) if the company has a holding company that:
 - (i) is a domestic corporation that is not listed; and
 - (ii) is not itself a subsidiary of a domestic corporation—the holding company.
- (2) Details of the benefit must be set out in, or accompany, the notice of the meeting at which the resolution is to be considered. The details must include:
 - (a) if the proposed benefit is a payment:

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- (i) the amount of the payment; or
 - (ii) if that amount cannot be ascertained at the time of the disclosure—the manner in which that amount is to be calculated and any matter, event or circumstance that will, or is likely to, affect the calculation of that amount; and
- (b) otherwise:
- (i) the money value of the proposed prescribed benefit; or
 - (ii) if that value cannot be ascertained at the time of the disclosure—the manner in which that value is to be calculated and any matter, event or circumstance that will, or is likely to, affect the calculation of that value.
- These requirements are in addition to, and not in derogation of, any other law that requires disclosure to be made with respect to giving or receiving a benefit.
- (3) The approval extends to the giving of another benefit to the person if:
- (a) the other benefit is given to the person instead of the proposed benefit; and
 - (b) the amount or money value of the benefit is less than the amount or money value of the proposed benefit.
- (4) The approval does not relieve a director of a body corporate from any duty to the body corporate (whether under section 180,181,182,183 or 184 or otherwise and whether of a fiduciary nature or not) in connection with the giving of the benefit.

200F Exempt benefits and benefits given in certain circumstances

Subsection 200B(1) does not apply to:

- (a) a benefit given in connection with a person's retirement from an office in relation to a company if the benefit is:
 - (i) given under an agreement entered into before 1 January 1991 if giving the benefit in accordance with the agreement would have been lawful if the benefit were given when the agreement was entered into; or

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- (ii) a genuine payment by way of damages for breach of contract; or
 - (iii) given to the person under an agreement made between the company and the person before the person became the holder of the office as the consideration, or part of the consideration, for the person agreeing to hold the office; or
 - (iv) a payment made in respect of leave of absence to which the person is entitled under an industrial instrument; or
- (b) a benefit given in prescribed circumstances.

200G Genuine payments of pension and lump sum

(1) Subsection 200B(1) does not apply to a benefit if:

- (a) the benefit is a payment in connection with a person's retirement from a board or managerial office (the *relevant office*) in a company or a related body corporate; and
- (b) the payment is for past services the person rendered to:
 - (i) the company; or
 - (ii) a related body corporate; or
 - (iii) a body that was a related body corporate of the company when the past services were rendered; and
- (c) the value of the benefit, when added to the value of all other payments (if any) already made or payable in connection with the person's retirement from board or managerial offices in the company and related bodies corporate does not exceed the payment limit set by subsection (1A).

In applying paragraph (c), disregard any pensions or lump sums that section 200F applies to.

(2) The payment limit is:

- (a) the amount worked out under subsection (3) if the person:
 - (i) was an eligible employee in relation to the company at the time when the person retired from the relevant office; and
 - (ii) has been an eligible employee in relation to the company throughout a period (the *relevant period*), or
-

throughout periods totalling a period (also the *relevant period*), of more than 3 years; or

- (b) otherwise—the total remuneration of the person from the company and related bodies corporate during the period of 3 years ending when the person retired from the relevant office.

Note: Section 9 defines *remuneration*.

- (3) The amount worked out under this subsection is the amount worked out using the formula:

$$\frac{\text{Total remuneration} \times \text{Relevant period}}{3}$$

where:

total remuneration is the amount of the total remuneration of the person from the company and related bodies corporate during the last 3 years of the relevant period.

relevant period is the number of years in the relevant period or 7, whichever is the lesser number.

- (4) In determining for the purposes of paragraph (1)(c) the value of a pension or lump sum payment, disregard any part of the pension or lump sum payment that is attributable to:
- (a) a contribution made by the person; or
 - (b) a contribution made by a person other than:
 - (i) the company; or
 - (ii) a body corporate (a *relevant body corporate*) that is a related body corporate of the company, or that was, when the contribution was made, such a related body corporate; or
 - (iii) an associate of the company, or of a relevant body corporate, in respect of:
 - (A) the payment of the pension, or the making of the lump sum payment, as the case may be; or
 - (B) the making of the contribution.

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- (5) For the purposes of subparagraph (2)(a), a person is taken to have been an eligible employee in relation to a company at a particular time if:
- (a) the person was a genuine full-time employee of the company at that time; or
 - (b) the person was a genuine full-time employee of a body corporate at that time and the body corporate was related to the company at that time.

- (6) In this section:

payment means a payment by way of pension or lump sum and includes a superannuation, retiring allowance, superannuation gratuity or similar payment.

200H Benefits required by law

Subsection 200B(1) does not apply to a benefit given by a person if failure to give the benefit would constitute a contravention of a law in force in Australia or elsewhere (otherwise than because of breach of contract or breach of trust).

200J Benefits to be held in trust for company

- (1) If giving a benefit to a person contravenes section 200B, then:
- (a) if the benefit is a payment—the amount of the payment; or
 - (b) otherwise—the money value of the prescribed benefit;
- is taken to be received by the person in trust for the company concerned.
- (2) Subsection (1) applies to the whole of the amount of a payment or of the money value of the benefit even though giving the benefit would not have contravened section 200B if that amount or value of the benefit had been less.

Part 2D.3—Appointment, remuneration and cessation of appointment of directors

Division 1—Appointment of directors

201A Minimum number of directors

Proprietary companies

- (1) A proprietary company must have at least 1 director. That director must ordinarily reside in Australia.

Public companies

- (2) A public company must have at least 3 directors (not counting alternate directors). At least 2 directors must ordinarily reside in Australia.

201B Who can be a director

- (1) Only an individual who is at least 18 may be appointed as a director of a company.
- (2) A person who is disqualified from managing corporations under Part 2D.6 may only be appointed as director of a company if the appointment is made with permission granted by ASIC under section 206F or leave granted by the Court under section 206G.

201C Directors of public companies, or subsidiaries, over 72

- (1) A person who has turned 72 may only be appointed or act as a director of:
 - (a) a public company; or
 - (b) a company that is a subsidiary of a public company;if authorised to do so under this section.

Schedule 1 Main amendments of the Corporations Law

Chapter 2D Officers and employees

Part 2D.3 Appointment, remuneration and cessation of appointment of directors

Section 201C

- (2) A person may act as a director of a company during the period that:
 - (a) starts on the day on which they turn 72; and
 - (b) ends at the conclusion of the AGM beginning next after that day.
 - (3) The office of a director of a public company, or of a subsidiary of a public company, becomes vacant at the conclusion of the AGM of the public company, or the subsidiary, beginning next after the director turns 72.
 - (4) If a proprietary company is a subsidiary of a public company:
 - (a) subsection (3) does not apply to it; and
 - (b) a person may continue to act as a director of the proprietary company until the next AGM of the public company after the person turns 72; and
 - (c) the person's office of director becomes vacant at the end of that meeting.
- Note: Proprietary companies do not need to hold annual general meetings (see section 250N).
- (5) An act done by a person as a director is valid even if it is afterwards discovered that they had turned 72 at the time when they were appointed or that their appointment had terminated under subsection (3) or (4).
 - (6) If the office of a director has become vacant under subsection (3) or (4), no provision for the automatic re-appointment of retiring directors in default of another appointment applies in relation to that director.
 - (7) If a vacancy created under subsection (3) or (4) is not filled at the meeting at which the office became vacant, the office may be filled as a casual vacancy.
 - (8) Subject to subsections (9) and (10), a person who has turned 72 may by special resolution be appointed or re-appointed as a director of that company to hold office until the conclusion of the company's next AGM company if:
 - (a) the resolution states the person's age; and
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- (b) the notice of meeting states that the person is a candidate for election who has turned 72 and states the person's age.
- (9) If the company is a subsidiary of a public company, the appointment or re-appointment referred to in subsection (8) does not have effect unless:
- (a) the person appointed or re-appointed is a director of the public company; or
 - (b) the appointment or re-appointment of the person as a director of the company has been approved by a special resolution of the public company and the notice of meeting states that the person is a candidate for election as a director of the company who has turned 72 and states the person's age.
- (10) If the subsidiary is a proprietary company:
- (a) the person may be appointed or re-appointed as a director of the subsidiary until the end of the next AGM of the holding company; and
 - (b) the appointment does not need a resolution under subsection (8); and
 - (c) the appointment must satisfy either paragraph (9)(a) or (b).
- (11) If:
- (a) the constitution of a company limited by guarantee provides for the holding of postal ballots for the election of a director or directors; and
 - (b) a postal ballot for the election of a director or directors is held and in the ballot:
 - (i) the members entitled to vote have been given notice in writing by the company stating that a candidate for election has turned 72 and stating the age of the candidate; and
 - (ii) that candidate is elected by a majority of not less than 75% of the members who, being entitled to vote, vote in the ballot;
- that candidate may be appointed or re-appointed as a director to hold office until the conclusion of the next AGM of the company.
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- (12) If:
- (a) the constitution of a company limited by guarantee provides for the election or appointment of a director or directors otherwise than by members at a general meeting or by postal ballot of members; and
 - (b) ASIC declares in writing that this section does not apply to the company or its directors;
- then, subject to the conditions (if any) that ASIC specifies in the declaration, this section does not so apply.
- (13) A vacancy in the office of a director occurring under subsection (3) or (4) is not to be taken into account in determining when other directors are to retire.
- (14) Nothing in this section limits, or affects the operation of, any provision of a company's constitution that prevents any person from being appointed as a director or requiring any director to vacate their office at any age less than 72 years.

201D Consent to act as director

- (1) A company contravenes this subsection if a person does not give the company a signed consent to act as a director of the company before being appointed.
- (2) The company must keep the consent.

201E Special rules for the appointment of public company directors

- (1) A resolution passed at a general meeting of a public company appointing or confirming the appointment of 2 or more directors is void unless:
 - (a) the meeting has resolved that the appointments or confirmations may be voted on together; and
 - (b) no votes were cast against the resolution.
 - (2) This section does not affect:
 - (a) a resolution to appoint directors by an amendment to the company's constitution (if any); or
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- (b) a ballot or poll to elect 2 or more directors if the ballot or poll does not require members voting for 1 candidate to vote for another candidate.
- (3) For the purposes of paragraph (2)(b), a ballot or poll does not require a member to vote for a candidate merely because the member is required to express a preference among individual candidates in order to cast a valid vote.

201F Special rules for the appointment of directors for single director/single shareholder proprietary companies

- (1) The director of a proprietary company who is its only director and only shareholder may appoint another director by recording the appointment and signing the record.

Appointment of new director on death, mental incapacity or bankruptcy

- (2) If a person who is the only director and the only shareholder of a proprietary company:

- (a) dies; or
- (b) cannot manage the company because of the person's mental incapacity;

and a personal representative or trustee is appointed to administer the person's estate or property, the personal representative or trustee may appoint a person as the director of the company.

- (3) If:

- (a) the office of the director of a proprietary company is vacated under subsection 206B(3) or (4) because of the bankruptcy of the director; and
- (b) the person is the only director and the only shareholder of the company; and
- (c) a trustee in bankruptcy is appointed to the person's property; the trustee may appoint a person as the director of the company.

Section 201G

- (4) A person who has a power of appointment under subsection (2) or (3) may appoint themselves as director.
- (5) A person appointed as a director of a company under subsection (2), (3) or (4) holds office as if they had been appointed in the usual way.

201G Company may appoint a director (*replaceable rule—see section 135*)

A company may appoint a person as a director by resolution passed in general meeting.

201H Directors may appoint other directors (*replaceable rule—see section 135*)

Appointment by other directors

- (1) The directors of a company may appoint a person as a director. A person can be appointed as a director in order to make up a quorum for a directors' meeting even if the total number of directors of the company is not enough to make up that quorum.

Proprietary company—confirmation by meeting within 2 months

- (2) If a person is appointed under this section as a director of a proprietary company, the company must confirm the appointment by resolution within 2 months after the appointment is made. If the appointment is not confirmed, the person ceases to be a director of the company at the end of those 2 months.

Public company—confirmation by next AGM

- (3) If a person is appointed by the other directors as a director of a public company, the company must confirm the appointment by resolution at the company's next AGM. If the appointment is not confirmed, the person ceases to be a director of the company at the end of the AGM.

201J Appointment of managing directors (*replaceable rule—see section 135*)

The directors of a company may appoint 1 or more of themselves to the office of managing director of the company for the period, and on the terms (including as to remuneration), as the directors see fit.

201K Alternate directors (*replaceable rule—see section 135*)

- (1) With the other directors' approval, a director may appoint an alternate to exercise some or all of the director's powers for a specified period.
- (2) If the appointing director requests the company to give the alternate notice of directors' meetings, the company must do so.
- (3) When an alternate exercises the director's powers, the exercise of the powers is just as effective as if the powers were exercised by the director.
- (4) The appointing director may terminate the alternate's appointment at any time.
- (5) An appointment or its termination must be in writing. A copy must be given to the company.

Note: ASIC must be given notice of the appointment and termination of appointment of an alternate (see subsections 205B(2) and (5)).

201L Signpost—ASIC to be notified of appointment

Under section 205B, a company must notify ASIC within 14 days if a person is appointed as a director or as an alternate director.

201M Effectiveness of acts by directors

- (1) An act done by a director is effective even if their appointment, or the continuance of their appointment, is invalid because the company or director did not comply with the company's constitution (if any) or any provision of this Law.

Section 202A

- (2) Subsection (1) does not deal with the question whether an effective act by a director:
- (a) binds the company in its dealings with other people; or
 - (b) makes the company liable to another person.

Note: The kinds of acts that this section validates are those that are only legally effective if the person doing them is a director (for example, calling a meeting of the company's members or signing a document to be lodged with ASIC or minutes of a meeting). Sections 128-130 contain rules about the assumptions people are entitled to make when dealing with a company and its officers.

Division 2—Remuneration of directors

202A Remuneration of directors (*replaceable rule—see section 135*)

- (1) The directors of a company are to be paid the remuneration that the company determines by resolution.

Note: Chapter 2E makes special provision for the payment of remuneration to the directors of public companies.

- (2) The company may also pay the directors' travelling and other expenses that they properly incur:
- (a) in attending directors' meetings or any meetings of committees of directors; and
 - (b) in attending any general meetings of the company; and
 - (c) in connection with the company's business.

202B Members may obtain information about directors' remuneration

- (1) A company must disclose the remuneration paid to each director of the company or a subsidiary (if any) by the company or by an entity controlled by the company if the company is directed to disclose the information by:
- (a) members with at least 5% of the votes that may be cast at a general meeting of the company; or
 - (b) at least 100 members who are entitled to vote at a general meeting of the company.

The company must disclose all remuneration paid to the director, regardless of whether it is paid to the director in relation to their capacity as director or another capacity.

- (2) The company must comply with the direction as soon as practicable by:
- (a) preparing a statement of the remuneration of each director of the company or subsidiary for the last financial year before the direction was given; and
 - (b) having the statement audited; and
 - (c) sending a copy of the audited statement to each person entitled to receive notice of general meetings of the company.

202C Special rule for single director/single shareholder proprietary companies

A person who is the only director and the only shareholder of a proprietary company is to be paid any remuneration for being a director that the company determines by resolution. The company may also pay the director's travelling and other expenses properly incurred by the director in connection with the company's business.

Division 3—Resignation, retirement or removal of directors

203A Director may resign by giving written notice to company *(replaceable rule—see section 135)*

A director of a company may resign as a director of the company by giving a written notice of resignation to the company at its registered office.

203B Signpost to consequences of disqualification from managing corporations

A person ceases to be a director of a company if the person becomes disqualified from managing corporations under Part 2D.6

Section 203C

(see subsection 206A(2)) unless ASIC or the Court allows them to manage the company (see sections 206F and 206G).

203C Removal by members—proprietary companies (*replaceable rule—see section 135*)

A proprietary company:

- (a) may by resolution remove a director from office; and
- (b) may by resolution appoint another person as a director instead.

203D Removal by members—public companies

Resolution for removal of director

- (1) A public company may by resolution remove a director from office despite anything in:
 - (a) the company's constitution (if any); or
 - (b) an agreement between the company and the director; or
 - (c) an agreement between any or all members of the company and the director.

If the director was appointed to represent the interests of particular shareholders or debenture holders, the resolution to remove the director does not take effect until a replacement to represent their interests has been appointed.

Note: See sections 249C to 249G for the rules on who may call meetings, sections 249H to 249M on how to call meetings and sections 249N to 249Q for rules on members' resolutions.

Notice of intention to move resolution for removal of director

- (2) Notice of intention to move the resolution must be given to the company at least 2 months before the meeting is to be held. However, if the company calls a meeting after the notice of intention is given under this subsection, the meeting may pass the resolution even though the meeting is held less than 2 months after the notice of intention is given.

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Note: Short notice of the meeting cannot be given for this resolution (see subsection 249H(3)).

Director to be informed

- (3) The company must give the director a copy of the notice as soon as practicable after it is received.

Director's right to put case to members

- (4) The director is entitled to put their case to members by:
- (a) giving the company a written statement for circulation to members (see subsections (5) and (6)); and
 - (b) speaking to the motion at the meeting (whether or not the director is a member of the company).
- (5) The written statement is to be circulated by the company to members by:
- (a) sending a copy to everyone to whom notice of the meeting is sent if there is time to do so; or
 - (b) if there is not time to comply with paragraph (a)—having the statement distributed to members attending the meeting and read out at the meeting before the resolution is voted on.
- (6) The director's statement does not have to be circulated to members if it is more than 1,000 words long or defamatory.

Time of retirement

- (7) If a person is appointed to replace a director removed under this section, the time at which:
- (a) the replacement director; or
 - (b) any other director;
- is to retire is to be worked out as if the replacement director had become director on the day on which the replaced director was last appointed a director.

Section 203E

203E Director cannot be removed by other directors—public companies

A resolution, request or notice of any or all of the directors of a public company is void to the extent that it purports to:

- (a) remove a director from their office; or
- (b) require a director to vacate their office.

203F Termination of appointment of managing director (*replaceable rule—see section 135*)

- (1) A person ceases to be managing director if they cease to be a director.
- (2) The directors may revoke or vary an appointment of a managing director.

Part 2D.4—Appointment of secretaries

204A Minimum number of secretaries

Proprietary companies

- (1) A proprietary company is not required to have a secretary but, if it does have 1 or more secretaries, at least 1 of them must ordinarily reside in Australia.

Public companies

- (2) A public company must have at least 1 secretary. At least 1 of them must ordinarily reside in Australia.

204B Who can be a secretary

- (1) Only an individual who is at least 18 may be appointed as a secretary of a company.
- (2) A person who is disqualified from managing corporations under Part 2D.6 may only be appointed as a secretary of a company if the appointment is made with permission granted by ASIC under section 206F or leave granted by the Court under section 206G.

204C Consent to act as secretary

- (1) A company contravenes this subsection if a person does not give the company a signed consent to act as secretary of the company before being appointed.
- (2) The company must keep the consent.

204D How a secretary is appointed

A secretary is to be appointed by the directors.

Section 204E

Note 1: The company must notify ASIC of the appointment within 14 days (see subsection 205B(1)).

Note 2: Section 188 deals with the responsibilities of secretaries for contraventions by the company.

204E Effectiveness of acts by secretaries

- (1) An act done by a secretary is effective even if their appointment, or the continuance of their appointment, is invalid because the company or secretary did not comply with the company's constitution (if any) or any provision of this Law.
- (2) Subsection (1) does not deal with the question whether an effective act by a secretary:
 - (a) binds the company in its dealings with other people; or
 - (b) makes the company liable to another person.

Note: The kinds of acts that this section validates are those that are only legally effective if the person doing them is a secretary (for example, signing and sending out a notice of a meeting of directors if the company's constitution authorises the secretary to do so or signing a document to be lodged with ASIC). Sections 128-130 contain rules about the assumptions people are entitled to make when dealing with a company and its officers.

204F Terms and conditions of office for secretaries (*replaceable rule—see section 135*)

A secretary holds office on the terms and conditions (including as to remuneration) that the directors determine.

204G Signpost to consequences of disqualification from managing corporations

A person ceases to be a secretary of a company if the person becomes disqualified from managing corporations under Part 2D.6 (see subsection 206A(2)) unless ASIC or the Court allows them to manage the company (see sections 206F and 206G).

Part 2D.5—Public information about directors and secretaries

205A Director, secretary or alternate director may notify ASIC of resignation or retirement

- (1) If a director, secretary or alternate director retires or resigns, they may give ASIC written notice of the retirement or resignation. The notice must be in the prescribed form.
- (2) To be effective, a notice of resignation must be accompanied by a copy of the letter of resignation given to the company.
- (3) Nothing in this section affects the company's obligations to notify ASIC of the resignation or retirement.

205B Notice of name and address of directors and secretaries to ASIC

New directors or secretaries

- (1) A company must lodge with ASIC a notice of the personal details of a director or secretary within 14 days after they are appointed. The notice must be in the prescribed form.

Note 1: If a person becomes a director under subsection 120(1) there is no appointment and no notice is required under this subsection.

Note 2: If a person who was appointed as an alternate director becomes a director under the terms of their appointment as an alternate director, there is no appointment as a director and no notice is required under this subsection.

New alternate directors

- (2) A company must lodge with ASIC a notice of:
 - (a) the personal details of a person who is appointed as an alternate director; and

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(b) the terms of their appointment (including terms about when the alternate director is to act as a director);
within 14 days after their appointment as an alternate director. The notice must be in the prescribed form.

Personal details

- (3) The personal details of a director, alternate director, or secretary are:
- (a) their given and family names; and
 - (b) all of their former given and family names; and
 - (c) their date and place of birth; and
 - (d) their address.

Note: For *address* see section 205D.

Changes in details

- (4) The company must lodge with ASIC notice of any change in the personal details of a director, alternate director or secretary within 14 days after the change. The notice must be in the prescribed form.

Notice required if person stops being a director or secretary

- (5) If a person stops being a director, alternate director or secretary of the company, the company must lodge with ASIC notice of the fact within 14 days. The notice must be in the prescribed form. However, the company does not need to lodge a notice if the person was an alternate director who stopped being a director in accordance with the terms of their appointment as an alternate director.

205C Director and secretary must give information to company

- (1) A director, alternate director or secretary must give the company any information the company needs to comply with subsection 205B(1) or (2) within 7 days after their initial appointment unless they have previously given the information to the company.

- (2) A director, alternate director or secretary must give the company any information the company needs to comply with subsection 205B(4) within 7 days after any change in their personal details.

205D Address for officers

Address is normally residential address

- (1) A person's address for the purposes of a notice or application under subsection 205B(1), (2), (3) or (5) or 117(2) or 601BC(2) must be their usual residential address unless they are entitled to have an alternative address substituted for their usual residential address under subsection (2).

Entitlement to have alternative address

- (2) The person is entitled to have an alternative address substituted for their usual residential address if:
- (a) their name, but not their residential address, is on an electoral roll under the *Commonwealth Electoral Act 1918* because of section 104 of that Act; or
 - (b) their name is not on an electoral roll under that Act and ASIC determines, in writing, that including their residential address in the notice or application would put at risk their personal safety or the personal safety of members of their family.

This alternative address must be in Australia and be one at which documents can be served on the person. At any particular time, a person is entitled to have only 1 alternative address under this section.

Note: See subsection 109X(2) on the status of the alternative address as an address for service.

- (3) A person who takes advantage of subsection (2) must:
- (a) before or at the same time as the alternative address is first included in a notice or application, lodge with ASIC notice of the person's usual residential address; and
 - (b) lodge with ASIC notice of any change in the person's usual residential address within 14 days after the change.

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A notice under this subsection must be in the prescribed form.

- (4) If a court gives a judgment for payment of a sum of money against a person who is taking advantage of subsection (2), ASIC may give details of the person's usual residential address to an officer of the court for the purposes of enforcing the judgment debt.

205E ASIC's power to ask for information about person's position as director or secretary

- (1) ASIC may ask a person, in writing, to inform ASIC:
 - (a) whether the person is a director or secretary of a particular company; and
 - (b) if the person is no longer a director or secretary of the company—the date on which the person stopped being a director or secretary.
- (2) The person must give the information to ASIC in writing by the date specified in the request.

205F Director must give information to company

A director must give the company any information affecting or relating to the director that the company needs, or will need, to comply with Chapter 6. The director must give the information to the company as soon as practicable after becoming aware that the company needs, or will need, the information. The company must give the information to each of the other directors of the company within 7 days of receiving it.

205G Listed company—director to notify securities exchange of shareholdings etc.

Notifiable interests

- (1) A director of a listed public company must notify the relevant securities exchange under subsections (3) and (4) of the following interests of the director:

- (a) relevant interests in securities of the company or a related body corporate
 - (b) contracts:
 - (i) to which the director is a party or under which the director is entitled to a benefit; and
 - (ii) that confer a right to call for or deliver shares in, debentures of, or interests in a collective investment scheme made available by, the company or a related body corporate.
- (2) A notice of a relevant interest in securities under paragraph (1)(a) must give details of:
- (a) the number of securities; and
 - (b) the circumstances giving rise to the relevant interest.

Occasions for initial notification

- (3) The director must notify the exchange within 14 days after each of the following occasions:
- (a) appointment as a director of the company
 - (b) the listing of the company.
- Paragraph (a) does not apply to a director who retires and is then reappointed at the same meeting.

Updating notices

- (4) The director must notify the exchange within 14 days after any change in the director's interests.
- (5) The director need not give the information to the exchange under this section if the director has already given the information to the exchange.

ASIC's power to make class orders

- (6) ASIC may make an order in writing relieving a director of the obligation to notify the relevant securities exchange of an interest in a security or contract. The order may be made in respect of a specified class of companies, directors, securities or contracts.
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- (7) The order may be expressed to be subject to conditions.
- (8) Notice of the making, revocation or suspension of the order must be published in the *Gazette*.

Part 2D.6—Disqualification from managing corporations

206A Disqualified person not to manage corporations

- (1) A person who is disqualified from managing corporations under this Part commits an offence if:
- (a) they make, or participate in making, decisions that affect the whole, or a substantial part, of the business of the corporation; or
 - (b) they exercise the capacity to affect significantly the corporation's financial standing; or
 - (c) they communicate instructions or wishes (other than advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors or the corporation) to the directors of the corporation:
 - (i) knowing that the directors are accustomed to act in accordance with the person's instructions or wishes; or
 - (ii) intending that the directors will act in accordance with those instructions or wishes.

It is a defence to the contravention if the person had permission to manage the corporation under either section 206F or 206G and their conduct was within the terms of that permission.

Note: Under section 1274AA, ASIC is required to keep a record of persons disqualified from managing corporations.

- (2) A person ceases to be a director, alternate director or a secretary of a company if:
- (a) the person becomes disqualified from managing corporations under this Part; and
 - (b) they are not given permission to manage the corporation under section 206F or 206G.

Section 206B

Note: If a person ceases to be a director, alternate director or a secretary under subsection (2) the company must notify ASIC (see subsection 205B(1)).

206B Automatic disqualification

Convictions

- (1) A person becomes disqualified from managing corporations if the person:
- (a) is convicted on indictment of an offence that:
 - (i) concerns the making, or participation in making, of decisions that affect the whole or a substantial part of the business of the corporation; or
 - (ii) concerns an act that has the capacity to affect significantly the corporation's financial standing; or
 - (b) is convicted of an offence that:
 - (i) is a contravention of the Corporations Law and is punishable by imprisonment for a period greater than 12 months; or
 - (ii) involves dishonesty and is punishable by imprisonment for at least 3 months; or
 - (c) is convicted of an offence against the law of a foreign country that is punishable by imprisonment for a period greater than 12 months.
- The offences covered by paragraph (a) and subparagraph (b)(ii) include offences against the law of a foreign country.
- (2) The period of disqualification under subsection (1) starts on the day the person is convicted and lasts for:
- (a) if the person does not serve a term of imprisonment—5 years after the day on which they are convicted; or
 - (b) if the person serves a term of imprisonment—5 years after the day on which they are released from prison.

Bankruptcy, deed of arrangement or composition with creditors

- (3) A person is disqualified from managing corporations if the person is an undischarged bankrupt under the law of Australia, its external territories or another country.
- (4) A person is disqualified from managing corporations if:
 - (a) the person has executed a deed of arrangement under Part X of the *Bankruptcy Act 1966* (or a similar law of an external territory or another country) and the terms of the deed have not been fully complied with; or
 - (b) the person's creditors have accepted a composition under Part X of the *Bankruptcy Act 1966* (or a similar law of an external territory or another country) and final payment has not been made under the composition.

206C Court power of disqualification—contravention of civil penalty provision

- (1) On application by ASIC, the Court may disqualify a person from managing corporations for a period that the Court considers appropriate if:
 - (a) a declaration is made under section 1317E (civil penalty provision) that the person has contravened a civil penalty provision; and
 - (b) the Court is satisfied that the disqualification is justified.
- Note: The civil penalty provisions are subsection 180(1) and (2), 181(1) and (2), 182(1) and (2), 183(1) and (2), 209(2), 254L(2), 256D(3), 259F(2), 260D(2) or 344(1) or section 588G.
- (2) In determining whether the disqualification is justified, the Court may have regard to:
 - (a) the person's conduct in relation to the management, business or property of any corporation; and
 - (b) any other matters that the Court considers appropriate.

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206D Court power of disqualification—insolvency and non-payment of debts

- (1) On application by ASIC, the Court may disqualify a person from managing corporations for up to 10 years if:
 - (a) within the last 7 years, the person has been an officer of 2 or more corporations when they have failed; and
 - (b) the Court is satisfied that:
 - (i) the manner in which the corporation was managed was wholly or partly responsible for the corporation failing; and
 - (ii) the disqualification is justified.
- (2) For the purposes of subsection (1), a corporation fails if:
 - (a) a Court orders the corporation to be wound up under section 459B because the Court is satisfied that the corporation is insolvent; or
 - (b) the corporation enters into voluntary liquidation and creditors are not fully paid or are unlikely to be fully paid; or
 - (c) the corporation executes a deed of company arrangement and creditors are not fully paid or are unlikely to be fully paid; or
 - (d) the corporation ceases to carry on business and creditors are not fully paid or are unlikely to be fully paid; or
 - (e) a levy of execution against the corporation is not satisfied; or
 - (f) a receiver, receiver and manager, or provisional liquidator is appointed in relation to the corporation; or
 - (g) the corporation enters into a compromise or arrangement with its creditors under Part 5.1; or
 - (h) the corporation is wound up and a liquidator lodges a report under subsection 533(1) about the corporation's inability to pay its debts.

Note: To satisfy paragraph (h), a corporation must begin to be wound up while the person is an officer or within 12 months after the person ceases to be an officer. However, the report under subsection 533(1) may be lodged by the liquidator at a time that is more than 12 months after the person ceases to be an officer. Sections 513A to 513D contain rules about when a company begins to be wound up.

- (3) In determining whether the disqualification is justified, the Court may have regard to:
- (a) the person's conduct in relation to the management, business or property of any corporation; and
 - (b) any other matters that the Court considers appropriate.

206E Court power of disqualification—repeated contraventions of Law

- (1) On application by ASIC, the Court may disqualify a person from managing corporations for the period that the Court considers appropriate if:
- (a) the person:
 - (i) has at least twice been an officer of a body corporate that has contravened this Law while they were an officer of the body corporate and each time the person has failed to take reasonable steps to prevent the contravention; or
 - (ii) has at least twice contravened this Law while they were an officer of a body corporate; or
 - (iii) has been an officer of a body corporate and has done something that would have contravened subsection 180(1) or section 181 if the body corporate had been a corporation; and
 - (b) the Court is satisfied that the disqualification is justified.
- (2) In determining whether the disqualification is justified, the Court may have regard to:
- (a) the person's conduct in relation to the management, business or property of any corporation; and
 - (b) any other matters that the Court considers appropriate.

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206F ASIC's power of disqualification

Power to disqualify

- (1) ASIC may disqualify a person from managing corporations for up to 5 years if:
 - (a) within 7 years immediately before ASIC gives a notice under paragraph (b)(i):
 - (i) the person has been an officer of 2 or more corporations; and
 - (ii) while the person was an officer, or within 12 months after the person ceased to be an officer of those corporations, each of the corporations was wound up and a liquidator lodged a report under subsection 533(1) about the corporation's inability to pay its debts; and
 - (b) ASIC has given the person:
 - (i) a notice in the prescribed form requiring them to demonstrate why they should not be disqualified; and
 - (ii) an opportunity to be heard on the question; and
 - (c) ASIC is satisfied that the disqualification is justified.

Grounds for disqualification

- (2) In determining whether disqualification is justified, ASIC:
 - (a) must have regard to whether any of the corporations mentioned in subsection (1) were related to one another; and
 - (b) may have regard to:
 - (i) the person's conduct in relation to the management, business or property of any corporation; and
 - (ii) any other matters that ASIC considers appropriate.

Notice of disqualification

- (3) If ASIC disqualifies a person from managing corporations under this section, ASIC must serve a notice on the person advising them of the disqualification. The notice must be in the prescribed form.

Start of disqualification

- (4) The disqualification takes effect from the time when a notice referred to in subsection (3) is served on the person.

ASIC power to grant leave

- (5) ASIC may give a person who it has disqualified from managing corporations under this Part written permission to manage a particular corporation or corporations. The permission may be expressed to be subject to conditions and exceptions determined by ASIC.

206G Court power to grant leave

- (1) A person who is disqualified from managing corporations may apply to the Court for leave to manage:
- (a) corporations; or
 - (b) a particular class of corporations; or
 - (c) a particular corporation;
- if the person was not disqualified by ASIC.
- (2) The person must lodge a notice with ASIC at least 21 days before commencing the proceedings. The notice must be in the prescribed form.
- (3) The order granting leave may be expressed to be subject to exceptions and conditions determined by the Court.
- Note: If the Court grants the person leave to manage the corporation, the person may be appointed as a director (see section 201B) or secretary (see section 204B) of a company.
- (4) The person must lodge with ASIC a copy of any order granting leave within 14 days after the order is made.
- (5) On application by ASIC, the Court may revoke the leave. The order revoking leave does not take effect until it is served on the person.

Section 206H

206H Territorial application of this Part

Part 2D.6 does not apply in respect of an act or omission by a person while they are managing a corporation that is a foreign company unless the act or omission occurred in connection with:

- (a) the foreign company carrying on business in Australia; or
- (b) an act that the foreign company does, or proposes to do, in Australia; or
- (c) a decision by the foreign company whether or not to do, or refrain from doing, an act in Australia.

Chapter 2E—Related party transactions

207 Purpose

The rules in this Chapter are designed to protect the interests of a public company's members as a whole, by requiring member approval for giving financial benefits to related parties that could endanger those interests.

Part 2E.1—Member approval needed for related party benefit

Division 1—Need for member approval

208 Need for member approval for financial benefit

- (1) For a public company, or an entity that the public company controls, to give a financial benefit to a related party of the public company:
 - (a) the public company or entity must:
 - (i) obtain the approval of the public company's members in the way set out in sections 217 to 227; and
 - (ii) give the benefit within 15 months after the approval; or
 - (b) the giving of the benefit must fall within an exception set out in sections 210 to 216.

Note: Section 228 defines *related party*, section 9 defines *entity*, section 55AA defines *control* and section 229 affects the meaning of *giving a financial benefit*.

- (2) If:
 - (a) the giving of the benefit is required by a contract; and
 - (b) the making of the contract was approved in accordance with subparagraph (1)(a)(i) as a financial benefit given to the related party; and

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- (c) the contract was made:
 - (i) within 15 months after that approval; or
 - (ii) before that approval, if the contract was conditional on the approval being obtained;

member approval for the giving of the benefit is taken to have been given and the benefit need not be given within the 15 months.

209 Consequences of breach

- (1) If the public company or entity contravenes section 208:
 - (a) the contravention does not affect the validity of any contract or transaction connected with the giving of the benefit; and
 - (b) the public company or entity is not guilty of an offence.

Note: A Court may order an injunction to stop the company or entity giving the benefit to the related party (see section 1324).

- (2) A person contravenes this subsection if they are involved in a contravention of section 208 by a public company or entity.

Note 1: This subsection is a civil penalty provision.

Note 2: Section 79 defines *involved*.

- (3) A person commits an offence if they are involved in a contravention of section 208 by a public company or entity and the involvement is dishonest.

Division 2—Exceptions to the requirement for member approval

210 Arm's length terms

Member approval is not needed to give a financial benefit on terms that:

- (a) would be reasonable in the circumstances if the public company or entity and the related party were dealing at arm's length; or
 - (b) are less favourable to the related party than the terms referred to in paragraph (a).
-

211 Remuneration and reimbursement for officer or employee

Benefits that are reasonable remuneration

- (1) Member approval is not needed to give a financial benefit if:
 - (a) the benefit is remuneration to a related party as an officer or employee of the following:
 - (i) the public company
 - (ii) an entity that the public company controls
 - (iii) an entity that controls the public company
 - (iv) an entity that is controlled by an entity that controls the public company; and
 - (b) to give the remuneration would be reasonable given:
 - (i) the circumstances of the public company or entity giving the remuneration; and
 - (ii) the related party's circumstances (including the responsibilities involved in the office or employment).

Benefits that are payments of expenses incurred

- (2) Member approval is not needed to give a financial benefit if:
 - (a) the benefit is payment of expenses incurred or to be incurred, or reimbursement for expenses incurred, by a related party in performing duties as an officer or employee of the following:
 - (i) the public company
 - (ii) an entity that the public company controls
 - (iii) an entity that controls the public company
 - (iv) an entity that is controlled by an entity that controls the public company; and
 - (b) to give the benefit would be reasonable in the circumstances of the public company or entity giving the remuneration.
 - (3) For the purposes of this section:
 - (a) a contribution made by a body corporate to a fund for the purpose of making provision for, or obtaining, superannuation benefits for an officer of the body, or for
-

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- dependants of an officer of the body, is remuneration provided by the body to the officer of the body; and
- (b) a financial benefit given to a person because of the person ceasing to hold an office or employment as an officer or employee of a body corporate is remuneration paid or provided to the person in a capacity as an officer of the body.

212 Indemnities, exemptions, insurance premiums and payment for legal costs for officers

Indemnities, exemptions and insurance premiums

- (1) Member approval is not needed to give a financial benefit if:
- (a) the benefit is for a related party who is an officer of the public company or entity; and
- (b) the benefit is:
- (i) an indemnity, exemption or insurance premium in respect of a liability incurred as an officer of the public company or entity; or
- (ii) an agreement to give an indemnity or exemption, or to pay an insurance premium, of that kind; and
- (c) to give the benefit would be reasonable in the circumstances of the public company or entity giving the benefit.

Note: Sections 199A to 199C may prohibit giving an indemnity or exemption or paying an insurance premium for an officer.

Payments in respect of legal costs

- (2) Member approval is not needed to give a financial benefit if:
- (a) the benefit is for a related party who is an officer of the public company or entity; and
- (b) the benefit is the making of, or an agreement to make, a payment (whether by way of advance, loan or otherwise) in respect of legal costs incurred by the officer in defending an action for a liability incurred as an officer of the public company or entity; and
- (c) either:

- (i) section 199A does not apply to the costs; or
 - (ii) if section 199A applies to the costs—the officer must repay the amount paid if the costs become costs for which the company must not give the officer an indemnity under that section; and
 - (d) to give the benefit would be reasonable in the circumstances of the public company or entity giving the benefit.
- (3) In working out for the purposes of subsection (1) or (2) whether giving the benefit is reasonable in the circumstances:
- (a) assess whether it would be reasonable on the basis of the circumstances existing:
 - (i) if the benefit is given under an agreement—at the time when the agreement is or was made; or
 - (ii) if the benefit is not given under an agreement—at the time when the benefit is or was given; and
 - (b) disregard any other financial benefit given or payable to the officer by the public company or entity.

213 Small amounts given to director or spouse

- (1) Member approval is not needed to give a financial benefit that is an amount of money for a director of the public company or their spouse or de facto spouse if the amount does not exceed \$2,000 or a greater amount as prescribed by the regulations.
- (2) In working out the amount given:
 - (a) add in all amounts previously given by the public company and any entities controlled by the public company to:
 - (i) the director; or
 - (ii) their spouse; or
 - (iii) their de facto spouse; and
 - (b) disregard:
 - (i) amounts that have been repaid; and
 - (ii) amounts that fall under any other exception in this Part or a corresponding previous law.

Section 214

For the purposes of this subsection, the time at which the entity must be controlled by the public company is the time at which the amount is given.

214 Benefit to or by closely-held subsidiary

- (1) Member approval is not needed to give a financial benefit if the benefit is given:
 - (a) by a body corporate to a closely-held subsidiary of the body;
or
 - (b) by a closely-held subsidiary of a body corporate to the body or an entity it controls.
- (2) For the purposes of this section, a body corporate is a closely-held subsidiary of another body corporate if, and only if, no member of the first-mentioned body is a person other than:
 - (a) the other body; or
 - (b) a nominee of the other body; or
 - (c) a body corporate that is a closely-held subsidiary of the other body because of any other application or applications of this subsection; or
 - (d) a nominee of a body referred to in paragraph (c).
- (3) For the purposes of subsection (2), disregard shares that are not voting shares.

215 Benefits to members that do not discriminate unfairly

Member approval is not needed to give a financial benefit if:

- (a) the benefit is given to the related party in their capacity as a member of the public company; and
- (b) giving the benefit does not discriminate unfairly against the other members of the public company.

216 Court order

Member approval is not needed to give a financial benefit under an order of a court.

Division 3—Procedure for obtaining member approval

217 Resolution may specify matters by class or kind

A resolution under this Division may specify anything either in particular or by reference to class or kind.

218 Company must lodge material that will be put to members with ASIC

- (1) At least 14 days before the notice convening the relevant meeting is given, the public company must lodge:
 - (a) a proposed notice of meeting setting out the text of the proposed resolution; and
 - (b) a proposed explanatory statement satisfying section 219; and
 - (c) any other document that is proposed to accompany the notice convening the meeting and that relates to the proposed resolution; and
 - (d) any other document that any of the following proposes to give to members of the public company before or at the meeting:
 - (i) the company;
 - (ii) a related party of the company to whom the proposed resolution would permit a financial benefit to be given;
 - (iii) an associate of the company or of such a related party; and can reasonably be expected to be material to a member in deciding how to vote on the proposed resolution.
- (2) If, when the notice convening the meeting is given, ASIC:
 - (a) has approved in writing a period of less than 14 days for the purposes of subsection (1); and
 - (b) has not revoked the approval by written notice to the public company;

subsection (1) applies as if the reference to 14 days were a reference to the approved period.

Section 219

- (3) ASIC may give and revoke approvals for the purposes of subsection (2).

219 Requirements for explanatory statement to members

- (1) The proposed explanatory statement lodged under section 218 must be in writing and set out:
- (a) the related parties to whom the proposed resolution would permit financial benefits to be given; and
 - (b) the nature of the financial benefits; and
 - (c) in relation to each director of the company:
 - (i) if the director wanted to make a recommendation to members about the proposed resolution—the recommendation and his or her reasons for it; or
 - (ii) if not—why not; or
 - (iii) if the director was not available to consider the proposed resolution—why not; and
 - (d) in relation to each such director:
 - (i) whether the director had an interest in the outcome of the proposed resolution; and
 - (ii) if so—what it was; and
 - (e) all other information that:
 - (i) is reasonably required by members in order to decide whether or not it is in the company's interests to pass the proposed resolution; and
 - (ii) is known to the company or to any of its directors.
- (2) An example of the kind of information referred to in paragraph (1)(d) is information about what, from an economic and commercial point of view, are the true potential costs and detriments of, or resulting from, giving financial benefits as permitted by the proposed resolution, including (without limitation):
- (a) opportunity costs; and
 - (b) taxation consequences (such as liability to fringe benefits tax); and

(c) benefits forgone by whoever would give the benefits.

Note: Sections 180 and 181 require an officer of a corporation to act honestly and to exercise care and diligence. These duties extend to preparing an explanatory statement under this section. Section 1309 creates offences where false and misleading material relating to a corporation's affairs is made available or furnished to members.

220 ASIC may comment on proposed resolution

- (1) Within 14 days after a public company lodges documents under section 218, ASIC may give to the company written comments on those documents (other than comments about whether the proposed resolution is in the company's best interests).
- (2) ASIC may consult with the Exchange for the purposes of giving comments to a company that is included in the official list of the Exchange.
- (3) Subsection (2) does not limit the persons with whom ASIC may consult.
- (4) ASIC must keep a copy of the written comments it gives to a company under subsection (1), and subsections 1274(2) and (5) apply to the copy as if it were a document lodged with ASIC.
- (5) The fact that ASIC has given particular comments, or has declined to give comments, under subsection (1) does not in any way affect the performance or exercise of any of ASIC's functions and powers.

221 Requirements for notice of meeting

The notice convening the meeting:

- (a) must be the same, in all material respects, as the proposed notice lodged under section 218; and
- (b) must be accompanied by an explanatory statement that is the same, in all material respects, as the proposed explanatory statement lodged under that section; and

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- (c) must be accompanied by a document that is, or documents that are, the same, in all material respects, as the document or documents (if any) lodged under paragraph 218(1)(c); and
- (d) if ASIC has given to the public company, under section 220, comments on the documents lodged under section 218—must be accompanied by a copy of those comments; and
- (e) must not be accompanied by any other documents.

222 Other material put to members

Each document (if any) that:

- (a) did not accompany the notice convening the meeting; and
- (b) was given to members of the public company before or at the meeting by:
 - (i) the public company; or
 - (ii) a related party of the public company to whom the proposed resolution would permit a financial benefit to be given; or
 - (iii) an associate of the public company or of such a related party; and
- (c) can reasonably be expected to have been material to a member in deciding how to vote on the proposed resolution; must be the same, in all material respects, as a document lodged under paragraph 218(1)(d).

223 Proposed resolution cannot be varied

The resolution must be the same as the proposed resolution set out in the proposed notice lodged under section 218.

224 Voting by or on behalf of related party interested in proposed resolution

- (1) At a general meeting, a vote on a proposed resolution under this Division must not be cast (in any capacity) by or on behalf of:
 - (a) a related party of the public company to whom the resolution would permit a financial benefit to be given; or
-

- (b) an associate of such a related party.
 - (2) Subsection (1) does not prevent the casting of a vote if:
 - (a) it is cast by a person as a proxy appointed by writing that specifies how the proxy is to vote on the proposed resolution; and
 - (b) it is not cast on behalf of a related party or associate of a kind referred to in subsection (1).
 - (3) The regulations may prescribe cases where subsection (1) does not apply.
 - (4) ASIC may by writing declare that:
 - (a) subsection (1) does not apply to a specified proposed resolution; or
 - (b) subsection (1) does not prevent the casting of a vote, on a specified proposed resolution, by a specified entity, or on behalf of a specified entity;but may only do so if satisfied that the declaration will not cause unfair prejudice to the interests of any member of the public company.
 - (5) A declaration in force under subsection (4) has effect accordingly.
 - (6) If a vote is cast in contravention of subsection (1), the related party or associate, as the case may be, contravenes this subsection, whether or not the proposed resolution is passed.
 - (7) For the purposes of this section, a vote is cast on behalf of an entity if, and only if, it is cast:
 - (a) as proxy for the entity; or
 - (b) otherwise on behalf of the entity; or
 - (c) in respect of a share in respect of which the entity has:
 - (i) power to vote; or
 - (ii) power to exercise, or control the exercise of, a right to vote.
 - (8) Subject to subsection 225(1), a contravention of this section does not affect the validity of a resolution.
-

Section 225

- (9) This section has effect despite:
- (a) anything else in this Law or in any other law of this jurisdiction (including the general law); or
 - (b) anything in a body corporate's constitution.

225 Voting on the resolution

- (1) If any votes on the resolution are cast in contravention of subsection 224(1), it must be the case that the resolution would still be passed even if those votes were disregarded.
- (2) If a poll was duly demanded on the question that the resolution be passed, subsections (3) and (4) apply in relation to voting on the poll.
- (3) In relation to each member of the public company who voted on the resolution in person, the public company must record in writing:
 - (a) the member's name; and
 - (b) how many votes the member cast for the resolution and how many against.
- (4) In relation to each member of the public company who voted on the resolution by proxy, or by a representative authorised under section 250D, the public company must record in writing:
 - (a) the member's name; and
 - (b) in relation to each person who voted as proxy, or as such a representative, for the member:
 - (i) the person's name; and
 - (ii) how many votes the person cast on the resolution as proxy, or as such a representative, for the member; and
 - (iii) how many of those votes the person cast for the resolution and how many against.
- (5) For 7 years after the day when a resolution under this Division is passed, the public company must retain the records it made under this section in relation to the resolution.

226 Notice of resolution to be lodged

The public company must lodge a notice setting out the text of the resolution within 14 days after the resolution is passed.

227 Declaration by court of substantial compliance

- (1) The Court may declare that the conditions prescribed by this Division have been satisfied if it finds that they have been substantially satisfied.
- (2) A declaration may be made only on the application of an interested person.

Part 2E.2—Related parties and financial benefits

228 Related parties

Controlling entities

- (1) An entity that controls a public company is a related party of the public company.

Directors and their spouses

- (2) The following persons are related parties of a public company:
 - (a) directors of the public company
 - (b) directors (if any) of an entity that controls the public company
 - (c) if the public company is controlled by an entity that is not a body corporate—each of the persons making up the controlling entity
 - (d) spouses and de facto spouses of the persons referred to in paragraphs (a), (b) and (c).

Relatives of directors and spouses

- (3) The following relatives of persons referred to in subsection (2) are related parties of the public company:
 - (a) parents
 - (b) children.

Entities controlled by other related parties

- (4) An entity controlled by a related party referred to in subsection (1), (2) or (3) is a related party of the public company unless the entity is also controlled by the public company.

Related party in previous 6 months

- (5) An entity is a related party of a public company at a particular time if the entity was a related party of the public company of a kind referred to in subsection (1), (2), (3) or (4) at any time within the previous 6 months.

Entity has reasonable grounds to believe it will become related party in future

- (6) An entity is a related party of a public company at a particular time if the entity believes or has reasonable grounds to believe that it is likely to become a related party of the public company of a kind referred to in subsection (1), (2), (3) or (4) at any time in the future.

Acting in concert with related party

- (7) An entity is a related party of a public company if the entity acts in concert with a related party of the public company on the understanding that the related party will receive a financial benefit if the public company gives the entity a financial benefit.

229 Giving a financial benefit

- (1) In determining whether a financial benefit is given for the purposes of this Chapter:
- (a) give a broad interpretation to financial benefits being given, even if criminal or civil penalties may be involved; and
 - (b) the economic and commercial substance of conduct is to prevail over its legal form; and
 - (c) disregard any consideration that is or may be given for the benefit, even if the consideration is adequate.
- (2) ***Giving a financial benefit*** includes the following:
- (a) giving a financial benefit indirectly, for example, through 1 or more interposed entities
 - (b) giving a financial benefit by making an informal agreement, oral agreement or an agreement that has no binding force

Section 229

- (c) giving a financial benefit that does not involve paying money (for example by conferring a financial advantage).
- (3) The following are examples of *giving a financial benefit* to a related party:
 - (a) giving or providing the related party finance or property
 - (b) buying an asset from or selling an asset to the related party
 - (c) leasing an asset from or to the related party
 - (d) supplying services to or receiving services from the related party
 - (e) issuing securities or granting an option to the related party
 - (f) taking up or releasing an obligation of the related party.

Part 2E.3—Interaction with other rules

230 General duties still apply

A director is not relieved from any of their duties under this Law (including sections 180 and 184), or their fiduciary duties, in connection with a transaction merely because the transaction is authorised by a provision of this Chapter or is approved by a resolution of members under a provision of this Chapter.

2 Section 246A

Renumber as section 231.

3 Part 2F.1

Repeal the Part, substitute:

Part 2F.1—Oppressive conduct of affairs

232 Grounds for Court order

The Court may make an order under section 233 if:

- (a) the conduct of a company's affairs; or
- (b) an actual or proposed act or omission by or on behalf of a company; or
- (c) a resolution, or a proposed resolution, of members or a class of members of a company;

is either:

- (d) contrary to the interests of the members as a whole; or
- (e) oppressive to, unfairly prejudicial to, or unfairly discriminatory against, a member or members whether in that capacity or in any other capacity.

Section 233

For the purposes of this Part, a person to whom a share in the company has been transmitted by will or by operation of law is taken to be a member of the company.

Note: For *affairs*, see section 53.

233 Orders the Court can make

- (1) The Court can make any order under this section that it considers appropriate in relation to the company, including an order:
 - (a) that the company be wound up
 - (b) that the company's existing constitution be modified or repealed
 - (c) regulating the conduct of the company's affairs in the future
 - (d) for the purchase of any shares by any member or person to whom a share in the company has been transmitted by will or by operation of law
 - (e) for the purchase of shares with an appropriate reduction of the company's share capital
 - (f) for the company to institute, prosecute, defend or discontinue specified proceedings
 - (g) authorising a member, or a person to whom a share in the company has been transmitted by will or by operation of law, to institute, prosecute, defend or discontinue specified proceedings in the name and on behalf of the company
 - (h) appointing a receiver or a receiver and manager of any or all of the company's property
 - (i) restraining a person from engaging in specified conduct or from doing a specified act
 - (j) requiring a person to do a specified act.

Order that the company be wound up

- (2) If an order that a company be wound up is made under this section, the provisions of this Law relating to the winding up of companies apply:
 - (a) as if the order were made under section 461; and

- (b) with such changes as are necessary.

Order altering constitution

- (3) If an order made under this section repeals or modifies a company's constitution, or requires the company to adopt a constitution, the company does not have the power under section 136 to change or repeal the constitution if that change or repeal would be inconsistent with the provisions of the order, unless:
 - (a) the order states that the company does have the power to make such a change or repeal; or
 - (b) the company first obtains the leave of the Court.

234 Who can apply for order

An application for an order under section 233 in relation to a company may be made by:

- (a) a member of the company, even if the application relates to an act or omission that is against:
 - (i) the member in a capacity other than as a member; or
 - (ii) another member in their capacity as a member; or
- (b) a person who has been removed from the register of members because of a selective reduction; or
- (c) a person who has ceased to be a member of the company if the application relates to the circumstances in which they ceased to be a member; or
- (d) a person to whom a share in the company has been transmitted by will or by operation of law; or
- (e) a person whom ASIC thinks appropriate having regard to investigations it is conducting or has conducted into:
 - (i) the company's affairs; or
 - (ii) matters connected with the company's affairs.

Note 1: If an application is made under this section, in certain cases the court may order that the company be wound up in insolvency (see section 459B).

Note 2: For *selective reduction*, see subsection 256B(2).

Schedule 1 Main amendments of the Corporations Law

Part 2F.1 Oppressive conduct of affairs

Section 235

235 Requirement for person to lodge order

If an order is made under section 233, the applicant must lodge a copy of the order with ASIC within 14 days after it is made.

Part 2F.1A—Proceedings on behalf of a company by members and others

236 Bringing, or intervening in, proceedings on behalf of a company

- (1) A person may bring proceedings on behalf of a company, or intervene in any proceedings to which the company is a party for the purpose of taking responsibility on behalf of the company for those proceedings, or for a particular step in those proceedings (for example, compromising or settling them), if:
 - (a) the person is:
 - (i) a member, former member, or person entitled to be registered as a member, of the company or of a related body corporate; or
 - (ii) an officer or former officer of the company; and
 - (b) the person is acting with leave granted under section 237.
- (2) Proceedings brought on behalf of a company must be brought in the company's name.
- (3) The right of a person at general law to bring, or intervene in, proceedings on behalf of a company is abolished.

Note 1: For the right to inspect company books, see subsections 247A(3) to (6).

Note 2: For the requirements to disclose proceedings and leave applications in the annual directors' report, see subsections 300(14) and (15).

Note 3: This section does not prevent a person bringing, or intervening in, proceedings on their own behalf in respect of a personal right.

237 Applying for and granting leave

- (1) A person referred to in paragraph 236(1)(a) may apply to the Court for leave to bring, or to intervene in, proceedings.
- (2) The Court must grant the application if it is satisfied that:

Section 237

- (a) it is probable that the company will not itself bring the proceedings, or properly take responsibility for them, or for the steps in them; and
 - (b) the applicant is acting in good faith; and
 - (c) it is in the best interests of the company that the applicant be granted leave; and
 - (d) if the applicant is applying for leave to bring proceedings—there is a serious question to be tried; and
 - (e) either:
 - (i) at least 14 days before making the application, the applicant gave written notice to the company of the intention to apply for leave and of the reasons for applying; or
 - (ii) it is appropriate to grant leave even though subparagraph (i) is not satisfied.
- (3) A rebuttable presumption that granting leave is not in the best interests of the company arises if it is established that:
- (a) the proceedings are:
 - (i) by the company against a third party; or
 - (ii) by a third party against the company; and
 - (b) the company has decided:
 - (i) not to bring the proceedings; or
 - (ii) not to defend the proceedings; or
 - (iii) to discontinue, settle or compromise the proceedings; and
 - (c) all of the directors who participated in that decision:
 - (i) acted in good faith for a proper purpose; and
 - (ii) did not have a material personal interest in the decision; and
 - (iii) informed themselves about the subject matter of the decision to the extent they reasonably believed to be appropriate; and
 - (iv) rationally believed that the decision was in the best interests of the company.

The director's belief that the decision was in the best interests of the company is a rational one unless the belief is one that no reasonable person in their position would hold.

- (4) For the purposes of subsection (3):
- (a) a person is a third party if:
 - (i) the company is a public company and the person is not a related party of the company; or
 - (ii) the company is not a public company and the person would not be a related party of the company if the company were a public company; and
 - (b) proceedings by or against the company include any appeal from a decision made in proceedings by or against the company.

Note: *Related party* is defined in section 228.

238 Substitution of another person for the person granted leave

- (1) Any of the following persons may apply to the Court for an order that they be substituted for a person to whom leave has been granted under section 237:
 - (a) a member, former member, or a person entitled to be registered as a member, of the company or of a related body corporate
 - (b) an officer, or former officer, of the company.
- (2) The Court may make the order if it is satisfied that:
 - (a) the applicant is acting in good faith; and
 - (b) it is appropriate to make the order in all the circumstances.
- (3) An order substituting one person for another has the effect that:
 - (a) the grant of leave is taken to have been made in favour of the substituted person; and
 - (b) if the other person has already brought the proceedings or intervened—the substituted person is taken to have brought those proceedings or to have made that intervention.

239 Effect of ratification by members

- (1) If the members of a company ratify or approve conduct, the ratification or approval:
 - (a) does not prevent a person from bringing or intervening in proceedings with leave under section 237 or from applying for leave under that section; and
 - (b) does not have the effect that proceedings brought or intervened in with leave under section 237 must be determined in favour of the defendant, or that an application for leave under that section must be refused.
- (2) If members of a company ratify or approve conduct, the Court may take the ratification or approval into account in deciding what order or judgment (including as to damages) to make in proceedings brought or intervened in with leave under section 237 or in relation to an application for leave under that section. In doing this, it must have regard to:
 - (a) how well-informed about the conduct the members were when deciding whether to ratify or approve the conduct; and
 - (b) whether the members who ratified or approved the conduct were acting for proper purposes.

240 Leave to discontinue, compromise or settle proceedings brought, or intervened in, with leave

Proceedings brought or intervened in with leave must not be discontinued, compromised or settled without the leave of the Court.

241 General powers of the Court

- (1) The Court may make any orders, and give any directions, that it considers appropriate in relation to proceedings brought or intervened in with leave, or an application for leave, including:
 - (a) interim orders; and
 - (b) directions about the conduct of the proceedings, including requiring mediation; and
-

- (c) an order directing the company, or an officer of the company, to do, or not to do, any act; and
 - (d) an order appointing an independent person to investigate, and report to the Court on:
 - (i) the financial affairs of the company; or
 - (ii) the facts or circumstances which gave rise to the cause of action the subject of the proceedings; or
 - (iii) the costs incurred in the proceedings by the parties to the proceedings and the person granted leave.
- (2) A person appointed by the Court under paragraph (1)(d) is entitled, on giving reasonable notice to the company, to inspect any books of the company for any purpose connected with their appointment.
- (3) If the Court appoints a person under paragraph (1)(d):
- (a) the Court must also make an order stating who is liable for the remuneration and expenses of the person appointed; and
 - (b) the Court may vary the order at any time; and
 - (c) the persons who may be made liable under the order, or the order as varied, are:
 - (i) all or any of the parties to the proceedings or application; and
 - (ii) the company; and
 - (d) if the order, or the order as varied, makes 2 or more persons liable, the order may also determine the nature and extent of the liability of each of those persons.
- (4) Subsection (3) does not affect the powers of the Court as to costs.

242 Power of the Court to make costs orders

The Court may at any time make any orders it considers appropriate about the costs of the following persons in relation to proceedings brought or intervened in with leave under section 237 or an application for leave under that section:

- (a) the person who applied for or was granted leave
 - (b) the company
-

Section 260FA

(c) any other party to the proceedings or application.

An order under this section may require indemnification for costs.

4 After Chapter 2K

Insert:

Chapter 2L—Debentures

Part 2L.1—Requirement for trust deed and trustee

260FA Requirement for trust deed and trustee

(1) Before a body:

- (a) makes an offer of debentures in this jurisdiction that needs disclosure to investors under Chapter 6D, or does not need disclosure to investors under Chapter 6D because of subsection 708(14) (disclosure document exclusion for debenture roll overs); or
- (b) makes an offer of debentures in this jurisdiction or elsewhere as consideration for the acquisition of securities under an off-market takeover bid; or
- (c) issues debentures in this jurisdiction or elsewhere under a compromise or arrangement under Part 5.1 approved at a meeting held as a result of an order under subsection 411(1) or (1A);

regardless of where any resulting issue, sale or transfer occurs, the body must enter into a trust deed that complies with section 260FB and appoint a trustee that complies with section 260FC.

Note: For rules about when an offer of debentures will need disclosure to investors under Chapter 6D, see sections 706, 707 and 708.

- (2) The body may revoke the trust deed after it has repaid all amounts payable under the debentures in accordance with the debentures' terms and the trust deed.
- (3) The body must comply with this Chapter.

Section 260FB

Note: Sections 168 and 601CZB require a register of debenture holders to be set up and kept.

260FB Trust deed

The trust deed must provide that the following are held in trust by the trustee for the benefit of the debenture holders:

- (a) the right to enforce the borrower's duty to repay
- (b) any charge or security for repayment
- (c) the right to enforce any other duties that the borrower and any guarantor have under:
 - (i) the terms of the debentures; or
 - (ii) the provisions of the trust deed or this Chapter.

Note: For information about the duties that the borrower and any guarantor body have under this Chapter, see sections 260GB to 260HE.

260FC Who can be a trustee

Who can be trustee

- (1) The trustee must be:
 - (a) the Public Trustee of any State or Territory; or
 - (b) a body corporate authorised by a law of any State or Territory to take in its own name a grant of probate of the will, or letters of administration of the estate, of a deceased person; or
 - (c) a body corporate registered under the *Life Insurance Act 1995*; or
 - (d) an Australian ADI; or
 - (e) a body corporate, all of whose shares are held beneficially by a body corporate or bodies corporate of the kind referred to in paragraph (b), (c) or (d) if that body or those bodies:
 - (i) are liable for all of the liabilities incurred, or to be incurred, by the trustee as trustee; or
 - (ii) have subscribed for and beneficially hold shares in the trustee and there is an uncalled liability of at least \$500,000 in respect of those shares that can only be

Section 260FD

called up if the trustee becomes an externally-administered body corporate (see section 254N); or

- (f) a body corporate approved by ASIC (see section 260MB).

Note: Section 260GD provides that if the borrower becomes aware that the trustee cannot be a trustee, the trustee must be replaced.

Circumstances in which a person cannot be trustee

- (2) A person may only be appointed or act as trustee (except to the extent provided for by section 260FD) if the appointment or acting will not result in a conflict of interest or duty. This subsection is not intended to affect any rule of law or equity.

260FD Existing trustee continues to act until new trustee takes office

An existing trustee continues to act as the trustee until a new trustee is appointed and has taken office as trustee, despite any rule of law or equity to the contrary.

Note: This section applies even if the existing trustee resigns.

260FE Replacement of trustee

Related party of existing trustee may be appointed as a new trustee

- (1) In addition to any other powers of appointment under the terms of the debentures or provisions of the trust deed, the borrower may appoint a body corporate that is related to the existing trustee as trustee in place of the existing trustee if:
- (a) the body corporate can be a trustee under section 260FC; and
 - (b) the existing trustee consents in writing to the appointment.
- The appointment has effect despite any terms of the debentures or provisions of the trust deed.

Appointment by Court

- (2) The Court may:

Section 260FE

- (a) appoint a person who may be a trustee under section 260FC as trustee on the application of the borrower, a debenture holder or ASIC if:
 - (i) a trustee has not been validly appointed; or
 - (ii) the trustee has ceased to exist; or
- (b) terminate the existing trustee's appointment and appoint a person who may be a trustee under section 260FC as trustee in the existing trustee's place on the application of the borrower, the existing trustee, a debenture holder or ASIC if:
 - (i) the existing trustee cannot be trustee under section 260FC; or
 - (ii) the existing trustee fails, or refuses, to act.

Part 2L.2—Duties of borrower

260GA Duties of borrower

A borrower that is required to enter into a trust deed under section 260FA has the duties imposed by this Part.

260GB General duties

The borrower must:

- (a) carry on and conduct its business in a proper and efficient manner; and
- (b) provide a copy of the trust deed to:
 - (i) a debenture holder; or
 - (ii) the trustee;if they request a copy; and
- (c) make all of its financial and other records available for inspection by:
 - (i) the trustee; or
 - (ii) an officer or employee of the trustee authorised by the trustee to carry out the inspection; or
 - (iii) a registered company auditor appointed by the trustee to carry out the inspection;and give them any information, explanations or other assistance that they require about matters relating to those records.

Note: The borrower also has a duty to call a meeting of debenture holders in certain circumstances (see section 260KA).

260GC Duty to notify ASIC of name of trustee

The borrower must lodge with ASIC a notice of the name of a trustee within 14 days after they are appointed. The notice must be in the prescribed form.

Section 260GD

260GD Duty to replace trustee

The borrower must take all reasonable steps to replace the trustee under section 260FE as soon as practicable after the borrower becomes aware that the trustee:

- (a) has ceased to exist; or
- (b) has not been validly appointed; or
- (c) cannot be a trustee under section 260FC; or
- (d) has failed or refused to act as trustee.

260GE Duty to inform trustee about charges

If the borrower creates a charge, it must:

- (a) give the trustee written details of the charge within 21 days after it is created; and
- (b) if the total amount to be advanced on the security of the charge is indeterminate and the advances are not merged in a current account with bankers, trade creditors or anyone else—give the trustee written details of the amount of each advance within 7 days after it is made.

Note: If the advances are merged in a current account the borrower must give the trustee the details in the quarterly report (see subsection 260GF(4)).

260GF Duty to give trustee and ASIC quarterly reports

Quarterly reports

- (1) Within 1 month after the end of each quarter, the borrower must:
 - (a) give the trustee a quarterly report that sets out the information required by subsections (4), (5) and (6); and
 - (b) lodge a copy of the report with ASIC (see section 351).

First quarter

- (2) The first quarter is the period of 3 months ending on a day fixed by the borrower, by written notice to the trustee. The day must be less

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than 6 months after the first issue of a debenture under the trust deed.

Subsequent quarters

- (3) Each of the subsequent quarters are periods of 3 months. The trustee may allow a particular quarter to be a period of less than 3 months if the trustee is satisfied that special circumstances justify doing so.

Content of quarterly report

- (4) The report for a quarter must include details of:
- (a) any failure by the borrower and each guarantor to comply with the terms of the debentures or the provisions of the trust deed or this Chapter during the quarter; and
 - (b) any event that has happened during the quarter that has caused, or could cause, 1 or more of the following:
 - (i) any amount deposited or lent under the debentures to become immediately payable
 - (ii) the debentures to become immediately enforceable
 - (iii) any other right or remedy under the terms of the debenture or provisions of the trust deed to become immediately enforceable; and
 - (c) any circumstances that have occurred during the quarter that materially prejudice:
 - (i) the borrower, any of its subsidiaries, or any of the guarantors; or
 - (ii) any security or charge included in or created by the debentures or the trust deed; and
 - (d) any substantial change in the nature of the business of the borrower, any of its subsidiaries, or any of the guarantors that has occurred during the quarter; and
 - (e) any of the following events that happened in the quarter:
 - (i) the appointment of a guarantor

Section 260GF

- (ii) the cessation of liability of a guarantor body for the payment of the whole or part of the money for which it was liable under the guarantee
- (iii) a change of name of a guarantor (if this happens, the report must also disclose the guarantor's new name); and
- (f) the net amount outstanding on any advances at the end of the quarter if the borrower has created a charge where:
 - (i) the total amount to be advanced on the security of the charge is indeterminate; and
 - (ii) the advances are merged in a current account with bankers, trade creditors or anyone else; and
- (g) any other matters that may materially prejudice any security or the interests of the debenture holders.

Note: Paragraph (f)—the borrower has a duty to inform the trustee about charges as they are created (see section 260GE).

- (5) If the borrower has deposited money with, or lent money to, a related body corporate during the quarter, the report must also include details of:
 - (a) the total of the money deposited with, or lent to, the related body corporate during the quarter (see subsection (7)); and
 - (b) the total amount of money owing to the borrower at the end of the quarter in respect of the deposits or loans to the related body corporate.

Disregard any amount that the borrower deposits with an ADI in the normal course of the borrower's business.

- (6) If the borrower has assumed a liability of a related body corporate during the quarter, the report must also include details of the extent of the liability assumed during the quarter and the extent of the liability as at the end of the quarter.
- (7) For the purposes of subsections (5) and (6), the report:
 - (a) must distinguish between deposits, loans and assumptions of liability that are secured and those that are unsecured; and

Section 260GG

- (b) may exclude any deposit, loan or assumption of liability on behalf of the related body corporate if it has:
 - (i) guaranteed the repayment of the debentures of the borrower; and
 - (ii) secured the guarantee by a charge over all of its property in favour of the trustee.

Formalities

- (8) The report must:
 - (a) be made in accordance with a resolution of the directors; and
 - (b) specify the date on which the report is made.

260GG Exceptions

Sections 260GE and 260GF do not apply in respect of the borrower while:

- (a) it is under external administration; or
- (b) a receiver, or a receiver and manager, of property of the borrower has been appointed and has not ceased to act under that appointment.

260GH How debentures may be described

- (1) The borrower may describe or refer to the debentures in:
 - (a) any disclosure in relation to the offer of the debentures; or
 - (b) any other document constituting or relating to the offer of the debentures; or
 - (c) the debentures themselves;only in accordance with the following table:

How debentures may be described		
Item	Description	When description may be used
1	mortgage debenture	only if the circumstances set out in subsection (2) are satisfied

Section 260GH

How debentures may be described		
Item	Description	When description may be used
2	debenture	only if the circumstances set out in subsection (2) or (3) are satisfied
3	unsecured note or unsecured deposit note	in any other case

When debentures can be called mortgage debentures or debentures

- (2) The borrower may describe or refer to the debentures as:
- (a) mortgage debentures; or
 - (b) debentures;
- if:
- (c) the repayment of all money that has been, or may be, deposited or lent under the debentures is secured by a first mortgage given to the trustee over land vested in the borrower or in any of the guarantors; and
 - (d) the mortgage has been registered, or is a registrable mortgage that has been lodged for registration, in accordance with the law relating to the registration of mortgages of land in the place where the land is situated; and
 - (e) the total amount of that money and of all other liabilities (if any) secured by the mortgage of that land ranking equally with the liability to repay that money does not exceed 60% of the value of the borrower's or guarantor's interest in that land as shown in the valuation included in the disclosure document for the debentures.

When debentures can be called debentures

- (3) The borrower may describe or refer to the debentures as debentures if:
- (a) the repayment of all money that has been, or may be, deposited or lent under the debentures has been secured by a charge in favour of the trustee over the whole or any part of the tangible property of the borrower or of any of the guarantors; and

Section 260GI

- (b) the tangible property that constitutes the security for the charge is sufficient and is reasonably likely to be sufficient to meet the liability for the repayment of all such money and all other liabilities that:
 - (i) have been or may be incurred; and
 - (ii) rank in priority to, or equally with, that liability.

260GI Offences for failure to comply with statutory duties

The borrower commits an offence if it intentionally or recklessly contravenes section 260GB, 260GC, 260GD, 260GE, 260GF or 260KA.

Part 2L.3—Duties of guarantor

260HA Duties of guarantor

If a borrower is required to enter into a trust deed under section 260FA in relation to debentures, a guarantor in respect of the debentures has the duties imposed by this Part.

260HB General duties

The guarantor must:

- (a) carry on and conduct its business in a proper and efficient manner; and
- (b) make all of its financial and other records available for inspection by:
 - (i) the trustee; or
 - (ii) an officer or employee of the trustee authorised by the trustee to carry out the inspection; or
 - (iii) a registered company auditor appointed by the trustee to carry out the inspection;and give them any information, explanations or other assistance that they require about matters relating to those records.

260HC Duty to inform trustee about charges

If the guarantor creates a charge, it must:

- (a) give the trustee written details of the charge within 21 days after it is created; and
- (b) if the total amount to be advanced on the security of the charge is indeterminate, give the trustee written details of:
 - (i) the amount of each advance made within 7 days after it is made; or

Section 260HD

- (ii) where the advances are merged in a current account with bankers, trade creditors or anyone else—the net amount outstanding on the advances at the end of every 3 months.

260HD Exceptions

Section 260HC does not apply in respect of the guarantor while:

- (a) it is under external administration; or
- (b) a receiver, or a receiver and manager, of property of the guarantor has been appointed and has not ceased to act under that appointment.

260HE Offences for failure to comply with statutory duties

The guarantor commits an offence if it intentionally or recklessly contravenes paragraph 260HB(b) or section 260HC.

Part 2L.4—Trustee

260JA Trustee’s duties

The trustee of a trust deed entered into under section 260FA must:

- (a) exercise reasonable diligence to ascertain whether the property of the borrower and of each guarantor that is or should be available (whether by way of security or otherwise) will be sufficient to repay the amount deposited or lent when it becomes due; and
- (b) exercise reasonable diligence to ascertain whether the borrower or any guarantor has committed any breach of:
 - (i) the terms of the debentures; or
 - (ii) the provisions of the trust deed or this Chapter; and
- (c) do everything in its power to ensure that the borrower or a guarantor remedies any breach known to the trustee of:
 - (i) any term of the debentures; or
 - (ii) any provision of the trust deed or this Chapter;unless the trustee is satisfied that the breach will not materially prejudice the debenture holders’ interests or any security for the debentures; and
- (d) ensure that the borrower and each guarantor complies with Part 2K to the extent that it applies to the debentures; and
- (e) notify ASIC as soon as practicable if:
 - (i) the borrower has not complied with section 260GE, 260GF or subsection 318(1) or (4); or
 - (ii) a guarantor has not complied with section 260HC; and
- (f) notify ASIC and the borrower as soon as practicable if the trustee discovers that it cannot be a trustee under section 260FC; and
- (g) give the debenture holders a statement explaining the effect of any proposal that the borrower submits to the debenture holders before any meeting that:

Section 260JB

- (i) the Court calls in relation to a scheme under subsection 411(1) or (1A); or
 - (ii) the trustee calls under subsection 260KB(1); and
- (h) comply with any directions given to it at a debenture holders' meeting referred to in section 260KA, 260KB or 260KC unless:
- (i) the trustee is of the opinion that the direction is inconsistent with the terms of the debentures or the provisions of the trust deed or this Law or is otherwise objectionable; and
 - (ii) has either obtained, or is in the process of obtaining, an order from the Court under section 260NA setting aside or varying the direction; and
- (i) apply to the Court for an order under section 260NB if the borrower requests it to do so.

Note 1: Paragraph (g)—Section 411 relates to compromises and arrangements.

Note 2: Section 260JC deals with indemnification in respect of a trustee's liability to the debenture holders.

260JB Exemptions and indemnifications of trustee from liability

- (1) A term of a debenture, provision of a trust deed or a term of a contract with holders of debentures secured by a trust deed, is void in so far as the term or provision would have the effect of:
- (a) exempting a trustee from liability for breach of section 260JA for failure to show the degree of care and diligence required of it as trustee; or
 - (b) indemnifying the trustee against that liability;
- unless the term or provision:
- (c) releases the trustee from liability for something done or omitted to be done before the release is given; or
 - (d) enables a meeting of debenture holders to approve the release of the trustee from liability for something done or omitted to be done before the release is given.
- (2) For the purposes of paragraph (1)(d):

Section 260JC

- (a) a release is approved if the debenture holders who vote for the resolution hold 75% of the nominal value of the debentures held by all the debenture holders who attend the meeting and vote on the resolution; and
- (b) a debenture holder attends the meeting and votes on the resolution if:
 - (i) they attend the meeting in person and vote on the resolution; or
 - (ii) if proxies are permitted—they are represented at the meeting by a proxy and the proxy votes on the resolution.

260JC Indemnity

The trustee is not liable for anything done or omitted to be done in accordance with a direction given to it by the debenture holders at any meeting called under section 260KA, 260KB or 260KC.

Part 2L.5—Meetings of debenture holders

260KA Borrower's duty to call meeting

Duty to call meeting

- (1) The borrower must call a meeting of debenture holders if:
 - (a) debenture holders who together hold 10% or more of the nominal value of the issued debentures to which the trust relates direct the borrower to do so; and
 - (b) the direction is given to the borrower in writing at its registered office; and
 - (c) the purpose of the meeting is to:
 - (i) consider the financial statements that were laid before the last AGM of the borrower; or
 - (ii) give the trustee directions in relation to the exercise of any of its powers.

Note: The trustee usually must comply with any directions given to it by the debenture holders at the meeting (see paragraph 260JA(h)).

Duty to give notification of meeting

- (2) If the borrower is required to call a meeting, it must give notice of the time and place of the meeting to:
 - (a) the trustee; and
 - (b) the borrower's auditor; and
 - (c) each of the debenture holders whose names are entered on the register of debenture holders.Notice to joint holders of a debenture must be given to the joint holder named first in the register of debenture holders.
 - (3) The borrower may give the notice to a debenture holder:
 - (a) personally; or
 - (b) by sending it by post to the address for the debenture holder in the register of debenture holders; or
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Section 260KB

- (c) by sending it to the fax number or electronic address (if any) nominated by the debenture holder; or
- (d) by any other means that the trust deed or the terms of the debentures permit.

Note: A defect in the notice may not invalidate a meeting (see section 1322).

When notice by post or fax is given

- (4) A notice of meeting sent to a debenture holder is taken to be given:
 - (a) 3 days after it is posted, if it is posted; or
 - (b) on the business day after it is sent, if it is sent by fax or other electronic means;unless the trust deed or the terms of the debentures provide otherwise.

260KB Trustee's power to call meeting

Trustee may call meeting in event of breach

- (1) If the borrower or a guarantor fails to remedy any breach of the terms of the debentures or provisions of the trust deed or this Chapter when required by the trustee, the trustee may:
 - (a) call a meeting of debenture holders; and
 - (b) inform the debenture holders of the failure at the meeting; and
 - (c) submit proposals for protection of the debenture holders' interests to the meeting; and
 - (d) ask for directions from the debenture holders in relation to the matter.

Trustee may appoint person to chair meeting

- (2) The trustee may appoint a person to chair a meeting of debenture holders called under subsection (1). If the trustee does not exercise this power, the debenture holders present at the meeting may appoint a person to chair the meeting.

Section 260KC

260KC Court may order meeting

- (1) Without limiting section 260NA or 260NB, the Court may make an order under either of those sections for a meeting of all or any of the debenture holders to be held to give directions to the trustee. The order may direct the trustee to:
 - (a) place before the debenture holders any information concerning their interests; and
 - (b) place before the debenture holders any proposals to protect their interests that the Court directs or the trustee considers appropriate; and
 - (c) obtain the debenture holders' directions concerning the protection of their interests.
- (2) The meeting is to be held and conducted in the manner the Court directs. The trustee may appoint a person to chair the meeting. If the trustee does not exercise this power, the debenture holders present at the meeting may appoint a person to chair the meeting.

Part 2L.6—Civil liability

260L Civil liability for contravening this Chapter

- (1) A person who suffers loss or damage because a person contravenes a provision of this Chapter may recover the amount of the loss or damage from:
 - (a) the person who contravened the provision; or
 - (b) a person involved in the contravention.This is so even if the person did not commit, and was not involved in, the contravention.
- (2) An action under subsection (1) may begin at any time within 6 years after the day on which the cause of action arose.
- (3) This Part does not affect any liability that a person has under any other law.

Part 2L.7—ASIC powers

260MA ASIC's power to exempt and modify

- (1) ASIC may:
 - (a) exempt a person from a provision of this Chapter; or
 - (b) declare that this Chapter applies to a person as if specified provisions were omitted, modified or varied as specified in the declaration.
- (2) The exemption or declaration may do all or any of the following:
 - (a) apply to all or specified provisions of this Chapter
 - (b) apply to all persons, specified persons, or a specified class of persons
 - (c) relate to all debentures, specified debentures or a specified class of debentures
 - (d) relate to any other matter generally or as specified.
- (3) An exemption may apply unconditionally or subject to specified conditions. A person to whom a condition specified in an exemption applies must comply with the condition. The Court may order the person to comply with the condition in a specified way. Only ASIC may apply to the Court for the order.
- (4) The exemption or declaration must be in writing and ASIC must publish notice of it in the *Gazette*.
- (5) For the purposes of this section, the *provisions of this Chapter* include:
 - (a) regulations made for the purposes of this Chapter; and
 - (b) definitions in this Law or the regulations as they apply to references in:
 - (i) this Chapter; or
 - (ii) regulations made for the purposes of this Chapter; and
 - (c) Division 12 of Part 11.2.

260MB ASIC may approve body corporate to be trustee

- (1) ASIC may approve a body corporate in writing to be a trustee for the purposes of paragraph 260FC(1)(f). The approval may allow the body corporate to act as trustee:
 - (a) in any circumstances; or
 - (b) in relation to a particular borrower or particular class of borrower; or
 - (c) in relation to a particular trust deed;and may be given subject to conditions.
- (2) ASIC must publish notice of the approval in the *Gazette*.

Part 2L.8—Court

260NA General Court power to give directions and determine questions

If the trustee applies to the Court for any direction in relation to the performance of the trustee's functions or to determine any question in relation to the interests of the debenture holders, the Court may give any direction and make any declaration or determination in relation to the matter that the Court considers appropriate. The Court may also make ancillary or consequential orders.

Note: Under this section, the Court may order a meeting of debenture holders to be held, see section 260KC.

260NB Specific Court powers

- (1) If the trustee or ASIC applies to the Court, the Court may make any or all of the following orders:
 - (a) an order staying an action or other civil proceedings before a court by or against the borrower or a guarantor body
 - (b) an order restraining the borrower from paying any money to the debenture holders or any holders of any other class of debentures
 - (c) an order that any security for the debentures be enforceable immediately or at the time the Court directs (even if the debentures are irredeemable or redeemable only on the happening of a contingency)
 - (d) an order appointing a receiver of any property constituting security for the debentures
 - (e) an order restricting advertising by the borrower for deposits or loans
 - (f) an order restricting borrowing by the borrower

Section 260NB

- (g) any other order that the Court considers appropriate to protect the interests of existing or prospective debenture holders.
- (2) In deciding whether to make an order under subsection (1), the Court must have regard to:
 - (a) the ability of the borrower and each guarantor to repay the amount deposited or lent as and when it becomes due; and
 - (b) any contravention of section 260MA by the borrower; and
 - (c) the interests of the borrower's members and creditors; and
 - (d) the interests of the members of each of the guarantors.

Note: The Court may order a meeting of debenture holders to be held (see section 260KC).

Part 2L.9—Location of other debenture provisions

260P Signpost to other debenture provisions

There are other rules relating to debentures in paragraph 124(1)(b) and section 563AAA.

5 Chapter 6

Repeal the Chapter, substitute:

Chapter 6—Takeovers

602 Purposes of Chapter

The purposes of this Chapter are to ensure that:

- (a) the acquisition of control over:
 - (i) the voting shares in a listed company, or an unlisted company with more than 50 members; or
 - (ii) the voting shares in a listed body; or
 - (iii) the voting interests in a listed managed investment scheme;takes place in an efficient, competitive and informed market; and
- (b) the holders of the shares or interests, and the directors of the company or body or the responsible entity for the scheme:
 - (i) know the identity of any person who proposes to acquire a substantial interest in the company, body or scheme; and
 - (ii) have a reasonable time to consider the proposal; and
 - (iii) are given enough information to enable them to assess the merits of the proposal; and
- (c) as far as practicable, the holders of the relevant class of voting shares or interests all have a reasonable and equal

opportunity to participate in any benefits accruing to the holders through any proposal under which a person would acquire a substantial interest in the company, body or scheme; and

- (d) an appropriate procedure is followed as a preliminary to compulsory acquisition of voting shares or interests or any other kind of securities under Part 6A.1.

Note 1: To achieve the objectives referred to in paragraphs (a), (b) and (c), the prohibition in section 606 and the exceptions to it refer to interests in “voting shares”. To achieve the objective in paragraph (d), the provisions that deal with the takeover procedure refer more broadly to interests in “securities”.

Note 2: Subsection 92(3) defines *securities* for the purposes of this Chapter.

603 Chapter extends to some listed bodies that are not companies

This Chapter applies to the acquisition of relevant interests in the securities of listed bodies that are not companies but are incorporated or formed in this jurisdiction in the same way as it applies to the acquisition of relevant interests in the securities of companies.

Note: Section 9 defines *company*, *jurisdiction* and *listed*.

604 Chapter extends to listed managed investment schemes

- (1) This Chapter applies to the acquisition of relevant interests in the interests in a listed managed investment scheme registered in this jurisdiction as if:
- (a) the scheme were a listed company; and
 - (b) interests in the scheme were shares in the company; and
 - (c) voting interests in the scheme were voting shares in the company; and
 - (d) a meeting of the members of the scheme were a general meeting of the company; and
 - (e) the obligations and powers that are imposed or conferred on the company were imposed or conferred on the responsible entity; and

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- (f) the directors of the responsible entity were the directors of the company; and
- (g) the appointment of a responsible entity for the scheme were the election of a director of the company; and
- (h) the scheme's constitution were the company's constitution.

Note 1: Paragraph (g): See subsection 610(2).

Note 2: Section 9 defines *voting interest* in a managed investment scheme.

- (2) The regulations may modify the operation of this Chapter as it applies in relation to the acquisition of interests in listed managed investment schemes.

605 Classes of securities

- (1) Takeover bids are made for securities within a particular class. Similarly, compulsory acquisition and buy-out rights operate on securities within a particular class.
- (2) For the purposes of this Chapter and Chapters 6A and 6C, securities are not to be taken to be different classes merely because:
 - (a) some of the securities are fully-paid and others are partly-paid; or
 - (b) different amounts are paid up or remain unpaid on the securities.

Part 6.1—Prohibited acquisitions of relevant interests in voting shares

606 Prohibition on certain acquisitions of relevant interests in voting shares

Acquisition of relevant interests in voting shares through transaction entered into by or on behalf of person acquiring relevant interest

- (1) A person must not acquire a relevant interest in issued voting shares in a company if:
- (a) the company is:
 - (i) a listed company; or
 - (ii) an unlisted company with more than 50 members; and
 - (b) the person acquiring the interest does so through a transaction in relation to securities entered into by or on behalf of the person; and
 - (c) because of the transaction, that person's or someone else's voting power in the company increases:
 - (i) from 20% or below to more than 20%; or
 - (ii) from a starting point that is above 20% and below 90%.

However, the person may acquire the relevant interest under one of the exceptions set out in section 611 without contravening this subsection.

Note 1: Section 9 defines *company* as meaning a company incorporated, or taken to have been incorporated, in this jurisdiction.

Note 2: Section 607 deals with the effect of a contravention of this section on transactions. Sections 608 and 609 deal with the meaning of *relevant interest*. Section 610 deals with the calculation of a person's voting power in a company.

Note 3: If the acquisition of relevant interests in an unlisted company with 50 or fewer members leads to the acquisition of a relevant interest in another company that is an unlisted company with more than 50

Section 606

members, or a listed company, the acquisition is caught by this section because of its effect on that other company.

Acquisition of legal or equitable interest giving rise to relevant interest for someone else

- (2) A person must not acquire a legal or equitable interest in securities of a body corporate if, because of the acquisition:
- (a) another person acquires a relevant interest in issued voting shares in a company that is:
 - (i) a listed company; or
 - (ii) an unlisted company with more than 50 members; and
 - (b) someone's voting power in the company increases:
 - (i) from 20% or below to more than 20%; or
 - (ii) from a starting point that is above 20% and below 90%.

However, if the acquisition of the relevant interest is covered by one of the exceptions set out in section 611, the person may acquire the legal or equitable interest without contravening this subsection.

50 member threshold

- (3) In determining whether the company has more than 50 members for the purposes of subsection (1) or (2), count joint holders of a particular parcel of shares as 1 person.

Offers and invitations

- (4) A person must not:
- (a) make an offer, or cause an offer to be made on their behalf, if the person would contravene subsection (1) or (2) if the offer were accepted; or
 - (b) issue an invitation, or cause an invitation to be issued on their behalf, if the person would contravene subsection (1) or (2) if:
 - (i) an offer were made in response to the invitation; and
 - (ii) the offer were accepted.

Defences

- (5) It is a defence to the prosecution of a person for contravening subsection (1), (2) or (4) if the person proves that they contravened the subsection:
- (a) because of inadvertence or mistake; or
 - (b) because the person was not aware of a relevant fact or occurrence.

In determining whether the defence is available, disregard the person's ignorance of, or a mistake on the person's part concerning, a matter of law.

Extended meaning of acquiring relevant interests—conversions and increases in voting rights

- (6) A person is taken for the purposes of subsection (1) or (2) to acquire a relevant interest in voting shares in a company if:
- (a) securities in which the person already had a relevant interest become voting shares in the company; or
 - (b) there is an increase in the number of votes that may be cast on a poll attached to voting shares that the person already had a relevant interest in.

The acquisition occurs when the securities become voting shares or the number of votes increases.

Note: Some examples of cases to which this subsection applies are:

- A person exercises a right to convert a non-voting preference share into an ordinary share that carries votes.
- A person pays up partly-paid shares with limited votes and this leads to an increase in the number of votes attached to the shares.

607 Effect on transactions

A transaction is not invalid merely because it involves a contravention of section 606.

Section 608

608 Relevant interests in securities

Basic rule—relevant interest is holding, or controlling voting or disposal of, securities

- (1) A person has a relevant interest in securities if they:
- (a) are the holder of the securities; or
 - (b) have power to exercise, or control the exercise of, a right to vote attached to the securities; or
 - (c) have power to dispose of, or control the exercise of a power to dispose of, the securities.

It does not matter how remote the relevant interest is or how it arises. If 2 or more people can jointly exercise one of these powers, each of them is taken to have that power.

Extension to control exercisable through a trust, agreement or practice

- (2) In this section, power or control includes:
- (a) power or control that is indirect; and
 - (b) power or control that is, or can be, exercised as a result of, by means of or by the revocation or breach of:
 - (i) a trust; or
 - (ii) an agreement; or
 - (iii) a practice; or
 - (iv) any combination of them;whether or not they are enforceable; and
 - (c) power or control that is, or can be made, subject to restraint or restriction.

It does not matter whether the power or control is express or implied, formal or informal, exercisable alone or jointly with someone else. It does not matter that the power or control cannot be related to a particular security.

Extension to relevant interests held through bodies corporate

- (3) A person has the relevant interests in any securities that any of the following has:
- (a) a body corporate, or managed investment scheme, in which the person's voting power is above 20%
 - (b) a body corporate, or managed investment scheme, that the person controls.
- Paragraph (a) does not apply to a relevant interest that the body corporate or scheme itself has in the securities merely because of the operation of that paragraph in relation to another body corporate or managed investment scheme.
- (4) For the purposes of paragraph (3)(b), a person controls a body corporate if the person has the capacity to determine the outcome of decisions about the body corporate's financial and operating policies.
- (5) In determining whether a person has this capacity:
- (a) the practical influence the person can exert (rather than the rights they can enforce) is the issue to be addressed; and
 - (b) any practice or pattern of behaviour affecting the body corporate's financial or operating policies is to be taken into account (even if it involves a breach of an agreement or a breach of trust).
- (6) The person does not control the body corporate merely because the person and an entity that is not an associate jointly have the capacity to determine the outcome of decisions about the body corporate's financial and operating policies.
- (7) A person is not to be taken to control a body corporate merely because of a capacity they have if they are under a legal obligation to exercise that capacity for the benefit of:
- (a) if the person is an individual—someone else; or
 - (b) if the person is a body corporate—someone other than its members.

Section 609

Extension to control in anticipation of performance of agreements etc.

- (8) If at a particular time all the following conditions are satisfied:
- (a) a person has a relevant interest in issued securities
 - (b) the person (whether before or after acquiring the relevant interest):
 - (i) has entered or enters into an agreement with another person with respect to the securities; or
 - (ii) has given or gives another person an enforceable right, or has been or is given an enforceable right by another person, in relation to the securities (whether the right is enforceable presently or in the future and whether or not on the fulfilment of a condition); or
 - (iii) has granted or grants an option to, or has been or is granted an option by, another person with respect to the securities
 - (c) the other person would have a relevant interest in the securities if the agreement were performed, the right enforced or the option exercised;

the other person is taken to already have a relevant interest in the securities.

Note: Subsections 609(6) and (7) deal with specific situations in which the agreement will not give rise to a relevant interest.

Body corporate may have relevant interest in its own securities

- (9) This section may result in a body corporate having a relevant interest in its own securities.

609 Situations not giving rise to relevant interests

Money lending and financial accommodation

- (1) A person does not have a relevant interest in securities merely because of a mortgage, charge or other security taken for the purpose of a transaction entered into by the person if:

- (a) the mortgage, charge or security is taken or acquired in the ordinary course of the person's business of providing financial services and on ordinary commercial terms; and
- (b) the person whose property is subject to the mortgage, charge or security is not an associate of the person.

Note: Sections 11 to 17 define *associate*.

Nominees and other trustees

- (2) A person who would otherwise have a relevant interest in securities as a bare trustee does not have a relevant interest in the securities if a beneficiary under the trust has a relevant interest in the securities because of a presently enforceable and unconditional right of the kind referred to in subsection 608(8).

Note: This subsection will often apply to a person who holds securities as a nominee.

Holding of securities by securities dealer

- (3) A securities dealer does not have a relevant interest in securities merely because they hold securities on behalf of someone else in the ordinary course of their securities business.

Shares covered by buy-backs

- (4) A person does not have a relevant interest in a company's shares if the relevant interest would arise merely because the company has entered into an agreement to buy back the shares.

Proxies

- (5) A person does not have a relevant interest in securities merely because the person has been appointed to vote as a proxy or representative at a meeting of members, or of a class of members, of the company, body or managed investment scheme if:
 - (a) the appointment is for one meeting only; and
 - (b) neither the person nor any associate gives valuable consideration for the appointment.

Section 609

Exchange traded options and futures contracts

- (6) A person does not have a relevant interest in securities merely because of:
- (a) an exchange traded option over the securities; or
 - (b) a right to acquire the securities given by a futures contract.

This subsection stops applying to the relevant interest when the obligation to make or take delivery of the securities arises.

Note: Without this subsection, subsection 608(8) would create a relevant interest from the option or contract.

Conditional agreements

- (7) A person does not have a relevant interest in securities merely because of an agreement if the agreement:
- (a) is conditional on:
 - (i) a resolution under item 7 in the table in section 611 being passed; or
 - (ii) ASIC exempting the acquisition under the agreement from the provisions of this Chapter under section 655A; and
 - (b) does not confer any control over, or power to substantially influence, the exercise of a voting right attached to the securities; and
 - (c) does not restrict disposal of the securities for more than 3 months from the date when the agreement is entered into.

The person acquires a relevant interest in the securities when the condition referred to in paragraph (a) is satisfied.

Pre-emptive rights

- (8) A member of a company, body or managed investment scheme does not have a relevant interest in securities of the company, body or scheme merely because the company's, body's or scheme's constitution gives members pre-emptive rights on the transfer of the securities if all members have pre-emptive rights on the same terms.

Director of body corporate holding securities

- (9) A person does not have a relevant interest in securities merely because:
- (a) the person is a director of a body corporate; and
 - (b) the body corporate has a relevant interest in those securities.

Prescribed exclusions

- (10) A person does not have a relevant interest in securities in the circumstances specified in the regulations. The regulations may provide that interests in securities are not relevant interests subject to specified conditions.

610 Voting power in a body corporate

Person's voting power in a body corporate

- (1) A person's **voting power** in a body corporate is:

$$\frac{\text{Person's and associates' votes}}{\text{Total votes in body corporate}} \times 100$$

where:

person's and associates' votes is the total number of votes attached to all the voting shares in the body corporate (if any) that the person or an associate has a relevant interest in.

total votes in body corporate is the total number of votes attached to all voting shares in the body corporate.

Note: Even if a person's relevant interest in voting shares is based on control over disposal of the shares (rather than control over voting rights attached to the shares), their voting power in the body corporate is calculated on the basis of the number of votes attached to those shares.

Section 610

Counting votes

- (2) For the purposes of this section, the number of votes attached to a voting share in a body corporate is the maximum number of votes that can be cast in respect of the share on a poll:
- (a) if the election of directors is determined by the casting of votes attached to voting shares—on the election of a director of the body corporate; or
 - (b) if the election of directors is not determined by the casting of votes attached to voting shares—on the adoption of a constitution for the body corporate or the amendment of the body corporate's constitution.

Note: The Corporations and Securities Panel may decide that the setting or varying of voting rights in a way that affects control of a body corporate is unacceptable circumstances under section 657A.

- (3) If:
- (a) a transaction in relation to, or an acquisition of an interest in, securities occurs; and
 - (b) before the transaction or acquisition, a person did not have a relevant interest in particular voting shares but an associate of the person did have a relevant interest in those shares; and
 - (c) because of the transaction or acquisition, the person acquires a relevant interest in those shares;

then, for the purposes of applying section 606 to the transaction or acquisition, the person's voting power is taken to have increased because of the transaction or acquisition from what it would have been before the transaction or acquisition if the votes attached to those shares were disregarded to what it was after the transaction or acquisition (taking the votes attached to those shares into account).

- (4) Disregard the operation of section 613 in working out a person's voting power in a body corporate.

Part 6.2—Exceptions to the prohibition

611 Exceptions to the prohibition

The following table sets out:

- (a) acquisitions of relevant interests in a company's voting shares that are exempt from the prohibition in subsection 606(1); and
- (b) acquisitions of relevant interests in a company's voting shares resulting from acquisitions of legal or equitable interests in securities of a body corporate that are exempt from the prohibition in subsection 606(2).

Note: Some of the items in the table cover only activities in relation to the company itself (items 7, 8, 12 and 13) while the other items cover acquisitions in that company that may occur through activities in relation to other companies.

Acquisitions that are exempt	[operative]
Takeover bids	
<i>Acceptance of takeover offer</i>	
1	An acquisition that results from the acceptance of an offer under a takeover bid. See also section 612.
<i>On-market purchase during bid period</i>	
2	An acquisition in relation to bid class securities that results from an on-market transaction if: <ul style="list-style-type: none"> (a) the acquisition is by or on behalf of the bidder under a takeover bid; and (b) the acquisition occurs during the bid period; and (c) the bid is for all the voting shares in the bid class; and

Section 611

Acquisitions that are exempt

[operative]

(d) the bid is:

(i) unconditional; or

(ii) conditional only on the happening of an event referred to in subsection 652C(1) or (2).

See also sections 612 and 613.

On-market purchase of convertible securities during bid period

3 An acquisition of bid class securities that results directly from the exercise of rights attached to convertible securities if:

(a) the acquisition is by or on behalf of the bidder under a takeover bid; and

(b) the bidder acquired a relevant interest in the convertible securities through an on-market transaction during the bid period; and

(c) the bid is for all the voting shares in the bid class; and

(d) the bid is:

(i) unconditional; or

(ii) conditional only on the happening of an event referred to in subsection 652C(1) or (2).

See sections 612 and 613.

Acceptance of scrip offered as takeover consideration

4 An acquisition that results from the acceptance of:

(a) an offer under a takeover bid if the voting shares are included in the consideration for offers under the bid; or

(b) an offer that results in an acquisition to which item 5 applies.

See also section 612.

Nature of acquirer

6 An acquisition that results from the exercise by a person of a power, or appointment as a receiver, or receiver and manager, under a mortgage, charge or other security if:

(a) the person's ordinary business includes providing financial services; and

(b) the person took or acquired the security in the ordinary course of their business of providing financial services and on ordinary commercial terms.

Acquisitions that are exempt

[operative]

Approval by resolution of target

- 7 An acquisition approved previously by a resolution passed at a general meeting of the company in which the acquisition is made, if:
- (a) no votes are cast in favour of the resolution by:
 - (i) the person proposing to make the acquisition and their associates; or
 - (ii) the persons (if any) from whom the acquisition is to be made and their associates; and
 - (b) the members of the company were given all information known to the person proposing to make the acquisition or their associates, or known to the company, that was material to the decision on how to vote on the resolution, including:
 - (i) the identity of the person proposing to make the acquisition and their associates; and
 - (ii) the maximum extent of the increase in that person's voting power in the company that would result from the acquisition; and
 - (iii) the voting power that person would have as a result of the acquisition; and
 - (iv) the maximum extent of the increase in the voting power of each of that person's associates that would result from the acquisition; and
 - (v) the voting power that each of that person's associates would have as a result of the acquisition.

Target newly formed

- 8 An acquisition that results from an issue of securities of the company in which the acquisition is made if the company has not started to carry on any business and has not borrowed any money.

Section 611

Acquisitions that are exempt

[operative]

Manner of acquisition

3% creep in 6 months

- 9 An acquisition by a person if:
- (a) throughout the 6 months before the acquisition that person, or any other person, has had voting power in the company of at least 19%; and
 - (b) as a result of the acquisition, none of the persons referred to in paragraph (a) would have voting power in the company more than 3 percentage points higher than they had 6 months before the acquisition.
-

Rights issues

- 10 An acquisition that results from an issue of securities that satisfies all of the following conditions:
- (a) a company offers to issue securities in a particular class
 - (b) offers are made to every person who holds securities in that class to issue them with the percentage of the securities to be issued that is the same as the percentage of the securities in that class that they hold before the issue
 - (c) all of those persons have a reasonable opportunity to accept the offers made to them
 - (d) agreements to issue are not entered into until a specified time for acceptances of offers has closed
 - (e) the terms of all the offers are the same.
- This extends to an acquisition by a person as underwriter to the issue or sub-underwriter.
- See section 615.
-

Section 611

Acquisitions that are exempt

[operative]

Dividend reinvestment etc.

- 11 An acquisition that results from an issue of:
- (a) shares in a company to existing holders of shares in the company under a dividend reinvestment plan or bonus share plan; or
 - (b) interests in a managed investment scheme to existing holders of interests in the scheme under a distribution reinvestment plan or switching facility;
- if the plan or facility is available to all members.
- Disregard any unavailability to foreign holders in determining whether the plan or facility is available to all members.

Initial public offering (IPO) fundraising

- 12 An acquisition that results from an issue under a disclosure document of securities in the company in which the acquisition is made if:
- (a) the issue is to a promoter; and
 - (b) the disclosure document is the first issued by the company; and
 - (c) the disclosure document disclosed the effect that the acquisition would have on the promoter's voting power in the company.

Underwriting of fundraising

- 13 An acquisition that results from an issue under a disclosure document of securities in the company in which the acquisition is made if:
- (a) the issue is to a person as underwriter to the issue or sub-underwriter; and
 - (b) the disclosure document disclosed the effect that the acquisition would have on the person's voting power in the company.

Acquisition through listed company

- 14 An acquisition that results from another acquisition of relevant interests in voting shares in a body corporate included in the official list of:
- (a) a stock exchange; or
 - (b) a foreign body conducting a stock market that is a body approved in writing by ASIC for the purposes of this item.

Wills etc.

- 15 An acquisition through a will or through operation of law.

Section 612

Acquisitions that are exempt		[operative]
	<i>Forfeiture of shares</i>	
16	An acquisition that results from an auction of forfeited shares conducted on-market.	
	Compromise, arrangement, liquidation or buy-back	
	<i>Part 5.1 compromise or arrangement</i>	
17	An acquisition that results from a compromise or arrangement approved by the Court under Part 5.1.	
	<i>Section 507 arrangement</i>	
18	An acquisition that results from an arrangement entered into by a liquidator under section 507.	
	<i>Buy-back</i>	
19	An acquisition that results from a buy-back authorised by section 257A.	
	Regulations	
20	An acquisition made in a manner or in circumstances prescribed by the regulations. The circumstances may include acquisitions of relevant interests in voting shares in a specified body or class of bodies.	

612 Effect of non-compliance with takeover rules for exceptions 1 to 4

The exceptions in items 1 to 4 of the table in section 611 do not apply to a takeover bid if the bid is carried out in contravention of:

- (a) section 618 (full or proportionate bid); or
- (b) section 619 (offers to be the same); or
- (c) subsection 621(3) (minimum price); or
- (d) subsection 624(1) (minimum offer period); or
- (e) sections 625 to 630 (conditional offers); or
- (f) items 2, 3 and 6 in the table in subsection 633(1) (procedural steps for off-market bid); or
- (g) items 3, 4 and 6 in the table in section 635 (procedural steps for market bid).

613 Bidder not to exercise voting rights if failure to send bids for off-market acquisition—exception 2 or 3

If the exception in item 2 or 3 of the table in section 611 applies to an acquisition on-market during a takeover bid, the bidder is not entitled to exercise the voting rights attached to the shares if:

- (a) the bid is an off-market bid; and
- (b) the bidder fails to send offers under the bid within 28 days after giving the bidder's statement to the target.

615 Treatment of foreign holders under equal access issue—exception 10

The exception in item 10 of the table in section 611 applies even though the conditions set out in the item are not satisfied in respect of foreign holders of the company's securities if, under the terms of the offers:

- (a) the company must appoint a nominee for foreign holders of the company's securities who is approved by ASIC; and
- (b) the company must transfer to the nominee:
 - (i) the securities that would otherwise be issued to the foreign holders who accept the offer; or
 - (ii) the right to acquire those securities; and
- (c) the nominee must sell the securities, or those rights, and distribute to each of those foreign holders their proportion of the proceeds of the sale net of expenses.

Part 6.3—The different types of takeover bid

616 Off-market bids and market bids

- (1) There are 2 kinds of takeover bid:
- (a) an off-market bid (for quoted or unquoted securities); or
 - (b) a market bid (only available for quoted securities).

Note: Although the prohibition in section 606 is against acquiring relevant interests in voting shares, a takeover bid may be made for any securities (for example, as a preliminary to compulsorily acquiring securities in that class under Part 6A.1).

- (2) The following table shows where to find the provisions dealing with the main features of the offers that may be made under off-market bids and market bids and the procedures to be followed:

Takeover bids		[signpost table]	
	Feature	Off-market bid	Market bid
1	people to whom offers made	617(1)-(2)	617(3)
2	securities covered	618(1)-(2)	618(3)
3	consideration offered for the securities	621(1), (3)-(5) and 651A	621(2), (3)-(5)
4	escalation agreements and collateral benefits not allowed	622 and 623	622 and 623
5	offer period	624(1)-(2) and 650C	624(1)-(2) and 649C
6	conditional offers	625(2)-(3) and 626-630	625(1)
7	procedure to be followed in making bid	632 and 633	634 and 635
8	acceptances	650E and 653A-653B	-

Part 6.4—Formulating the takeover offer

Division 1—General

617 Securities covered by the bid

Off-market bid

- (1) An off-market bid must relate to securities:
 - (a) in a class of securities (the ***bid class***); and
 - (b) that exist or will exist as at the date set by the bidder under subsection 633(2).

Note: Subsection 92(3) defines ***securities*** for the purposes of this Chapter.

- (2) If other securities exist or will exist at that date that:
 - (a) will convert, or may be converted, to securities in the bid class; or
 - (b) confer rights to be issued securities in the bid class;the bid may extend to securities that come to be in the bid class during the offer period due to a conversion or exercise of the rights.

Note: The bidder's statement must say if the bid is extended in this way (see paragraph 636(1)(j)).

Market bid

- (3) A market bid must relate to securities:
 - (a) in a class of quoted securities (the ***bid class***); and
 - (b) that exist or will exist at any time during the offer period.

Section 618

618 Offers must be for all or a proportion of securities in the bid class

Off-market bid

- (1) An offer for securities under an off-market bid must be an offer to buy:

- (a) all the securities in the bid class; or
- (b) a specified proportion of the securities in the bid class.

The proportion specified under paragraph (b) must be the same for all holders of securities in the bid class.

Off-market bid—non-marketable parcels

- (2) If accepting an offer under an off-market bid for quoted securities would leave a person with a parcel of the securities that is less than a marketable parcel (within the meaning of the rules of the relevant securities exchange), the offer extends to that parcel.

Market bid

- (3) An offer for securities under a market bid must be an offer to buy all the securities in the bid class.

619 General terms of the offer

Off-market bid

- (1) All the offers made under an off-market bid must be the same.

Note: The offers may include alternative forms of consideration (see section 621).

- (2) In applying subsection (1), disregard the following:

- (a) any differences in the offers attributable to the fact that the number of securities that may be acquired under each offer is limited by the number of securities held by the holder
 - (b) any differences in the offers attributable to the fact that the offers relate to securities having different accrued dividend or distribution entitlements
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Section 620

- (c) any differences in the offers attributable to the fact that the offers relate to securities on which different amounts are paid up or remain unpaid
- (d) any differences in the offers attributable to the fact that the bidder may issue or transfer only whole numbers of securities as consideration for the acquisition
- (e) any additional cash amount offered to holders instead of the fraction of a security that they would otherwise be offered.

Foreign holders

- (3) If the consideration for the bid includes an offer of securities, the securities do not need to be offered to foreign holders of the target's securities if under the terms of the bid:
 - (a) the bidder must appoint a nominee for foreign holders of the target's securities who is approved by ASIC; and
 - (b) the bidder must transfer to the nominee:
 - (i) the securities that would otherwise be transferred to the foreign holders who accept the bid for that consideration; or
 - (ii) the right to acquire those securities; and
 - (c) the nominee must sell the securities, or those rights, and distribute to each of those foreign holders their proportion of the proceeds of the sale net of expenses.

620 Off-market bid (offer formalities)

- (1) Each offer under an off-market bid must:
 - (a) be in writing; and
 - (b) have the same date; and
 - (c) provide that, unless withdrawn, it will remain open until the end of the offer period (see section 624); and
 - (d) state how, and when, the bidder is to satisfy their obligations.
- (2) Each offer must provide that the bidder is to pay or provide the consideration for the offer:

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- (a) if the bidder is given the necessary transfer documents with the acceptance—by the end of whichever of the following periods ends earlier:
 - (i) 1 month after the offer is accepted or, if the offer is subject to a defeating condition, within 1 month after the takeover contract becomes unconditional
 - (ii) 21 days after the end of the offer period; or
- (b) if the bidder is given the necessary transfer documents after the acceptance and before the end of the bid period—within 1 month after the bidder is given the necessary transfer documents; or
- (c) if the bidder is given the necessary transfer documents after the acceptance and after the end of the bid period—within 21 days after the bidder is given the necessary transfer documents.

Note: Subsection 630(1) requires an offer that is subject to a defeating condition to specify a date for declaring whether the condition has been fulfilled or not.

- (3) The offer may provide that the bidder may avoid the takeover contract if the bidder is not given the necessary transfer documents within 1 month after the end of the offer period.

Division 2—Consideration for the offer

621 Consideration offered

Off-market bid—general

- (1) A bidder making an off-market bid for securities may offer any form of consideration for the securities, including:
 - (a) a cash sum; or
 - (b) securities (including shares, debentures, interests in a managed investment scheme or options); or
 - (c) a combination of a cash sum and securities.

Note: Sections 650B and 651A deal with variations of the consideration offered under the bid.

Market bid—cash only

- (2) As the offers under a market bid for securities are made through the stock market of a securities exchange, the bidder must offer to acquire the securities for a cash sum only for each security.

Note: Section 649B deals with variations of the consideration offered under the bid.

All bids—minimum consideration if bidder purchased securities in the 4 months before the bid

- (3) The consideration offered for securities in the bid class under a takeover bid must equal or exceed the maximum consideration that the bidder or an associate provided, or agreed to provide, for a security in the bid class under any purchase or agreement during the 4 months before the date of the bid.
- (4) For the purposes of subsection (3), the consideration offered or provided for a security is:
- (a) if the consideration offered or provided is a cash sum only—the amount of that cash sum; or
 - (b) if the consideration offered or provided does not include a cash sum—the value of that consideration; or
 - (c) if the consideration offered or provided is a cash sum and other consideration—the sum of the amount of the cash sum and the value of the other consideration.

The value of consideration that is not a cash sum is to be ascertained as at the time the relevant offer, purchase or agreement is made.

- (5) If:
- (a) a person agrees to buy a security in a company; and
 - (b) the agreement provides that the price payable for the security is a price specified in the agreement but may be varied in accordance with the terms of the agreement;
- any variation in price under the agreement is to be disregarded in working out, for the purposes of subsection (3), the price agreed to be paid for the security under the agreement.

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622 Escalation agreements

Benefits linked to bids and proposed bids not allowed

- (1) A person who makes or proposes to make a takeover bid for securities, or their associate, contravenes this section if:
- (a) a person acquires a relevant interest in securities in the bid class within the 6 months before the bid is made or proposed; and
 - (b) at any time whatever, the bidder, proposed bidder or associate gives or agrees to give a benefit to, or receives or agrees to receive a benefit from:
 - (i) a person who had a relevant interest in any of the paragraph (a) securities immediately before the acquisition; or
 - (ii) an associate of a person who had a relevant interest in any of those securities at that time; and
 - (c) the benefit is attributable to the acquisition or matters that include the acquisition; and
 - (d) the amount or value of the benefit is, or is to be, determined by reference to or to matters that include either of the following:
 - (i) the amount or value of the consideration for the securities under the bid or proposed bid
 - (ii) the amount or value of the consideration for which the bidder or proposed bidder acquires, offers or proposes to offer to acquire, securities in the bid class during the offer period (whether or not under the bid) or under Chapter 6A.

Contravening agreements void

- (2) An agreement is void to the extent that it purports to provide for:
- (a) a person to give a benefit to a person; or
 - (b) a person to receive a benefit from a person;
- in contravention of subsection (1).

623 Collateral benefits not allowed

- (1) A bidder, or an associate, must not, during the offer period for a takeover bid, give, offer to give or agree to give a benefit to a person if:
 - (a) the benefit is likely to induce the person or an associate to:
 - (i) accept an offer under the bid; or
 - (ii) dispose of securities in the bid class; and
 - (b) the benefit is not offered to all holders of securities in the bid class under the bid.
- (2) For the purpose of this section, a person does not receive a benefit that is not offered under a takeover bid merely because the person sells bid class securities on-market and the takeover bid is an off-market bid or a conditional bid.
- (3) This section does not prohibit:
 - (a) the variation of a takeover offer as provided by sections 649A to 650D; or
 - (b) an acquisition of securities through an on-market transaction; or
 - (c) simultaneous takeover bids for different classes of securities in the target.

Division 3—The offer period

624 Offer period

Offer period set in offer

- (1) The offers under a takeover bid must remain open for the period stated in the offer. The period must:
 - (a) start on the date the first offer under the bid is made; and
 - (b) last for at least 1 month, and not more than 12 months.However, the offer may be withdrawn during that period under section 652B.

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Note: Sections 649C (market bids) and 650C (off-market bids) deal with variation of the offer period.

Automatic extension of offer period if bidder reaches 50% or consideration increased in last week

- (2) If, within the last 7 days of the offer period:
- (a) for an off-market bid—the offers under the bid are varied to improve the consideration offered; or
 - (b) in any case—the bidder’s voting power in the target increases to more than 50%;

the offer period is extended so that it ends 14 days after the event referred to in paragraph (a) or (b). The bidder must give the target and everyone who has not accepted an offer under the bid written notice that the extension has occurred within 3 days after that event.

Note: The consideration for a market bid cannot be increased in the last 5 trading days of the offer period (see section 649B).

Division 4—Conditional offers

625 Conditional offers—general

Market bids

- (1) Offers under a market bid must be unconditional.

Off-market bids may generally be conditional

- (2) Offers under an off-market bid may be subject to conditions that are not prohibited by sections 626 to 629.

- (3) If:

- (a) the consideration offered is or includes securities; and
- (b) the offer or the bidder’s statement states or implies that the securities are to be quoted on a stock market of a securities exchange (whether in Australia or elsewhere);

the following rules apply:

- (c) the offer is subject to a condition that:
 - (i) an application for admission to quotation will be made within 7 days after the start of the bid period; and
 - (ii) permission for admission to quotation will be granted no later than 7 days after the end of the bid period
- (d) the offer may not be freed from this condition.

Note: Section 1325A provides that a Court may make a remedial order if the condition is not satisfied.

626 Maximum acceptance conditions in off-market bids

Maximum acceptance conditions not allowed

- (1) Offers under an off-market bid must not be subject to a maximum acceptance condition. A maximum acceptance condition is one that provides that the offers will terminate, or the maximum consideration offered under the bid will be reduced, if one or more of the following occur:
 - (a) the number of securities for which the bidder receives acceptances reaches or exceeds a particular number; or
 - (b) the bidder's voting power in the company reaches or exceeds a particular percentage; or
 - (c) the percentage of securities the bidder has relevant interests in reaches or exceeds a particular percentage of securities in that class.
- (2) For the purposes of subsection (1), it does not matter:
 - (a) how the condition is expressed; or
 - (b) how a particular number or percentage was, or is to be, determined; or
 - (c) whether or not a particular number or percentage is specified in the condition and, if it is so specified, how it is expressed.
- (3) For the purposes of subsection (1), an offer under an off-market bid terminates if:
 - (a) the offer lapses, is withdrawn or otherwise ceases to have effect; or

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- (b) a binding takeover contract will not result from an acceptance of the offer; or
- (c) an obligation of the bidder will not arise under the takeover contract; or
- (d) the takeover contract is rescinded; or
- (e) the bidder is entitled to rescind the takeover contract; or
- (f) the bidder is relieved of an obligation arising under the takeover contract.

627 Discriminatory conditions not allowed for off-market bids

Offers under an off-market bid must not be subject to a condition that allows the bidder to acquire, or may result in the bidder acquiring, securities from some but not all of the people who accept the offers. It does not matter how the condition is expressed.

628 Conditions requiring payments to officers of target not allowed in off-market bids

An offer to a person under an off-market bid must not be made subject to a condition that requires the person to approve or consent to a payment or other benefit to an officer of the target or a related body corporate:

- (a) as compensation for loss of; or
- (b) as consideration in connection with retirement from; any office or employment in connection with the management of the target or of a related body corporate. A purported requirement of this kind is void.

629 Conditions turning on bidder's or associate's opinion not allowed in off-market bids

- (1) Offers under an off-market bid must not be subject to a defeating condition if the fulfilment of the condition depends on:
 - (a) the bidder's, or an associate's, opinion, belief or other state of mind; or

- (b) the happening of an event that is within the sole control of, or is a direct result of action by, any of the following:
 - (i) the bidder (acting alone or together with an associate or associates)
 - (ii) an associate (acting alone or together with the bidder or another associate or associates of the bidder).

A purported condition of this kind is void.

Note: Section 9 defines *defeating condition*. Sections 630, 650F and 650G deal with defeating conditions.

- (2) For the purposes of paragraph (1)(b):

- (a) the target; and
- (b) a subsidiary of the target;

are taken not to be associates of the bidder if they would otherwise be an associate merely because they are a related body corporate.

Note: Paragraph 11(b) makes related bodies corporate associates of each other.

630 Defeating conditions

Off-market bid may include defeating conditions

- (1) Offers under an off-market bid may be made subject to a defeating condition only if the offers specify a date (not more than 14 days and not less than 7 days before the end of the offer period) for giving a notice on the status of the condition.
- (2) If the offer period is extended by a period:
 - (a) the date for giving the notice is taken to be postponed for the same period; and
 - (b) as soon as practicable after the extension, the bidder must give a notice that states:
 - (i) the new date for giving the notice of the status of the condition; and
 - (ii) whether the offers have been freed from the condition and whether, so far as the bidder knows, the condition

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has been fulfilled on the date the notice under this subsection is given.

Bidder to give notice of status of defeating condition near end of offer period

- (3) On the date determined under subsection (1) or (2), the bidder must give a notice that states:
- (a) whether the offers are free of the condition; and
 - (b) whether, so far as the bidder knows, the condition was fulfilled on the date the notice is given; and
 - (c) the bidder's voting power in the target.

The bidder must comply with this subsection whether or not the bidder has given a notice under subsection (4) or 650F(1).

Note: The offers may be freed of the condition by a declaration by the bidder under subsection 650F(1).

Bidder to give notice if defeating condition fulfilled

- (4) If the condition is fulfilled (so that the offers become free of the condition) during the bid period but before the date for publishing the notice on the status of the condition, the bidder must publish as soon as practicable a notice that states that the condition has been fulfilled.
- (5) A notice under this section is given by:
- (a) giving the notice to the target; and
 - (b) for quoted bid class securities—giving the notice to the relevant securities exchange; and
 - (c) for unquoted bid class securities—lodging the notice with ASIC.

Part 6.5—The takeover procedure

Division 1—The overall procedure

631 Proposing or announcing a bid

Bid must proceed within 2 months after proposal

- (1) If a person publicly proposes to make a takeover bid for securities in a company, either alone or with other persons, the person contravenes this subsection unless they make offers for the securities under a takeover bid within 2 months after the proposal. The terms and conditions of the bid must be the same as or not substantially less favourable than those in the public proposal.

Note: The Court has power under section 1325B to order a person to proceed with a bid.

Proposals if takeover bid not intended

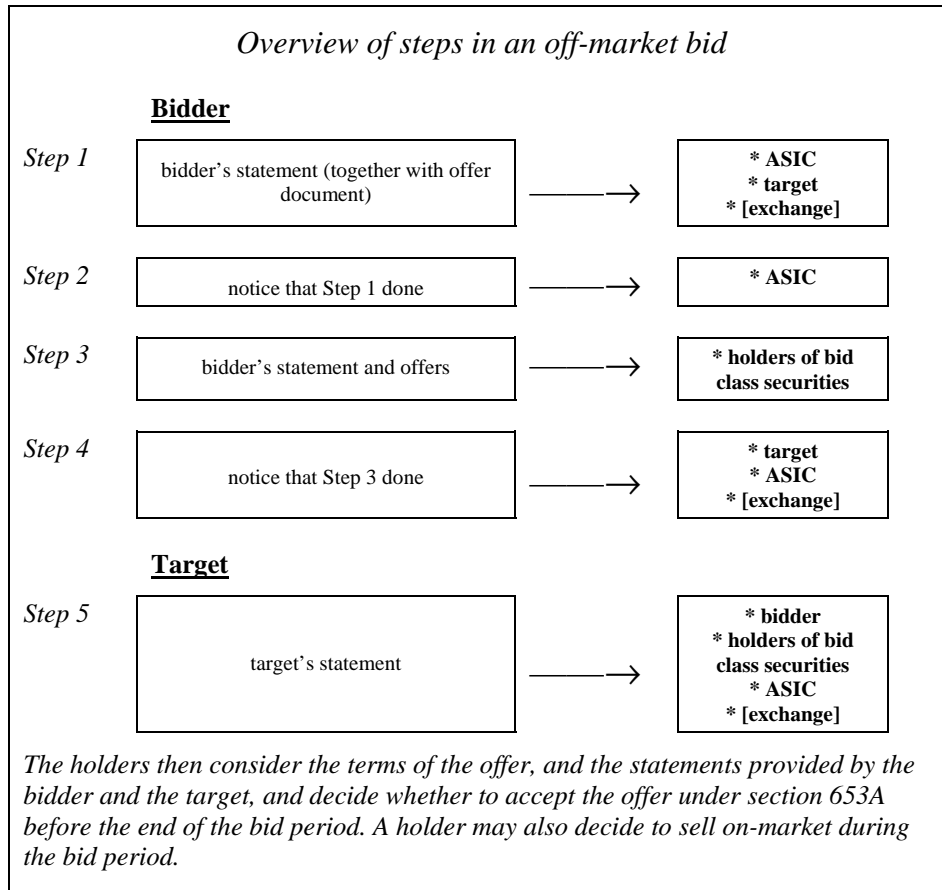
- (2) A person must not publicly propose, either alone or with other persons, to make a takeover bid if:
 - (a) the person knows the proposed bid will not be made, or is reckless as to whether the proposed bid is made; or
 - (b) the person is reckless as to whether they will be able to perform their obligations relating to the takeover bid if a substantial proportion of the offers under the bid are accepted.
- (3) Section 1314 (continuing offences) and subsection 1324(2) (injunctions) do not apply in relation to a failure to make a takeover bid in accordance with a public proposal under subsection (1).

Note: For liability and defences for contraventions of this section, see sections 670E and 670F.

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632 Overview of steps in an off-market bid

The following diagram gives an overview of the steps involved in an off-market bid.



633 Detailed steps in an off-market bid

- (1) The following table provides for the steps that a bidder must take to make an effective off-market bid and the steps that a target must take when an off-market bid is made.

Steps in off-market bid		[operative table]
Steps	Timing and relevant provisions	
1	The bidder must prepare: <ul style="list-style-type: none"> • a bidder's statement; and • if the bidder's statement does not set out all the terms of the offer—an offer document that sets out the other terms of the offer. 	<i>See section 636 for content of statement.</i>
2	The bidder must lodge a copy of the bidder's statement and offer document with ASIC.	
3	The bidder must send a copy of the bidder's statement and offer document to the target.	To be done on the day the bidder's statement is lodged or within 21 days afterwards
4	The bidder must lodge with ASIC a notice stating that the bidder's statement and offer document have been sent to the target.	To be done on the day the bidder's statement is sent to the target
5	The bidder must send a copy of the bidder's statement and offer document to each securities exchange that has a stock market on which the target's securities are quoted.	To be done on the day the bidder's statement is sent to the target <i>See also subsection (5).</i>

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Steps in off-market bid		[operative table]
Steps	Timing and relevant provisions	
<p>6</p> <p>The bidder must send the bidder's statement and offers to each person (other than the bidder) who holds:</p> <ul style="list-style-type: none"> • securities in the bid class; or • if the bid extends to securities that come to be in the bid class due to the conversion of or exercise of rights attached to other securities (see subsection 617(2))—the other securities; <p>as at the date set by the bidder under subsection (2).</p> <p>The offers must be made on the terms set out in the bidder's statement and the offer document lodged with ASIC under item 2.</p>	<p>To be done:</p> <ul style="list-style-type: none"> • within a 3 day period; and • within 14-28 days after the bidder's statement is sent to the target <p>The directors of the target may agree that the offers and accompanying documents be sent earlier.</p> <p><i>See also subsections (5) and (6). Item 2 of the table in section 611 covers offers made by the bidder on-market during the period between the lodgment of the bidder's statement and the making of the offers under the bid. Sections 648B and 648C provide for the manner in which documents may be sent to holders.</i></p>	
<p>7</p> <p>The bidder must send a notice to the target that the bidder's statement and offers have been sent as required by item 6.</p> <p>The notice must state the date of the offers.</p>	<p>To be done on the day all offers have been sent as required by item 6</p> <p><i>See subsection 620(1) on date of offer.</i></p>	
<p>8</p> <p>The bidder must send a notice that offers have been sent as required by item 6 to each securities exchange that has a stock market on which the target's securities are quoted.</p>	<p>To be done on the day all offers have been sent as required by item 6</p>	
<p>9</p> <p>The bidder must lodge with ASIC a notice that offers have been sent as required by item 6.</p>	<p>To be done on the day all offers have been sent as required by item 6</p>	
<p>10</p> <p>The target must prepare a target's statement.</p>	<p><i>See section 638 for content of statement.</i></p>	

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Steps in off-market bid		[operative table]
Steps	Timing and relevant provisions	
11	The target must send the target's statement (and any accompanying report) to the bidder.	To be done no later than 15 days after the target receives a notice that all offers have been sent as required by item 6
12	The target must send a copy of the target's statement (and any accompanying report) to each person who holds: <ul style="list-style-type: none"> • securities in the bid class; or • if the bid extends to securities that come to be in the bid class due to the conversion of or exercise of rights attached to other securities (see subsection 617(2))—the other securities; as at the date set by the bidder under subsection (2).	To be done: <ul style="list-style-type: none"> • no earlier than the day on which the target sends the target's statement to the bidder; and • no later than 15 days after the target receives a notice that all offers have been sent as required by item 6 <i>Sections 648B and 648C provide for the manner in which documents may be sent to holders.</i>
13	The target must lodge a copy of the target's statement (and any accompanying report) with ASIC.	To be done on the day the target's statement is sent to the bidder <i>See also subsection (7).</i>
14	The target must send a copy of the target's statement (and any accompanying report) to each securities exchange that has a stock market on which the target's securities are quoted.	To be done on the day the target's statement is sent to the bidder <i>See also subsection (7).</i>

Date for determining holders of securities

- (2) The people to whom information is to be sent under items 6 and 12 of the table in subsection (1) are the holders of the securities referred to in those items as at the date set by the bidder in:
- (a) the bidder's statement; or
 - (b) a separate written notice given to the target on or before the date set by the bidder.

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Note: The bidder may set the date when the bidder asks the target for a list of members under section 641.

- (3) The date set by the bidder must be:
 - (a) on or after the date on which the bidder gives the bidder's statement, or the separate written notice, to the target; and
 - (b) on or before the date on which the first offers under the bid are made to holders of the securities.
- (4) As soon as practicable after setting the day, the bidder must give notice of it by:
 - (a) if the securities in the bid class are quoted—giving the notice to the relevant securities exchange; or
 - (b) otherwise—lodging the notice with ASIC.

Information to be sent with bidder's statement

- (5) A bidder's statement required to be sent under item 5 or 6 in the table in subsection (1) must be sent together with any other information sent by the bidder to the target with the statement.

Information to be sent with notices that offers have been sent

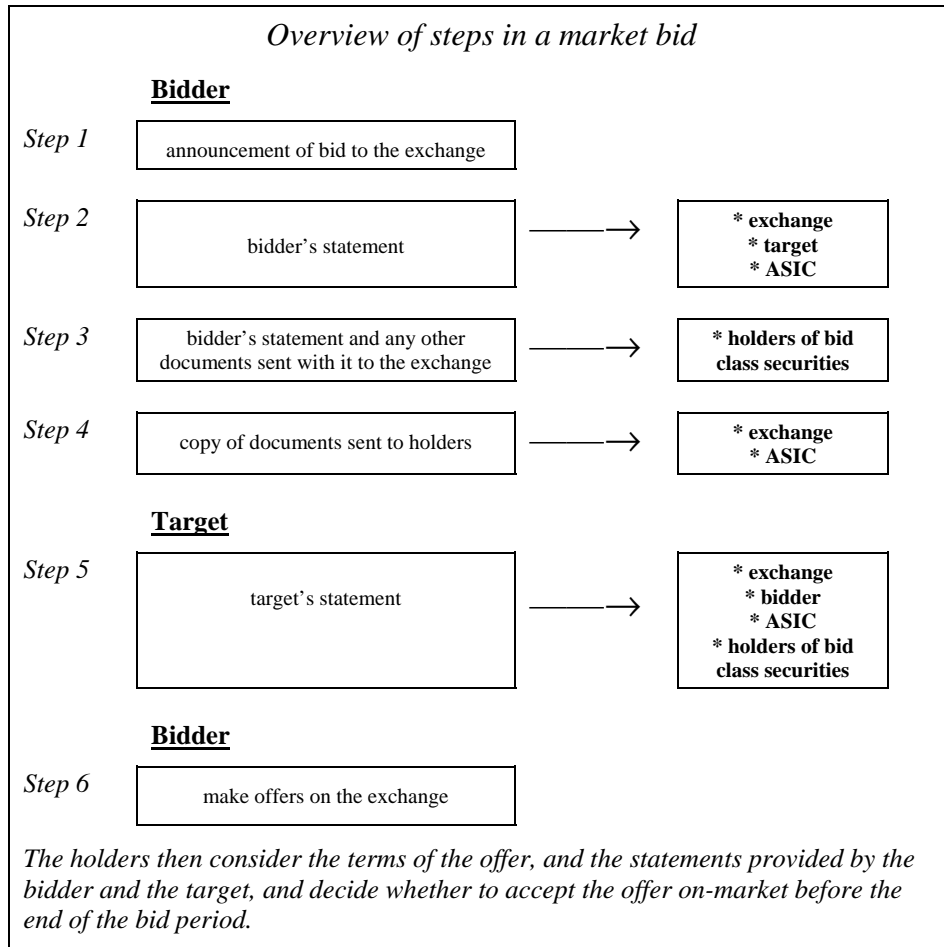
- (6) If the bidder sends the people to whom the bidder's statement is sent under item 6 of the table in subsection (1) additional information together with the bidder's statement and the offer, the bidder must also include that information in any notice under item 7, 8 or 9 of the table.

Information to be sent with target's statement

- (7) If the target sends the people to whom the target's statement is sent under item 12 of the table in subsection (1) additional information together with the target's statement, the target must also include that information in any notice under item 13 or 14 of the table.

634 Overview of steps in a market bid

The following diagram gives an overview of the steps involved in a market bid.



635 Detailed steps in a market bid

The following table provides for the steps that a bidder must take to make an effective market bid and the steps that a target must take when a market bid is made.

Steps in market bid

[operative]

Schedule 1 Main amendments of the Corporations Law

Chapter 6 Takeovers

Part 6.5 The takeover procedure

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	Steps	Timing and relevant provisions
1	The bidder must prepare a bidder's statement.	<i>See section 636 for content of statement</i>
2	The bidder must have the bid announced to the relevant securities exchange.	
3	The bidder must send a copy of the bidder's statement to the relevant securities exchange.	To be done on the day the announcement is made
4	The bidder must send to the target: <ul style="list-style-type: none">• a copy of the bidder's statement; and• a copy of any other document that was sent with the bidder's statement to the relevant securities exchange.	To be done on the day the announcement is made
5	The bidder must lodge with ASIC: <ul style="list-style-type: none">• a copy of the bidder's statement; and• a copy of any other document that was sent with the bidder's statement to the relevant securities exchange.	To be done on the day the announcement is made
6	The bidder must send to each holder of bid class securities (other than the bidder): <ul style="list-style-type: none">• a copy of the bidder's statement; and• a copy of any other document that was sent with the bidder's statement to the relevant securities exchange.	Within 14 days after the announcement is made <i>Sections 648B and 648C provide for the manner in which documents may be sent to holders.</i>
7	The bidder must lodge with ASIC a copy of every other document sent to holders of bid class securities with the bidder's statement.	To be done no later than the day copies of the bidder's statement have been sent to all holders of bid class securities

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Steps in market bid		[operative]
Steps	Timing and relevant provisions	
8	The bidder must give the relevant securities exchange a copy of every other document sent to holders of bid class securities with the bidder's statement.	To be done no later than the day copies of the bidder's statement have been sent to all holders of bid class securities
9	The target must prepare a target's statement.	<i>See section 638 for content of statement</i>
10	The target must send a copy of the target's statement to the relevant securities exchange.	Within 14 days after the announcement is made
11	The target must send to the bidder: <ul style="list-style-type: none"> • a copy of the target's statement; and • a copy of any other document that was sent with the target's statement to the relevant securities exchange. 	To be done on the day the target sends a copy of the target's statement to the securities exchange
12	The target must lodge with ASIC: <ul style="list-style-type: none"> • a copy of the target's statement; and • a copy of any other document that was sent with the target's statement to the relevant securities exchange. 	To be done on the day the target sends a copy of the target's statement to the securities exchange
13	The target must send each holder of bid class securities: <ul style="list-style-type: none"> • a copy of the target's statement; and • a copy of any other document that was sent with the target's statement to the relevant securities exchange. 	Within 14 days after the announcement is made <i>Sections 648B and 648C provide for the manner in which documents may be sent to holders.</i>

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Steps in market bid		[operative]
Steps	Timing and relevant provisions	
14	The bidder must make offers for the securities under the bid through the relevant securities exchange.	To be done on the next day after the end of the 14 day period referred to in item 13. If the bidder does not make the offers at that time, the bidder contravenes this section. <i>Item 2 of the table in section 611 covers offers made by the bidder on market during the 14 day period between the announcement and the making of the offers under the bid</i>

Division 2—The bidder’s statement

636 Bidder’s statement content

- (1) A bidder’s statement must include the following:
 - (a) the identity of the bidder
 - (b) the date of the statement
 - (c) if the target is a company or body—details of the bidder’s intentions regarding:
 - (i) the continuation of the business of the target; and
 - (ii) any major changes to be made to the business of the target, including any redeployment of the fixed assets of the target; and
 - (iii) the future employment of the present employees of the target
 - (d) if the target is a managed investment scheme—details of the bidder’s intentions regarding:
 - (i) the continued operation of the scheme; and
 - (ii) any major changes to be made to the operation of the scheme, including any redeployment of scheme property; and

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- (iii) any plans to remove the current responsible entity and appoint a new responsible entity
- (e) for an off-market bid—a statement that the bidder’s statement has been lodged with ASIC but that ASIC takes no responsibility for the content of the statement
- (f) in relation to the cash consideration (if any) offered under the bid—details of:
 - (i) the cash amounts (if any) held by the bidder for payment of the consideration; and
 - (ii) the identity of any other person who is to provide, directly or indirectly, cash consideration from that person’s own funds; and
 - (iii) any arrangements under which cash will be provided by a person referred to in subparagraph (ii)
- (g) if any securities are offered as consideration under the bid and the bidder is:
 - (i) the body that has issued or will issue the securities; or
 - (ii) a person who controls that body;all material that would be required for a prospectus for an offer of those securities by the bidder under section 710 to 713
- (h) if the bidder or an associate provided, or agreed to provide, consideration for a security in the bid class under a purchase or agreement during the 4 months before the date of the bid—the following information about the consideration:
 - (i) to the extent to which the consideration is a cash sum—the amount per security of the cash sum
 - (ii) to the extent to which the consideration is quoted securities—the market price per security of those securities
 - (iii) to the extent to which the consideration is neither a cash sum nor a quoted security—the value per security of that consideration
- (i) if, during the period of 4 months before the date of the bid, the bidder or an associate gave, or offered to give or agreed

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to give a benefit to another person and the benefit was likely to induce the other person, or an associate, to:

- (i) accept an offer under the bid; or
 - (ii) dispose of securities in the bid class;
- and the benefit is not offered to all holders of securities in the bid class under the bid—details of the benefit
- (j) if the bid is to extend to securities that come to be in the bid class during the offer period due to the conversion of or exercise of rights attached to other securities (see subsection 617(2))—a statement to that effect
 - (k) for an off-market bid—the following details in relation to each class of securities in the target:
 - (i) the total number of securities in the class
 - (ii) the number of securities in the class that the bidder had a relevant interest in immediately before the first offer is sent (expressed as a number of securities or as a percentage of the total number of securities in the class)
 - (l) for an off-market bid—the bidder's voting power in the company
 - (m) any other information that:
 - (i) is material to the making of the decision by a holder of bid class securities whether to accept an offer under the bid; and
 - (ii) is known to the bidder; and
 - (iii) does not relate to the value of securities offered as consideration under the bid.

The information that the bidder must disclose under subparagraph (k)(i) and paragraph (l) must be only as up-to-date as it is reasonable to expect in the circumstances. The bidder does not have to disclose information under paragraph (m) if it would be unreasonable to require the bidder to do so because the information had previously been disclosed to the holders of bid class securities.

Note: Paragraph (b)—See subsection 637(2) for the date of the statement.

Section 637*Expert's report on non-cash consideration provided for bid class securities in last 4 months*

- (2) If the bidder's statement includes details of the value per share of consideration under subparagraph (1)(h)(iii), the statement must include, or be accompanied by, a report by an expert that states whether, in the expert's opinion, the value stated is fair and reasonable and gives the reasons for forming that opinion.

Note: Subsections 648A(2) and (3) provide for the independence of the expert and disclosure of any association between the bidder and the expert or the target and the expert. A contravention of one of those subsections results in the bidder's statement not complying with this subsection.

Consent of person to whom statement attributed

- (3) The bidder's statement may only include, or be accompanied by, a statement by a person, or a statement said in the bidder's statement to be based on a statement by a person, if:
- (a) the person has consented to the statement being included in the bidder's statement, or accompanying it, in the form and context in which it is included; and
 - (b) the bidder's statement states that the person has given this consent; and
 - (c) the person has not withdrawn this consent before the bidder's statement is lodged with ASIC.
- (4) The bidder must keep the consent.

637 Bidder's statement formalities*Approval*

- (1) The copy of the bidder's statement that is lodged with ASIC must be approved by:
- (a) for a bidder that is a body corporate:
 - (i) if the consideration offered under the bid is a cash sum only—a resolution passed by the directors of the bidder; or

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- (ii) otherwise—a unanimous resolution passed by all the directors of the bidder; or
 - (b) for a bidder who is an individual—the bidder.
- (2) The bidder's statement must be dated. The date is the date on which it is lodged with ASIC.

Division 3—The target's response

638 Target's statement content

General requirement

- (1) A target's statement must include all the information that holders of bid class securities and their professional advisers would reasonably require to make an informed assessment whether to accept the offer under the bid. The statement must contain this information:
- (a) only to the extent to which it is reasonable for investors and their professional advisers to expect to find the information in the statement; and
 - (b) only if the information is known to any of the directors of the target.
- (2) In deciding what information should be included under subsection (1), have regard to:
- (a) the nature of the bid class securities; and
 - (b) if the bid class securities are interests in a managed investment scheme—the nature of the scheme; and
 - (c) the matters that the holders of bid class securities may reasonably be expected to know; and
 - (d) the fact that certain matters may reasonably be expected to be known to their professional advisers; and
 - (e) the time available to the target to prepare the statement.

Director's recommendations

- (3) A target's statement must contain a statement by each director of the target:
 - (a) recommending that offers under the bid be accepted or not accepted, and giving reasons for the recommendation; or
 - (b) giving reasons why a recommendation is not made.
- (4) The statement under subsection (3) must be made by:
 - (a) if the target is under administration—the liquidator or administrator; or
 - (b) if the target has executed a deed of company arrangement that has not yet terminated—the deed's administrator.

Consent of person to whom statement attributed

- (5) The target's statement may only include, or be accompanied by, a statement by a person, or a statement said in the target's statement to be based on a statement by a person, if:
 - (a) the person has consented to the statement being included in the target's statement, or accompanying it, in the form and context in which it is included; and
 - (b) the target's statement states that the person has given this consent; and
 - (c) the person has not withdrawn this consent before the target's statement is lodged with ASIC.
- (6) The target must keep the consent.

639 Target's statement formalities

Approval

- (1) The copy of the target's statement that is lodged with ASIC must be approved by:
 - (a) if paragraphs (b) and (c) do not apply—a resolution passed by the directors of the target; or

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- (b) for a target that is under administration—the liquidator or administrator; or
- (c) for a target that has executed a deed of company arrangement that has not yet terminated—the deed’s administrator.

Date

- (2) The target’s statement must be dated. The date is the date on which it is lodged with ASIC.

640 Expert’s report to accompany target’s statement if bidder connected with target

- (1) If:
 - (a) the bidder’s voting power in the target is 30% or more; or
 - (b) for a bidder who is, or includes, an individual—the bidder is a director of the target; or
 - (c) for a bidder who is, or includes, a body corporate—a director of the bidder is a director of the target;

a target’s statement given in accordance with section 638 must include, or be accompanied by, a report by an expert that states whether, in the expert’s opinion, the takeover offers are fair and reasonable and gives the reasons for forming that opinion.

Note: Subsections 648A(2) and (3) provide for the independence of the expert and disclosure of any association between the target and the expert or the bidder and the expert. A contravention of one of those subsections results in the target’s statement not complying with this subsection.

- (2) In determining whether the bidder’s voting power in the target is 30% or more, calculate the bidder’s voting power at the time the bidder’s statement is sent to the target.

641 Target must inform bidder about securities holdings

Requirement to inform bidder and information that must be given

- (1) If the bidder has given a bidder's statement to the target and requested the target to give the bidder information in accordance with this section, the target must inform the bidder of:
 - (a) the name and address of each person who, at a time specified by the bidder under subsection (2), held securities:
 - (i) in the bid class; or
 - (ii) convertible into securities in the bid class; and
 - (b) the type, and number of each type, of those securities held by the person at the specified time.

However, the target does not need to give information to the bidder about a person or their holding of securities unless the target knows the person's name.

Time at which target's information must be correct

- (2) The bidder's request must specify a day as at which the information must be correct. The day must be one that occurs after the day on which the bidder makes the request unless the target agrees to it being the day on which the bidder makes the request.

Form in which target must provide information

- (3) The target must give the information to the bidder:
 - (a) in the form that the bidder requests; or
 - (b) if the target is unable to comply with the request—in writing.
- (4) If the target must give the information to the bidder in electronic form, the information must be readable but the information need not be formatted for the bidder's preferred operating system.

Fee for provision of information

- (5) The target may require the bidder to pay an amount, not exceeding the prescribed amount, for the provision of the information to the bidder.

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Time by which target must provide information

- (6) The target must give the information to the bidder no later than the latest of the following times:
 - (a) the end of the second day after the day on which the bidder requested the information; or
 - (b) the end of the next day after the day as at which the information must be correct; or
 - (c) the time when the target receives the amount mentioned in subsection (5).

642 Expenses of directors of target companies

- (1) If the target is a company or body, the directors of the target have a right to recover from the target any expenses they reasonably incur in the interest of members of the target and in relation to the takeover bid. The directors have this right regardless of anything contained in the target's constitution (if any).
- (2) If the target is a managed investment scheme, the responsible entity for the scheme has a right to recover from scheme property any expenses it reasonably incurs in the interest of members of the scheme and in relation to the takeover bid. The responsible entity has this right regardless of anything contained in the scheme's constitution.

Division 4—Updating and correcting the bidder's statement and target's statement

643 Supplementary bidder's statement

If a bidder becomes aware of:

- (a) a misleading or deceptive statement in the bidder's statement; or
- (b) an omission from the bidder's statement of information required by section 636; or
- (c) a new circumstance that:

- (i) has arisen since the bidder's statement was lodged; and
- (ii) would have been required by section 636 to be included in the bidder's statement if it had arisen before the bidder's statement was lodged;

that is material from the point of view of a holder of bid class securities, the bidder must prepare a supplementary bidder's statement that remedies this defect.

Note 1: The bidder must then send and lodge the supplementary bidder's statement in accordance with section 647.

Note 2: Section 670A makes it an offence to give a bidder's statement after the bidder has become aware of a misleading or deceptive statement, omission or new circumstance that is material from the point of view of a holder of securities to whom the statement is given (unless the deficiency is corrected).

Note 3: The power to issue a supplementary bidder's statement is not limited to the situations dealt with in this section.

Note 4: This section applies to a bidder's statement that has already been previously supplemented.

644 Supplementary target's statement

If a target becomes aware of:

- (a) a misleading or deceptive statement in the target's statement;
or
- (b) an omission from the target's statement of information required by section 638; or
- (c) a new circumstance that:
 - (i) has arisen since the target's statement was lodged; and
 - (ii) would have been required by section 638 to be included in the target's statement if it had arisen before the target's statement was lodged;

that is material from the point of view of a holder of bid class securities, the target must prepare a supplementary target's statement that remedies this defect.

Note 1: The target must then send and lodge the supplementary target's statement in accordance with section 647.

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- Note 2: Section 670A makes it an offence to give a target's statement after the target has become aware of a misleading or deceptive statement, omission or new circumstance that is material from the point of view of a holder of securities to whom the statement is given (unless the deficiency is corrected).
- Note 3: The power to issue a supplementary target's statement is not limited to the situations dealt with in this section.
- Note 4: This section applies to a target's statement that has already been previously supplemented.

645 Form of supplementary statement

Identity as a supplementary statement

- (1) At the beginning of a supplementary bidder's or target's statement there must be:
- a statement that it is a supplementary statement; and
 - an identification of the statement it supplements; and
 - an identification of any previous supplementary statements lodged with ASIC in relation to the bid; and
 - a statement that it is to be read together with the statement it supplements and any previous supplementary statements.

Approval of supplementary bidder's statement

- (2) The copy of the supplementary bidder's statement that is lodged with ASIC must be approved by:
- for a bidder that is a body corporate:
 - if the consideration offered under the bid is a cash sum only—a resolution passed by the directors of the bidder; or
 - otherwise—a unanimous resolution passed by all the directors of the bidder; or
 - for a bidder who is an individual—the bidder.

Approval of supplementary target's statement

- (3) The copy of a supplementary target's statement that is lodged with ASIC must be approved by:
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- (a) if paragraphs (b) and (c) do not apply—a resolution passed by the directors of the target; or
- (b) for a target that is under administration—the liquidator or administrator; or
- (c) for a target that has executed a deed of company arrangement that has not yet terminated—the deed's administrator.

Date

- (4) A supplementary statement must be dated. The date is the date on which it is lodged with ASIC.

646 Consequences of lodging a supplementary statement

If a supplementary statement is lodged with ASIC, for the purposes of the application of this Chapter and Chapter 6B to events that occur after the lodgment, the bidder's or target's statement is taken to be the original statement together with the supplementary statement.

647 To whom supplementary statement must be sent

- (1) A supplementary bidder's statement must be sent to the target as soon as practicable.
- (2) A supplementary target's statement must be sent to the bidder as soon as practicable.
- (3) Either kind of supplementary statement must as soon as practicable be:
 - (a) lodged with ASIC; and
 - (b) if the bid class securities are quoted and the target is listed—sent to each relevant securities exchange that has a stock market on which the target's securities are quoted; and
 - (c) if the bid is an off-market bid and the bid class securities are not quoted—sent to all holders of bid class securities who have not accepted an offer under the bid.

Section 648A

Note: Sections 648B and 648C provide for the manner in which documents may be sent to holders.

Division 5—General rules on takeover procedure

Subdivision A—Experts' reports

648A Experts' reports

- (1) If the bidder or target obtains 2 or more reports each of which could be used for the purposes of subparagraph 636(1)(h)(iii) or subsection 640(1), the bidder's or target's statement must be accompanied by a copy of each report.
- (2) The expert must be someone other than an associate of the bidder or target.
- (3) The report must set out details of:
 - (a) any relationship between the expert and:
 - (i) the bidder or an associate of the bidder; or
 - (ii) the target or an associate of the target;including any circumstances in which the expert gives them advice, or acts on their behalf, in the proper performance of the functions attaching to the expert's professional capacity or business relationship with them; and
 - (b) any financial or other interest of the expert that could reasonably be regarded as being capable of affecting the expert's ability to give an unbiased opinion in relation to the matter being reported on; and
 - (c) any fee, payment or other benefit (whether direct or indirect) that the expert has received or will or may receive in connection with making the report.

Note: If the statement includes, or is accompanied by, the report, it must state that the expert has consented to this being done (see subsections 636(3) and 638(5)).

Subdivision B—Sending documents to holders of securities

648B Address at which bidder may send documents to holders of securities

The bidder may send a document to a holder of securities for the purposes of this Chapter at the address shown for the holder in the information given to the bidder by the target under section 641. This section does not limit the address to which the document may be sent to the holder.

Note: Section 109X makes general provision for service of documents.

648C Manner of sending documents to holders of securities

If a document must be sent to the holder of securities under this Chapter, the document must be sent:

- (a) if the document is to be sent to the holder in an external territory or outside Australia—by pre-paid airmail post or by courier; or
- (b) if the document is to be sent to the holder in Australia—by pre-paid ordinary post or by courier.

Subdivision C—Effect of proportional takeover approval provisions

648D Constitution may contain proportional takeover approval provisions

- (1) Subject to this Subdivision, the constitution of a company may contain provisions to the effect that, if offers are made under a proportional takeover bid for securities of the company:
 - (a) the registration of a transfer giving effect to a takeover contract for the bid is prohibited unless and until a resolution (an *approving resolution*) to approve the bid is passed in accordance with the provisions; and
 - (b) a person (other than the bidder or an associate of the bidder) who, as at the end of the day on which the first offer under
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Section 648D

the bid was made, held bid class securities is entitled to vote on an approving resolution; and

- (c) an approving resolution is to be voted on in whichever of the following ways is specified in the provisions:
- (i) at a meeting, convened and conducted by the company, of the persons entitled to vote on the resolution;
 - (ii) by means of a postal ballot conducted by the company in accordance with a procedure set out in the provisions;
- or, if the provisions so provide, in whichever of those ways is determined by the directors of the company; and
- (d) an approving resolution that has been voted on is taken to have been passed if the proportion that the number of votes in favour of the resolution bears to the total number of votes on the resolution is greater than the proportion specified in the provisions, and otherwise is taken to have been rejected.

The proportion specified under paragraph (d) must not exceed 50%.

Note: Section 9 defines *proportional takeover bid*. See paragraph 618(1)(b).

- (2) To be effective, an approving resolution in relation to a proportional takeover bid must be passed before the **approving resolution deadline**. The deadline is the 14th day before the last day of the bid period.

Note: In certain circumstances, an approving resolution will be taken to have been passed (see subsection 648E(3)).

- (3) Except to the extent to which a company's constitution provides otherwise:
- (a) the provisions that apply to a general meeting of the company apply, with such modifications as the circumstances require, to a meeting convened under the company's proportional takeover approval provisions; and
 - (b) those provisions apply as if the meeting convened under the proportional takeover provisions were a general meeting of the company.

Section 648E

The provisions referred to in paragraph (a) may be the provisions of a law, provisions of the company's constitution or any other provisions.

648E Resolution to be put if proportional bid made

- (1) If:
- (a) a company's constitution contains proportional takeover approval provisions; and
 - (b) offers are made under a proportional bid for a class of the company's securities;
- then:
- (c) the company's directors must ensure that a resolution to approve the bid is voted on in accordance with those provisions before the approving resolution deadline; and
 - (d) if the directors fail to ensure that a resolution of that kind is voted on before the deadline, each of the directors contravenes this subsection.

Note: Subsection 648D(2) sets the approving resolution deadline.

- (2) If a resolution to approve the bid is voted on in accordance with the proportional takeover approval provisions before the approving resolution deadline, the company must, on or before the deadline, give:
- (a) the bidder; and
 - (b) if the company is listed—each relevant securities exchange; a written notice stating that a resolution to approve the bid has been voted on and whether the resolution was passed or rejected.
- (3) If no resolution to approve the bid has been voted on in accordance with the proportional takeover approval provisions as at the end of the day before the approving resolution deadline, a resolution to approve the bid is taken, for the purposes of those provisions, to have been passed in accordance with those provisions.

Section 648F

648F Effect of rejection of approval resolution

If a resolution to approve the bid is voted on, in accordance with the proportional takeover approval provisions, before the approving resolution deadline and is rejected:

- (a) despite section 652A:
 - (i) all offers under the bid that have not been accepted as at the end of deadline; and
 - (ii) all offers under the bid that have been accepted, and from whose acceptance binding contracts have not resulted, as at the end of the deadline; are taken to be withdrawn at the end of the deadline; and
- (b) as soon as practicable after the deadline, the bidder must return to each person who has accepted an offer referred to in subparagraph (a)(ii) any documents that the person sent the bidder with the acceptance of the offer; and
- (c) the bidder:
 - (i) is entitled to rescind; and
 - (ii) must rescind as soon as practicable after the deadline; each binding takeover contract for the bid; and
- (d) a person who has accepted an offer made under the bid is entitled to rescind their takeover contract.

648G Including proportional takeover provisions in constitution

- (1) A company's proportional takeover approval provisions, unless sooner omitted from the constitution of the company, cease to apply at the end of:
 - (a) unless paragraph (b) or (c) applies—3 years;
 - (b) if the constitution provides that the provisions apply for a specified period of less than 3 years and the provisions have not been renewed—the specified period; or
 - (c) if the provisions have been renewed on at least one occasion and the resolution, or the most recent resolution, renewing the provisions states that the provisions are renewed for a specified period of less than 3 years—the specified period.

- (2) The period referred to in subsection (1) starts:
 - (a) if the provisions were contained in the company's constitution when it was incorporated or formed and have not been renewed—at that time; or
 - (b) if the provisions were inserted in the company's constitution and have not been renewed—when the provisions were inserted; or
 - (c) if the provisions have been renewed on at least one occasion—when the provisions were renewed, or last renewed.
- (3) When the provisions cease to apply, the company's constitution is, by force of this subsection, altered by omitting the provisions.
- (4) A company may renew its proportional takeover approval provisions. The provisions are to be renewed in the same manner as that in which the company could alter its constitution to insert proportional takeover approval provisions.
- (5) With every notice that:
 - (a) specifies the intention to propose:
 - (i) a resolution to alter a company's constitution by inserting proportional takeover approval provisions; or
 - (ii) a resolution to renew a company's proportional takeover approval provisions; and
 - (b) is sent to a person who is entitled to vote on the proposed resolution;the company must send a statement that:
 - (c) explains the effect of the proposed provisions, or of the provisions proposed to be renewed; and
 - (d) explains the reasons for proposing the resolution and sets out the factual matters and principles underlying those reasons; and
 - (e) states whether, as at the day on which the statement is prepared, any of the directors of the company is aware of a proposal by a person to acquire, or to increase the extent of, a substantial interest in the company and, if so, explains the

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- extent (if any) to which the proposal has influenced the decision to propose the resolution; and
- (f) for a proposed resolution to renew proportional takeover approval provisions—reviews both the advantages, and disadvantages, of the provisions proposed to be renewed for:
 - (i) the directors; and
 - (ii) the company's members;during the period during which the provisions have been in effect; and
 - (g) discusses both the potential advantages, and the potential disadvantages, of the proposed provisions, or of the provisions proposed to be renewed, for:
 - (i) the directors; and
 - (ii) the company's members.
- (6) If, on a particular day, a company purports to:
- (a) alter its constitution by inserting proportional takeover approval provisions; or
 - (b) renew its proportional takeover approval provisions;
- then:
- (c) holders who together hold not less than 10% (by number) of the issued securities in a class of securities in the company to which the provisions apply may, within 21 days after that day, apply to the Court to have the purported alteration or renewal set aside to the extent to which it relates to that class; and
 - (d) unless and until an application made under paragraph (c) is finally determined by the making of an order setting aside the purported alteration or renewal to that extent, the company is taken for all purposes (other than the purposes of an application of that kind):
 - (i) to have validly altered its constitution by inserting the provisions referred to in paragraph (a) applying to that class; or
 - (ii) to have validly renewed the provisions referred to in paragraph (b) applying to that class.

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- (7) An application under paragraph (6)(c) may be made, on behalf of the holders entitled to make the application, by a holder or holders appointed by them in writing.
- (8) On an application under paragraph (6)(c), the Court may make an order setting aside the purported alteration or renewal to the extent to which it applies to that class if it is satisfied that it is appropriate in all the circumstances to do so. Otherwise the Court must dismiss the application.
- (9) Within 14 days after the day on which the Court makes an order of the kind referred to in subsection (8) in relation to a company, the company must lodge a copy of the order with ASIC.

648H Effect of Subdivision

This Subdivision applies notwithstanding anything contained in:

- (a) the business rules or listing rules of a securities exchange; or
- (b) the constitution of a company; or
- (c) any agreement.

Part 6.6—Variation of offers

Division 1—Market bids

649A General

A bidder may only vary the offers under a market bid in accordance with section 649B or 649C.

Note: ASIC may allow other variations under section 655A.

649B Market bids—raising bid price

The bidder may increase the current market bid price. They may not do so, however, during the last 5 trading days of the relevant securities exchange in the offer period.

649C Market bids—extending the offer period

- (1) The bidder may extend the offer period. The extension must be announced to the relevant securities exchange at least 5 trading days of the exchange before the end of the offer period. However, the announcement may be made up to the end of the offer period if during those 5 trading days:
- (a) another person lodges with ASIC a bidder's statement for a takeover bid for securities in the bid class; or
 - (b) another person announces a takeover bid for securities in the bid class; or
 - (c) another person makes offers under a takeover bid for securities in the bid class; or
 - (d) the consideration for offers under another takeover bid for securities in the bid class is improved.

The offer period is extended by having the extension announced to the relevant securities exchange.

Note: Section 624 provides for an automatic extension of the bid period in certain circumstances.

Section 650A

- (2) On the day on which the announcement is made, the bidder must:
- (a) give the target and the relevant securities exchange a notice setting out the terms of the announcement; and
 - (b) lodge a notice setting out the terms of the announcement with ASIC.

Division 2—Off-market bids (express variation by bidder)

650A General

- (1) A bidder may only vary the offers under an off-market bid in accordance with section 650B, 650C or 650D.

Note: ASIC may allow other variations under section 655A.

- (2) If the bidder varies the offer under an off-market bid in accordance with section 650B, 650C or 650D, the bidder must vary all unaccepted offers under the bid in the same way.

Note: Subsections 650B(2) and (3) deal with the effect of a variation on takeover contracts that have already resulted from acceptances of offers under the bid when the variation is made.

650B Off-market bids—consideration offered

Improving the consideration offered

- (1) The bidder may vary the offers made under the bid to improve the consideration offered:
- (a) by increasing a cash sum offered; or
 - (b) by increasing the number of securities offered; or
 - (c) by increasing the rate of interest payable under debentures offered; or
 - (d) by increasing the amount or value of debentures offered; or
 - (e) by increasing the number of unissued securities that may be acquired under options offered; or
 - (f) by offering a cash sum in addition to securities; or

Section 650B

- (g) if the securities being acquired include shares to which rights to accrued dividends are attached—by giving the holders the right to:
 - (i) retain the whole or a part of the dividend; or
 - (ii) be paid an amount equal to the amount of the dividend; in addition to the consideration already offered; or
- (h) offering an additional alternative form of consideration.

Note: If the bidder increases the consideration during the last 7 days of the offer period, subsection 624(2) extends the offer period by a further 14 days.

Effect of increase in consideration on offers already accepted

- (2) Improving the consideration has the effects set out in the following table on the rights of a person who has already accepted an offer when the variation is made.

Effect of improving consideration		[operative]
Improvement	Effect on person who has already accepted bid offer	
1	improvement of the only form of consideration being offered	entitled to the improved consideration
2	2 or more forms of consideration offered and all forms improved by the same factor or percentage	entitled to the improvement in the form of consideration accepted
3	2 or more forms of consideration offered and improvement in the consideration is identical for all forms	entitled to the improvement in the form of consideration accepted
4	addition of a new form of consideration	entitled to make a fresh election as to the form of consideration to be taken
5	any other improvement	entitled to make a fresh election as to the form of consideration to be taken

The person is entitled to receive the improved consideration immediately, or immediately after the exercise of the election.

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Fresh election as to the form of consideration

- (3) If a person who has already accepted an offer has the right to make a fresh election as to the form of consideration to be taken, the bidder must send the person as soon as practicable after the variation a written notice informing them about their right to make the election.

Note 1: Section 651B says how the election is to be exercised.

Note 2: Sections 648B and 648C provide for the manner in which documents may be sent to holders.

650C Off-market bids—extension of offer period

- (1) A bidder making an off-market bid may extend the offer period at any time before the end of the offer period.
- (2) If the bid is subject to a defeating condition, the bidder may extend the offer period after the publication of the notice under subsection 630(3) only if one of the following happens after the publication:
- (a) another person lodges with ASIC a bidder's statement for a takeover bid for securities in the bid class
 - (b) another person announces a takeover bid for securities in the bid class
 - (c) another person makes offers under a takeover bid for securities in the bid class
 - (d) the consideration for offers under another takeover bid for securities in the bid class is improved.

Note: Section 624 says how long the total offer period can be.

650D Off-market bids—method of making variation

Variation to be made by notice to the target and holders

- (1) To vary offers under an off-market bid, the bidder must:
- (a) prepare a notice that:
 - (i) sets out the terms of the proposed variation; and

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- (ii) if the bid is subject to a defeating condition and the proposed variation postpones for more than 1 month the time by which the bidder must satisfy their obligations under the bid—informs people about the right to withdraw acceptances under section 650E; and
 - (b) lodge the notice with ASIC; and
 - (c) after the notice is lodged, give the notice to:
 - (i) the target; and
 - (ii) everyone to whom offers were made under the bid.
- Note: Sections 648B and 648C provide for the manner in which documents may be sent to holders.
- (2) A person must be sent a copy of the notice under subparagraph (1)(c)(ii) even if they have already accepted the offer. However, they need not be sent a copy if:
 - (a) the variation merely extends the offer period; and
 - (b) the bid is not subject to a defeating condition at the time the notice is given to the target.
 - (3) A notice under subsection (1) must be signed by:
 - (a) if the bidder is, or includes, an individual—the individual; and
 - (b) if the bidder is, or includes, a body corporate with 2 or more directors—not fewer than 2 of the directors who are authorised to sign the notice by a resolution passed at a directors' meeting; and
 - (c) if the bidder is, or includes, a body corporate that has only one director—that director.
 - (4) A copy of a notice given to a person under subparagraph (1)(c)(ii) must include a statement that:
 - (a) a copy of the notice was lodged with ASIC on a specified date; and
 - (b) ASIC takes no responsibility for the contents of the notice.

650E Right to withdraw acceptance

- (1) A person who accepts an offer made under an off-market bid may withdraw their acceptance of the offer if:
 - (a) the bid is subject to a defeating condition; and
 - (b) the bidder varies the offers under the bid in a way that postpones for more than 1 month the time when the bidder has to meet their obligations under the bid; and
 - (c) the person is entitled to be given a notice of the variation under subsection 650D(1).
 - (2) To withdraw their acceptance, the person must:
 - (a) give the bidder notice within 1 month beginning on the day after the day on which the copy of the notice of the variation was received; and
 - (b) return any consideration received by the person for accepting the offer.
 - (3) A notice under paragraph (2)(a):
 - (a) if it relates to securities that are entered on an SCH subregister—must be in an electronic form approved by the SCH business rules for the purposes of this Part; or
 - (b) if it relates to shares that are not entered on an SCH subregister—must be in writing.
 - (4) To return consideration that includes securities, the person must:
 - (a) if the securities are entered on an SCH subregister—take the action that the SCH business rules require in relation to the return of the securities; or
 - (b) otherwise—give the bidder any transfer documents needed to effect the return of securities.
 - (5) If the person withdraws their acceptance, the bidder must:
 - (a) take any action that the SCH business rules require in relation to any of the securities to which the acceptance relates that are entered on an SCH subregister; and
 - (b) return any documents that the person sent the bidder with the acceptance of the offer;
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Section 650F

within 14 days after:

- (c) if the person does the things referred to in subsection (2) on the same day—that day; or
 - (d) if the person does those things on different days—the last of those days.
- (6) If under this section a person returns to a company any certificates (together with any necessary transfer documents) in respect of the securities issued by the company, the company must cancel those securities as soon as possible. Any reduction in share capital is authorised by this subsection.

650F Freeing off-market bids from defeating conditions

- (1) If the offers under an off-market bid are subject to a defeating condition, the bidder may free the offers, and the takeover contracts, from the condition only by giving the target a notice declaring the offers to be free from the condition in accordance with this section:
- (a) if the condition is that the bidder may withdraw unaccepted offers if an event or circumstance referred to in subsection 652C(1) or (2) occurs in relation to the target—not later than 3 business days after the end of the offer period; or
 - (b) in any other case—not less than 7 days before the end of the offer period.
- (2) The notice must:
- (a) state that the offers are free from the condition; and
 - (b) specify the bidder's voting power in the company.
- (3) The notice must be:
- (a) if the securities in the bid class are quoted—given to the relevant securities exchange; and
 - (b) if those securities are not quoted—lodged with ASIC.

650G Contracts and acceptances void if defeating condition not fulfilled

All takeover contracts, and all acceptances that have not resulted in binding takeover contracts, for an off-market bid are void if:

- (a) offers made under the bid have at any time been subject to a defeating condition; and
- (b) the bidder has not declared the offers to be free from the condition within the period before the date applicable under subsection 630(1) or (2); and
- (c) the condition has not been fulfilled at the end of the offer period.

A transfer of securities based on an acceptance or contract that is void under this section must not be registered.

Division 3—Off-market bids (automatic variations)

651A Off-market bid—effect on bid consideration of purchases made outside bid

Effect of purchases outside bid on offers made under the bid

- (1) The offers made under an off-market bid, and the takeover contracts, are varied under this section if:
 - (a) the bidder purchases securities in the bid class outside the bid during the bid period; and
 - (b) the consideration for that purchase consists solely of a cash sum; and
 - (c) either:
 - (i) the consideration, or 1 of the forms of consideration, payable under the bid consists of a cash sum only and the consideration referred to in paragraph (b) is higher than the cash sum payable for the securities under the bid; or
 - (ii) a cash sum only is not the consideration, or 1 of the forms of consideration, payable under the bid.

Section 651A

Note 1: Section 9 defines *takeover contract*.

Note 2: The effect of section 623 is that the purchase outside the bid has to be made through an on-market transaction (see subsection 623(1) and paragraph 623(3)(b)).

Effect on unaccepted cash offers

- (2) If:
- (a) one of the forms of consideration offered to a person under an off-market bid is a cash sum only; and
 - (b) the person has not accepted the offer before the purchase outside the bid occurs;
- the cash sum is taken to be increased to the highest outside purchase price before the offer is accepted.

Effect on cash offers already accepted

- (3) The consideration payable for each security covered by a takeover contract arising from the acceptance of an offer for a cash sum only is increased to the highest outside purchase price. If the person who accepted the offer has already received the whole or any part of the consideration under the contract, they are entitled to receive the increase in consideration immediately.

Effect on non-cash offers accepted at any time during bid period

- (4) If:
- (a) a person accepts an offer under a bid at any time during the bid period; and
 - (b) the consideration paid or provided, or to be paid or provided, under the takeover contract arising from the acceptance of the offer does not consist of a cash sum only;
- then:
- (c) the person may elect to take as consideration for each security covered by the takeover contract a cash sum equal to the highest outside purchase price instead of the consideration they originally accepted; and

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- (d) the bidder must give the person a written notice of their right to make the election within 14 days after the end of the offer period.

Note: Section 651B says how the election is to be exercised.

651B How to make an election for new forms of consideration

- (1) An election under section 650B or 651A to take a new form of consideration must be made:
 - (a) by written notice to the bidder; and
 - (b) within 1 month after the person receives the notice from the bidder of their right to make the election.
- (2) The person becomes entitled to the new form of consideration if they:
 - (a) make the election; and
 - (b) return to the bidder:
 - (i) any consideration they have already received; and
 - (ii) any necessary transfer documents.

651C Returning securities as part of election

If under section 651B a person returns to a company any certificates (together with any necessary transfer documents) in respect of the securities issued by a company, the company must cancel those securities as soon as possible.

Part 6.7—Withdrawal and suspension of offers

652A Withdrawal of unaccepted offers under takeover bid

Unaccepted offers under a takeover bid may only be withdrawn under section 652B or 652C.

652B Withdrawal of takeover offers with ASIC consent

Unaccepted offers under a takeover bid may be withdrawn with the written consent of ASIC. ASIC may consent subject to conditions.

652C Withdrawal of market bids

Bidder entitled to withdraw if certain events happen during the offer period

- (1) The bidder may withdraw unaccepted offers made under a market bid if 1 of the following happens during the bid period, but only if the bidder's voting power in the target is at or below 50% when the event happens:
 - (a) the target converts all or any of its shares into a larger or smaller number of shares (see section 254H)
 - (b) the target or a subsidiary resolves to reduce its share capital in any way
 - (c) the target or a subsidiary:
 - (i) enters into a buy-back agreement; or
 - (ii) resolves to approve the terms of a buy-back agreement under subsection 257C(1) or 257D(1)
 - (d) the target or a subsidiary issues shares, or grants an option over its shares, or agrees to make such an issue or grant such an option
 - (e) the target or a subsidiary issues, or agrees to issue, convertible notes

- (f) the target or a subsidiary disposes, or agrees to dispose, of the whole, or a substantial part, of its business or property
 - (g) the target or a subsidiary charges, or agrees to charge, the whole, or a substantial part, of its business or property
 - (h) the target or a subsidiary resolves to be wound up.
- (2) The bidder may also withdraw unaccepted offers made under a market bid if 1 of the following happens during the bid period:
- (a) a liquidator or provisional liquidator of the target or of a subsidiary is appointed
 - (b) a court makes an order for the winding up of the target or of a subsidiary
 - (c) an administrator of the target, or of a subsidiary, is appointed under section 436A, 436B or 436C
 - (d) the target or a subsidiary executes a deed of company arrangement
 - (e) a receiver, or a receiver and manager, is appointed in relation to the whole, or a substantial part, of the property of the target or of a subsidiary.
- This is so regardless of the bidder's voting power at the time.
- (3) Notice of the withdrawal must be given to each relevant securities exchange.

Part 6.8—Acceptances

653A Acceptance of offers made under off-market bid

If:

- (a) an offer is made under an off-market bid for quoted securities; and
- (b) the SCH business rules require that an acceptance of the offer, so far as it relates to those securities, must be made in a particular way;

an acceptance of the offer for those securities is effective only if it is made in that way.

653B Acceptances by transferees and nominees of offers made under off-market bid

(1) If an off-market bid is made for securities:

- (a) a person who:
 - (i) is able during the offer period to give good title to a parcel of those securities; and
 - (ii) has not already accepted an offer under the bid for those securities;

may accept as if an offer on terms identical with the other offers made under the bid had been made to that person in relation to those securities; and

- (b) a person who holds 1 or more parcels of those securities as trustee or nominee for, or otherwise on account of, another person may accept as if a separate offer had been made in relation to:
 - (i) each of those parcels; and
 - (ii) any parcel they hold in their own right.

If a person accepts an offer under a proportional takeover bid for securities, no-one else may accept an offer under the bid in respect of those securities.

Section 653B

Note: Section 9 defines *proportional takeover bid*. See paragraph 618(1)(b).

- (2) For the purposes of this section:
- (a) a person is taken to hold securities if the person is, or is entitled to be registered as, the holder of the securities; and
 - (b) a person is taken to hold the securities on trust for, as nominee for or on account of another person if they:
 - (i) are entitled to be registered as the holder of particular securities; and
 - (ii) hold their interest in the securities on trust for, as nominee for or on account of that other person; and
 - (c) in determining under subsection (1) whether a person has accepted an offer for particular securities under a takeover bid, a person who accepts an offer under a proportional takeover bid is taken to have accepted the offer for all the securities in the bid class that they hold at the time they accept the offer.
- (3) If under paragraph (1)(b) a person may accept as if a separate offer is taken to be made to a person for a parcel of securities within a holding, an acceptance of that offer is ineffective unless:
- (a) the person gives the bidder a notice stating that the securities consist of a separate parcel; and
 - (b) the acceptance specifies the number of securities in the parcel.
- (4) A notice under subsection (3) must be made:
- (a) if it relates to securities that are entered on an SCH subregister—in an electronic form approved by the SCH business rules for the purposes of this Part; or
 - (b) if it relates to shares that are not entered on an SCH subregister—in writing.
- (5) A person contravenes this subsection if:
- (a) they purport to accept an offer under this section; and
 - (b) the acceptance is not made in accordance with this section.
- The acceptance is, however, as valid as it would have been if it had been made in accordance with this section.
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Schedule 1 Main amendments of the Corporations Law

Chapter 6 Takeovers

Part 6.8 Acceptances

Section 653B

- (6) A person may, at the one time, accept for 2 or more parcels under this section as if there had been a single offer for a separate parcel consisting of those parcels.

Part 6.9—Other activities during the bid period

654A Bidder not to dispose of securities during the bid period

- (1) The bidder must not dispose of any securities in the bid class during the bid period.
- (2) Subsection (1) does not apply to a disposal of securities by the bidder if:
 - (a) someone else who is not an associate of the bidder makes an offer, or improves the consideration offered, under a takeover bid for securities in the bid class after the bidder's statement is given to the target; and
 - (b) the bidder disposes of the securities after the offer is made or the consideration is improved.

654B Disclosures about substantial shareholdings in listed companies

During the bid period, substantial shareholding notices that need to be lodged under section 671B must be lodged by 9.30 am the next business day (rather than the usual 2 days).

654C Disclosures about substantial shareholdings in unlisted companies

- (1) A bidder making a bid for securities of an unlisted company must give the target a notice stating the bidder's voting power in the target if, at a particular time during the bid period, the bidder's voting power in the target rises from below a percentage in the following list to that percentage or higher:
 - (a) 25%
 - (b) 50%
 - (c) 75%
 - (d) 90%.

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Part 6.9 Other activities during the bid period

Section 654C

- (2) The notice must be given as soon as practicable, and in any event within 2 business days, after the rise in voting power occurred.
- (3) The target must:
 - (a) make the notice available at its registered office for inspection without charge by any holder of bid class securities during the bid period; and
 - (b) lodge the notice with ASIC.

Part 6.10—Review and intervention

Division 1—ASIC’s power to exempt and modify

655A ASIC’s power to exempt and modify

- (1) ASIC may:
 - (a) exempt a person from a provision of this Chapter; or
 - (b) declare that this Chapter applies to a person as if specified provisions were omitted, modified or varied as specified in the declaration.

Note: Under section 656A, the Panel has power to review the exercise by ASIC of its powers under this section.
- (2) In deciding whether to give the exemption or declaration, ASIC must consider the purposes of this Chapter set out in section 602.
- (3) The exemption or declaration may:
 - (a) apply to all or specified provisions of this Chapter; and
 - (b) apply to all persons, specified persons, or a specified class of persons; and
 - (c) relate to all securities, specified securities or a specified class of securities; and
 - (d) relate to any other matter generally or as specified.
- (4) An exemption may apply unconditionally or subject to specified conditions. A person to whom a condition specified in an exemption applies must comply with the condition. The Court may order the person to comply with the condition in a specified way. Only ASIC may apply to the Court for the order.
- (5) The exemption or declaration must be in writing and ASIC must publish notice of it in the *Gazette*.
- (6) For the purposes of this section, the *provisions of this Chapter* include:

Section 655B

- (a) regulations made for the purposes of this Chapter; and
- (b) definitions in this Law or the regulations as they apply to references in:
 - (i) this Chapter; or
 - (ii) regulations made for the purposes of this Chapter; and
- (c) Division 12 of Part 11.2.

655B Notice of decision and review rights

- (1) Subject to subsection (3), ASIC must take such steps as are reasonable in the circumstances to give to each person whose interests are affected by a decision under a section 655A notice, in writing or otherwise:
 - (a) of the making of the decision; and
 - (b) of the person's right to have the decision reviewed by the Panel under section 656A.
- (2) Subsection (1) does not require ASIC to give notice to a person affected by the decision or to the persons in a class of persons affected by the decision, if ASIC determines that giving notice to the person or persons is not warranted, having regard to:
 - (a) the cost of giving notice to the person or persons; and
 - (b) the way in which the interests of the person or persons are affected by the decision.
- (3) A failure to comply with this section does not affect the validity of the decision.

Division 2—The Corporations and Securities Panel

Subdivision A—Review of ASIC's exercise of its exemption or modification powers

656A Review of exercise of exemption or modification powers

- (1) The Panel may review:
 - (a) a decision of ASIC under section 655A; or
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Section 656A

- (b) a decision of ASIC under section 673 in relation to securities of the target of a takeover bid during the bid period.

For these purposes, *decision* has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

- (2) An application to the Panel for review of the decision may be made by any person whose interests are affected by the decision.
- (3) For the purpose of reviewing the decision, the Panel may exercise all the powers and discretions conferred on ASIC by this Chapter or Chapter 6C. The Panel must make a decision:
- (a) affirming the decision; or
 - (b) varying the decision; or
 - (c) setting aside the decision and:
 - (i) making a decision in substitution for the decision under review; or
 - (ii) remitting the matter for reconsideration by ASIC in accordance with any directions or recommendations of the Panel.
- (4) The decision must be in writing and published in the *Gazette*.
- (5) If the Panel varies an ASIC decision, or makes a decision in substitution for an ASIC decision:
- (a) the ASIC decision as varied, or the substituted decision, is taken for all purposes (other than the purposes of applications to the Panel for review in accordance with this section) to be a decision of ASIC under section 655A; and
 - (b) when the Panel's determination on the review comes into operation, the ASIC decision as varied, or the substituted decision, has effect, or is taken to have had effect, on and from the day on which the ASIC decision has or had effect.

Paragraph (b) applies unless the Panel otherwise orders.

Section 656B

656B Operation and implementation of a decision that is subject to review

- (1) Subject to this section, applying to the Panel under section 656A for review of an ASIC decision does not:
 - (a) affect the operation of the decision; or
 - (b) prevent the taking of action to implement the decision.
- (2) On application by a party to the proceedings before the Panel, the Panel may:
 - (a) make an order staying, or otherwise affecting the operation or implementation of, the whole or a part of the decision if the Panel considers that:
 - (i) it is desirable to make the order after taking into account the interests of any person who may be affected by the review; and
 - (ii) the order is appropriate for the purpose of securing the effectiveness of the hearing and determination of the application for review; or
 - (b) make an order varying or revoking an order made under paragraph (a) (including an order that has previously been varied on one or more occasions under this paragraph).
- (3) Subject to subsection (4), the Panel must not:
 - (a) make an order under paragraph (2)(a) unless ASIC has been given a reasonable opportunity to make a submission to the Panel in relation to the matter; or
 - (b) make an order under paragraph (2)(b) unless:
 - (i) ASIC; and
 - (ii) the person who requested the making of the order under paragraph (2)(a); and
 - (iii) if the order under paragraph (2)(a) has previously been varied by an order or orders under paragraph (2)(b)—the person or persons who applied for the last-mentioned order or orders;have been given a reasonable opportunity to make submissions to the Panel in relation to the matter.

Section 657A

- (4) Subsection (3) does not prohibit the Panel from making an order without giving to a person referred to in that subsection a reasonable opportunity to make a submission to the Panel in relation to a matter if the Panel is satisfied that, by reason of the urgency of the case or otherwise, it is not practicable to give that person such an opportunity. If an order is so made without giving such an opportunity to ASIC, the order does not come into operation until a notice setting out the terms of the order is served on ASIC.
- (5) An order in force under paragraph (2)(a) (including an order that has previously been varied on one or more occasions under paragraph (2)(b)):
 - (a) is subject to the conditions that are specified in the order; and
 - (b) has effect until:
 - (i) if a period for the operation of the order is specified in the order—the end of that period or, if the application for review is decided by the Panel before the end of that period, the decision of the Panel on the application for review comes into operation; or
 - (ii) if a period for the operation of the order is not specified in the order—the decision of the Panel on the application for review comes into operation.

Subdivision B—Unacceptable circumstances

657A Declaration of unacceptable circumstances

- (1) The Panel may declare circumstances in relation to the affairs of a company to be unacceptable circumstances. Without limiting this, the Panel may declare circumstances to be unacceptable circumstances whether or not the circumstances constitute a contravention of a provision of this Law.

Note: Sections 659B and 659C deal with court proceedings during and after a takeover bid.

- (2) The Panel may only declare circumstances to be unacceptable circumstances if it appears to the Panel that the circumstances:
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Section 657A

- (a) are unacceptable having regard to the effect of the circumstances on:
 - (i) the control, or potential control, of the company or another company; or
 - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in the company or another company; or
- (b) are unacceptable because they constitute, or give rise to, a contravention of a provision of this Chapter or of Chapter 6A, 6B or 6C.

The Panel may only make a declaration under this subsection, or only decline to make a declaration under this subsection, if it considers that doing so is not against the public interest after taking into account any policy considerations that the Panel considers relevant.

- (3) In exercising its powers under this section, the Panel:
 - (a) must have regard to:
 - (i) the purposes of this Chapter set out in section 602; and
 - (ii) the other provisions of this Chapter; and
 - (iii) the rules made under section 658C; and
 - (iv) the matters specified in regulations made for the purposes of paragraph 195(3)(c) of the *Australian Securities and Investments Commission Act 1989*; and
 - (b) may have regard to any other matters it considers relevant.

In having regard to the purpose set out in paragraph 602(1)(c) in relation to an acquisition, or proposed acquisition, of a substantial interest in a company, body or scheme, the Panel must take into account the actions of the directors of the company or body or the responsible entity for a scheme (including actions that caused the acquisition or proposed acquisition not to proceed or contributed to it not proceeding).

- (4) The Panel must give an opportunity to make submissions in relation to the matter to:
 - (a) each person to whom a proposed declaration relates; and
 - (b) each party to the proceedings; and
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Section 657B

- (c) ASIC.
- (5) The declaration must be in writing and published in the *Gazette*.
- (6) As soon as practicable, the Panel must give each person to whom the declaration relates:
 - (a) a copy of the declaration; and
 - (b) a written statement of the Panel's reasons for making the declaration.
- (7) This section does not require the Panel to perform a function, or exercise a power, in a particular way in a particular case.

657B When Panel may make declaration

The Panel can only make a declaration under section 657A within:

- (a) 3 months after the circumstances occur; or
- (b) 1 month after the application under section 657C for the declaration was made;

whichever ends last. The Court may extend the period on application by the Panel.

657C Applying for declarations and orders

- (1) The Panel may make a declaration under section 657A, or an order under section 657D or 657E, only on an application made under this section.
- (2) An application for a declaration under section 657A or an order under section 657D or 657E may be made by:
 - (a) the bidder; or
 - (b) the target; or
 - (c) ASIC; or
 - (d) any other person whose interests are affected by the relevant circumstances.

Note: The Administrative Appeals Tribunal cannot review ASIC's decision whether to apply to the Panel (see paragraph 1317C(gc)).

Section 657D

- (3) An application for a declaration under section 657A can be made only within:
 - (a) 2 months after the circumstances have occurred; or
 - (b) a longer period determined by the Panel.

657D Orders that Panel may make following declaration

- (1) The Panel may make an order under subsection (2) if it has declared circumstances to be unacceptable under section 657A. It must not make an order if it is satisfied that the order would unfairly prejudice any person. Before making the order, the Panel must give:
 - (a) each person to whom a proposed order relates; and
 - (b) each party to the proceedings; and
 - (c) ASIC;an opportunity to make submissions to the Panel about the matter
- (2) The Panel may make any order (including a remedial order but not including an order directing a person to comply with a requirement of Chapter 6, 6A, 6B or 6C) that it thinks appropriate to:
 - (a) protect the rights or interests of any person affected by the circumstances; or
 - (b) ensure that a takeover bid or proposed takeover bid in relation to securities proceeds (as far as possible) in a way that it would have proceeded if the circumstances had not occurred; or
 - (c) specify in greater detail the requirements of an order made under this subsection; or
 - (d) determine who is to bear the costs of the parties to the proceedings before the Panel;regardless of whether it has previously made an order under this subsection or section 657E in relation to the declaration. The Panel may also make any ancillary or consequential orders that it thinks appropriate.

Note: Section 9 defines *remedial order*.

Section 657E

- (3) The Panel may vary, revoke or suspend an order made under this section. Before doing so, it must give an opportunity to make submissions in relation to the matter to:
- (a) each person to whom the order is directed; and
 - (b) each party to the proceedings in which the order was made; and
 - (c) ASIC.
- (4) If the Panel makes an order under this section, the Panel must give a copy of the order, and a written statement of its reasons for making the order, to:
- (a) each party to the proceedings before the Panel; and
 - (b) each person to whom the order is directed if they are not a party to the proceedings; and
 - (c) for an order relating to specified securities of a company—the company; and
 - (d) ASIC.
- The Panel must also publish the order in the *Gazette*. The order takes effect as soon as it is made and not when all the requirements of this subsection are met.
- (5) If the Panel makes an order of the kind referred to in paragraph (j) of the definition of **remedial order**, the exercise of rights attached to shares is to be disregarded as provided in the order.
- (6) If the Panel makes an order of the kind referred to in paragraph (k) of the definition of **remedial order**, then, by force of this subsection, the agreement or offer specified in the order is cancelled, or becomes voidable, as from the making of the order or any later time that is specified in the order.

657E Interim orders

- (1) The Panel, or the President of the Panel, may make an interim order of a kind referred to in subsection 657D(2) in relation to circumstances even if:
- (a) there is no declaration under section 657A that the circumstances are unacceptable; or
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(b) no application to the Panel for a declaration of that kind has been made.

The order must specify the period (not exceeding 2 months) for which it is to have effect.

- (2) The order ceases to have effect:
- (a) at the end of the period specified in the order; or
 - (b) if, before the end of that period, proceedings for a declaration under section 657A in relation to the circumstances (and all related proceedings for an order under section 657D) are determined—when those proceedings are determined.

657EA Internal Panel reviews

- (1) The following may apply under this section for review by the Panel of a decision of the Panel made on an application under section 657C:
- (a) a party to the proceedings in which the decision was made; or
 - (b) ASIC.

For these purposes, *decision* has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

- (2) If the decision is not:
- (a) a decision to make a declaration under section 657A; or
 - (b) a decision to make an order under section 657D or 657E;
- the person may apply for review only with the consent of the President of the Panel.

- (3) The regulations may provide for the time limits within which an application may be made for review of a decision.

Note: Regulations made under the *Australian Securities and Investments Commission Act 1989* deal with the constitution of the Panel for the purposes of conducting a review under this section and the procedures to be followed in conducting the review.

- (4) After conducting a review under this section, the Panel may:
- (a) vary the decision reviewed; or
 - (b) set aside the decision reviewed; or

Section 657EB

(c) set aside the decision reviewed and substitute a new decision. In conducting the review, the Panel has the same power to make a declaration under section 657A, or an order under section 657D or 657E, as it has when it is considering an application under section 657C.

657EB References by Courts

- (1) A Court hearing proceedings in relation to a decision of the Panel made on an application under section 657C may refer the decision to the Panel for review.

Note: Regulations made under the *Australian Securities and Investments Commission Act 1989* deal with the constitution of the Panel for the purposes of conducting a review under this section and the procedures to be followed in conducting the review.

- (2) After conducting a review under this section, the Panel may:
- (a) vary the decision reviewed; or
 - (b) set aside the decision reviewed; or
 - (c) set aside the decision reviewed and substitute a new decision.
- In conducting the review, the Panel has the same powers to make a declaration under section 657A, or an order under section 657D or 657E, as it has when it is considering an application under section 657C.

657F Offence to contravene Panel order

A person who contravenes an order made under section 657D or 657E commits an offence.

657G Orders by the Court where contravention or proposed contravention of Panel order

- (1) If a person contravenes, or proposes to engage in conduct that would contravene, an order made by the Panel under section 657D or 657E, the Court may make any orders it considers appropriate to secure compliance with the Panel's order, including:
- (a) 1 or more remedial orders; and

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- (b) an order directing a person to do, or to refrain from doing, a specified act.

Note: Section 9 defines *remedial order*.

- (2) An application for an order under this section may only be made by:
 - (a) ASIC; or
 - (b) the President of the Panel; or
 - (c) a person to whom the Panel's order relates; or
 - (d) a person who was a party to the proceedings in which the Panel's order was made.

657H ASIC may publish report about application to Panel or Court

- (1) ASIC may publish a report, statement or notice in relation to an application it has made for:
 - (a) a declaration of unacceptable circumstances under section 657A; or
 - (b) an order under subsection 657D(2); or
 - (c) an order under section 657E; or
 - (d) review under section 657EA of a decision of the Panel; or
 - (e) an order under section 657G to secure compliance with an order made under subsection 657D(2) or section 657E.
- (2) The report, statement or notice must:
 - (a) state that the application has been made; and
 - (b) name the company; and
 - (c) if ASIC considers that the report, statement or notice should name any other person to whom the declaration would relate or the order would be directed—name that other person.
- (3) The report, statement or notice may be published in any way that ASIC thinks appropriate. It need not be in writing.
- (4) This section does not limit a function or power of ASIC, the Panel or any other person or body.

Subdivision C—General provisions

658A Power of Panel where a proceeding is frivolous or vexatious

- (1) If an application is made to the Panel under this Division, the Panel may, at any stage of the proceeding, if it is satisfied that the application is frivolous or vexatious:
 - (a) dismiss the application; or
 - (b) if the Panel considers it appropriate, on the application of a party to the proceedings, direct that the person who made the application must not, without leave of the Panel, make a subsequent application to the Panel of a kind or kinds specified in the direction.
- (2) A direction given by the Panel under paragraph (1)(b) has effect despite any other provision of this Act or a provision of any other Act.
- (3) The Panel may revoke or vary the direction.

658B Evidentiary value of findings of fact by Panel

- (1) A finding of fact recorded in an order by the Panel, or a written statement of the reasons for an order of the Panel, is proof of the fact in the absence of evidence to the contrary.
- (2) A certificate signed by the President of the Panel that states a finding of fact made in proceedings before the Panel is proof of the fact in the absence of evidence to the contrary.

658C Panel's power to make rules

- (1) The President of the Panel may, after consultation with members of the Panel, make rules, not inconsistent with the Law or the Regulations, to clarify or supplement the operation of the provisions of this Chapter.
- (2) In making rules under this section, the President of the Panel must consider the purposes of this Chapter set out in section 602.

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- (3) A rule under this section must be in writing and the President of the Panel must:
 - (a) publish notice of it in the *Gazette*; and
 - (b) give the Minister, and ASIC, a copy of the rule as soon as practicable after it is published in the *Gazette*.
- (4) Within 28 days after receiving the copy, the Minister may disallow the whole or a specified part of the rule.
- (5) If a person contravenes a rule made under this section, the Court may give directions for compliance with the rule to:
 - (a) that person; or
 - (b) if that person is a body corporate—the directors of the body corporate.

The Court must give the person against whom the order is sought, and any person aggrieved by the contravention, an opportunity to be heard before giving directions under this subsection.
- (6) The Court may give a direction under subsection (5) only on application by:
 - (a) ASIC; or
 - (b) the President of the Panel; or
 - (c) a person aggrieved by the contravention.

658D Inconsistency between Panel and ASIC exemptions or modifications

If there is an inconsistency between a rule made under section 658C and an exemption or modification given by ASIC under section 655A, the rule made under section 658C prevails to the extent of the inconsistency.

Division 3—Court powers

659A Panel may refer questions of law to the Court

The Panel may, of its own motion, refer a question of law arising in a proceeding before the Panel to the Court for decision.

659AA Object of sections 659B and 659C

The object of sections 659B and 659C is to make the Panel the main forum for resolving disputes about a takeover bid until the bid period has ended.

659B Court proceedings before end of bid period

Delay in commencing court proceedings until after end of bid period

- (1) Only:
- (a) ASIC; or
 - (b) another public authority of the Commonwealth or a State;
- may commence court proceedings in relation to a takeover bid, or proposed takeover bid, before the end of the bid period.

Note: This restriction starts to apply as soon as there is a takeover bid, or a proposed takeover bid; it does not start to apply only when the bid period commences.

Court power to stay proceedings that have already commenced

- (2) A court may stay:
- (a) court proceedings in relation to a takeover bid or proposed takeover bid; or
 - (b) court proceedings that would have a significant effect on the progress of a takeover bid;
- until the end of the bid period.
- (3) In deciding whether to exercise its powers under subsection (2), the court is to have regard to:
- (a) the purposes of this Chapter; and
 - (b) the availability of review by the Panel under Division 2.
- (4) For the purposes of this section:

court proceedings in relation to a takeover bid or proposed takeover bid:

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- (a) means any proceedings before a court in relation to:
 - (i) an action taken or to be taken as part of, or for the purposes of, the bid or the target's response to the bid; or
 - (ii) a document prepared or to be prepared, or a notice given or to be given, under this Chapter; and
- (b) includes:
 - (i) proceedings to enforce an obligation imposed by this Chapter; or
 - (ii) proceedings for the review of a decision, or the exercise of a power or discretion, under this Chapter; or
 - (iii) proceedings for the review of a decision, or the exercise of a power or discretion, under Chapter 6C in relation to securities of the target of a takeover bid during the bid period; and
 - (iv) proceedings under Part 2F.1A for leave to bring, or to intervene in, proceedings referred to in paragraph (a) or subparagraph (b)(i), (ii) or (iii).

This is not limited to proceedings brought under this Chapter or this Law but includes proceedings under other Commonwealth and State laws (including the general law).

659C Court proceedings after end of bid period

- (1) If:
 - (a) an application is made to the Panel for a declaration under section 657A that particular conduct amounts to, or leads to, circumstances that are unacceptable; and
 - (b) the Panel refuses to make the declaration; and
 - (c) a Court finds after the end of the bid period that the conduct contravenes this Law;the Court's powers under this Law in relation to the conduct are limited to the following:
 - (d) the Court may:

Section 659C

- (i) determine whether a person is guilty of an offence against this Law because they engaged in or were involved in the conduct; and
 - (ii) impose a penalty if the person is found guilty
- (e) the Court may:
- (i) determine whether a person who engaged in, or was involved in, the conduct contravened a provision of the Law; and
 - (ii) order the person to pay an amount of money to another person (whether by way of damages, account of profits, pecuniary penalty or otherwise)
- (f) the Court may make an order under section 1318 or 1322 in relation to the conduct.

This subsection does not confer power or jurisdiction on a court that it does not have apart from this subsection.

- (2) Without limiting subsection (1), the only kind of remedial order that the Court may make is one that requires the person to pay money to another person.

Chapter 6A—Compulsory acquisitions and buy-outs

660A Chapter extends to some listed bodies that are not companies

This Chapter extends to the acquisition of securities of listed bodies that are not companies but are incorporated or formed in this jurisdiction in the same way as it applies to the acquisition of securities of companies.

Note: Section 9 defines *company*, *jurisdiction* and *listed*.

660B Chapter extends to listed managed investment schemes

- (1) This Chapter extends to the acquisition of interests in a listed managed investment scheme registered in this jurisdiction as if:
 - (a) the scheme were a company; and
 - (b) interests in the scheme were shares in the company; and
 - (c) voting interests in the scheme were voting shares in the company.
- (2) If Part 6A.1 applies to a scheme at the end of the bid period for a takeover, that Part continues to apply to the scheme in relation to the takeover bid even if the scheme ceases to be listed.
- (3) If Part 6A.2 applies to a scheme when a compulsory acquisition notice under section 664C is lodged, that Part (including Division 2 of that Part) continues to apply to the scheme in relation to the notice even if the scheme ceases to be listed.
- (4) The regulations may modify the operation of this Chapter as it applies in relation to the acquisition of interests in listed managed investment schemes.

Part 6A.1—Compulsory acquisitions and buy-outs following takeover bid

Division 1—Compulsory acquisition of bid class securities

661A Compulsory acquisition power following takeover bid

Threshold for compulsory acquisition power

- (1) Under this subsection, the bidder under a takeover bid may compulsorily acquire any securities in the bid class if:
 - (a) the bid is:
 - (i) an off-market bid to acquire all the securities in the bid class; or
 - (ii) a market bid; and
 - (b) during, or at the end of, the offer period:
 - (i) the bidder and their associates have relevant interests in at least 90% (by number) of the securities in the bid class; and
 - (ii) the bidder and their associates have acquired at least 75% (by number) of the securities that the bidder offered to acquire under the bid (whether the acquisitions happened under the bid or otherwise).

This is so even if the bidder subsequently ceases to satisfy subparagraph (b)(i) because of the issue of further securities in the bid class.

Note: Subsection 92(3) defines *securities* for the purposes of this Chapter.

- (2) For the purposes of subsection (1), disregard any relevant interests that the bidder has merely because of the operation of subsection 608(3) (relevant interest by 20% interest in body corporate).

Section 661A

Court may allow compulsory acquisition even if threshold not reached

- (3) Under this subsection, the bidder under a takeover bid may compulsorily acquire securities in the bid class with the approval of the Court.

Securities to be acquired

- (4) If the bidder compulsorily acquires securities in the bid class under subsection (1) or (3), the bidder:

(a) must acquire all the securities in the bid class:

(i) which were issued or granted before the end of the offer period; and

(ii) in which the bidder does not have a relevant interest; and

(b) may elect to acquire all securities in the bid class:

(i) that were issued or granted after the end of the offer period and before the notice under section 661B is issued; and

(ii) in which the bidder does not have a relevant interest; but only if the bidder and their associates have relevant interests in at least 90% (by number) of the securities in the bid class when the bidder gives notice under section 661B; and

(c) if securities exist when the bidder gives the notice under section 661B that:

(i) will convert, or may be converted, to securities in the bid class; or

(ii) confer rights to be issued securities in the bid class that may be exercised;

within the period of 6 weeks after the notice is given—may elect to acquire securities that come to be in the bid class during that period due to a conversion or exercise of the rights but only if the bidder and their associates have relevant interests in at least 90% of the securities (by number) in the

- bid class when the bidder gives notice under section 661B;
and
- (d) may elect to acquire any securities in the bid class in which the bidder has a relevant interest (no matter when they were issued or granted).
- (5) This section has effect despite anything in the constitution of the company whose securities are to be acquired.

661B Compulsory acquisition notice

Compulsory acquisition notice

- (1) To compulsorily acquire securities under subsection 661A(1) or (3), the bidder must:
- (a) prepare a notice in the prescribed form that:
- (i) informs the holders of the securities that the bidder is entitled to acquire their securities under that subsection; and
- (ii) informs the holders about the compulsory acquisition procedure under this Part, including:
- (A) their right under section 661D to obtain the names and addresses of everyone else the bidder has given the notice to; and
- (B) their right under section 661E to apply to the Court for an order that the securities not be compulsorily acquired; and
- (b) lodge the notice with ASIC; and
- (c) give the notice to each other person who is:
- (i) a holder of securities in the bid class; or
- (ii) if the bidder elects under paragraph 661A(4)(c) to acquire securities that come to be in the bid class after the notice is given—a holder of the convertible securities referred to in that paragraph; and
- (d) give a copy to each relevant securities exchange on the same day as it is lodged with ASIC if the target is listed.

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If alternative forms of consideration were offered under the takeover bid, the notice must specify which of those forms of consideration will apply to the acquisition of the holder's securities if the holder does not elect one of the forms under paragraph 661C(2)(a).

Note: Everyone who holds bid class securities on the day on which the notice is lodged with ASIC is entitled notice. Under section 661E, anyone who holds the securities after that day may apply to the Court to stop the acquisition.

Time for dispatching notices to holders

- (2) The bidder must dispatch the notices under paragraph (1)(c):
- (a) during the offer period, or within 1 month after:
 - (i) the end of offer period if the acquisition is under subsection 661A(1); or
 - (ii) the court approval if the acquisition is under subsection 661A(3); and
 - (b) on the day the bidder lodges the notice with ASIC or on the next business day.

The notices cannot be withdrawn.

Manner of giving notice to holders

- (3) The bidder may give the notice to a holder:
- (a) personally; or
 - (b) by sending it by post to the address for the holder in the register of members, debenture holders or option holders.
- A notice sent by post is taken to be given 3 days after it is posted.
- (4) The notice may be sent:
- (a) if the notice is to be sent to the holder in an external territory or outside Australia—by pre-paid airmail post or by courier; or
 - (b) if the notice is to be sent to the holder in Australia—by pre-paid ordinary post or by courier.

This section does not limit the manner in which the notice may be sent to the holder.

Note: Section 109X makes general provision for service of documents.

661C Terms on which securities to be acquired

Same terms as takeover bid

- (1) The bidder may acquire the securities only on the terms that applied to the acquisition of securities under the takeover bid immediately before:
 - (a) the notice under section 661B is given if it is given before the end of the offer period; or
 - (b) the end of the offer period if it is not.

Alternative forms of consideration under takeover bid

- (2) If alternative forms of consideration were offered under the takeover bid, the form of consideration that applies to the acquisition of the holder's securities is:
 - (a) the form that the holder elects; or
 - (b) the form set out in the compulsory acquisition notice under subsection 661B(1).
- (3) The holder makes an election under subsection (2) by giving the bidder a notice of the election by the later of:
 - (a) 1 month after the compulsory acquisition notice is given under section 661B; or
 - (b) 14 days after the holder is given a statement under section 661D if the holder asks for it.
- (4) The election must be:
 - (a) in an electronic form approved by the SCH business rules for the purposes of this Part if it relates to shares that are entered on an SCH subregister; or
 - (b) in writing if it relates to shares that are not entered on an SCH subregister.

Section 661D

661D Holder may obtain names and addresses of other holders

Within 1 month after a compulsory acquisition notice in relation to securities in the bid class is lodged with ASIC under section 661B, the holder of the securities may ask the bidder in writing for a written statement of the names and addresses of everyone else the bidder has given the notice to. The bidder must give the holder the statement within 7 days after the request.

661E Holder may apply to Court to stop acquisition

- (1) The holder of securities covered by a compulsory acquisition notice under section 661B may apply to the Court for an order that the securities not be compulsorily acquired under subsection 661A(1). The application must be made before the later of:
 - (a) the end of 1 month after the holder is given notice under section 661B; or
 - (b) the end of 14 days after the holder is given a statement under section 661D if the holder asks for it.
- (2) The Court may order that the securities not be compulsorily acquired under subsection 661A(1) only if the Court is satisfied that the consideration is not fair value for the securities.

Note: See section 667C on valuation.

- (3) If the Court makes an order under this section in relation to an acquisition of securities, the order applies to all holders who have applications to the Court pending for an order under this section in relation to the acquisition.

661F Signpost—completing the acquisition of the securities

See section 666A to find out how to complete the acquisition.

Division 2—Compulsory buy-out of bid class securities

662A Bidder must offer to buy out remaining holders of bid class securities

- (1) If the bidder and their associates have relevant interests in at least 90% of the securities (by number) in the bid class at the end of the offer period, the bidder must offer to buy out the remaining holders of bid class securities in accordance with sections 662B and 662C.
- (2) This section does not apply to securities that are issued:
 - (a) if the takeover bid was not subject to a defeating condition—after the end of the offer period; or
 - (b) if the takeover bid was subject to a defeating condition—after the notice whether the bid is free from a defeating condition or not is given under subsection 630(3).

662B Bidder to tell remaining holders of their right to be bought out

Notice to remaining holders of bid class securities

- (1) The bidder must:
 - (a) prepare a notice in the prescribed form that:
 - (i) states that the bidder and their associates have relevant interests in at least 90% (by number) of the securities in the bid class; and
 - (ii) informs the holder of bid class securities about their right to be bought out under this Part; and
 - (iii) sets out the terms on which the holder may be bought out; and
 - (b) lodge the notice with ASIC; and
 - (c) give the notice to each other person who:
 - (i) is a holder of securities in the bid class on the day on which the notice is lodged with ASIC; and
 - (ii) has not been given a compulsory acquisition notice under section 661B when the notice under subsection (2) is given; and

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(d) give the notice to each relevant securities exchange on the same day as it is lodged with ASIC if the target is listed.

If alternative forms of consideration were offered under the takeover bid, the notice must specify which of those forms will apply to the acquisition of the holder's securities if the holder does not give the bidder an election notice under subsection 662C(1).

Note: The notice is given to everyone who holds bid class securities on the day on which the notice is lodged with ASIC. Under section 662C, anyone who acquires the securities after that day may require the bidder to acquire the securities.

Time for dispatching notice to holders

- (2) The bidder must dispatch the notices under paragraph (1)(c):
- (a) during, or within 1 month after the end of, the offer period; and
 - (b) on the day the bidder lodges the notice with ASIC or on the next business day.

The notices cannot be withdrawn.

Manner of giving notice to holders

- (3) The bidder may give the notice to a holder:
- (a) personally; or
 - (b) by sending it by post to the address for the holder in the register of members, debenture holders or option holders.
- A notice sent by post is taken to be given 3 days after it is posted.
- (4) The notice may be sent:
- (a) if the notice is to be sent to the holder in an external territory or outside Australia—by pre-paid airmail post or by courier.
 - (b) if the notice is to be sent to the holder in Australia—by pre-paid ordinary post or by courier.

This subsection does not limit the manner in which the document may be sent to the holder.

Note: Section 109X makes general provision for service of documents.

662C Right of remaining holder of securities in the bid class to be bought out

- (1) Within 1 month after notice is given in relation to securities under section 662B, the holder of the securities may give the bidder written notice requiring the bidder to acquire the securities. If alternative forms of consideration were offered under the takeover bid, the holder may elect in the notice which of those forms will apply to the acquisition of the holder's securities.
- (2) The notice by the holder gives rise to a contract between the holder and the bidder for the sale of the securities on:
 - (a) the terms that applied to the acquisition of securities under the bid immediately before the end of the offer period; or
 - (b) if alternative forms of consideration applied at that time—on the terms that the bidder will provide:
 - (i) the alternative specified by the holder in the notice under subsection (1); or
 - (ii) if the holder has not made an election under that subsection—the alternative set out in the bidder's notice under section 662B; or
 - (c) if the holder and the bidder agree on other terms—those terms.

Division 3—Compulsory buy-out of convertible securities

663A Bidder must offer to buy out holders of convertible securities

If the bidder and their associates have relevant interests in at least 90% of the securities (by number) in the bid class at the end of the offer period, the bidder must offer to buy out the holders of securities that are convertible into bid class securities in accordance with sections 663B and 663C. This section does not apply to securities if a takeover bid has been made for the convertible securities and a notice has been given under section 661B or 662B in relation to the convertible securities.

Note: For when securities are convertible into bid class securities, see the definition of *convertible securities* in section 9.

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663B Bidder to tell holders of convertible securities of their right to be bought out

Notice to holders of convertible securities

- (1) The bidder must:
 - (a) prepare a notice in the prescribed form that:
 - (i) states that the bidder and their associates have relevant interests in at least 90% of the securities (by number) in the bid class; and
 - (ii) informs the holder of convertible securities about their right to be bought out under this Part; and
 - (iii) sets out the terms on which the holder may be bought out; and
 - (b) lodge the notice with ASIC; and
 - (c) give each other person who is a holder of convertible securities:
 - (i) the notice; and
 - (ii) a copy of the expert's report, or of all the experts' reports, under section 667A; and
 - (d) give a copy of those documents to each relevant securities exchange on the same day as it is lodged with ASIC if the target is listed.

Note 1: Subparagraph (a)(iii)—Section 667A deals with the contents of an expert's report.

Note 2: The notice is to be given to everyone who holds convertible securities on the day on which the notice is lodged with ASIC. Under section 663C, anyone who acquires the securities after that day may require the bidder to acquire the securities.

Time for dispatching notice to holders

- (2) The bidder must dispatch the notices and reports under paragraph (1)(c):
 - (a) during, or within 1 month after the end of, the offer period; and

- (b) on the day the bidder lodges the notice with ASIC or on the next business day.

The notices cannot be withdrawn.

Manner of giving notice to holders

- (3) The bidder may give the notice or report to a holder:
 - (a) personally; or
 - (b) by sending it by post to the address for the holder in the register of members, debenture holders or option holders.A notice or report sent by post is taken to be given 3 days after it is posted.
- (4) The notice may be sent:
 - (a) if the notice is to be sent to the holder in an external Territory or outside Australia—by pre-paid airmail post or by courier; or
 - (b) if the notice is to be sent to the holder in Australia—by pre-paid ordinary post or by courier.

This subsection does not limit the manner in which the document may be sent to the holder.

Note: Section 109X makes general provision for service of documents.

663C Right of holders of convertible securities to be bought out

- (1) Within 1 month after notice under section 663B is given in relation to convertible securities, the holder of the convertible securities may give the bidder a notice requiring the bidder to acquire the securities.
- (2) The holder's notice gives rise to a contract between the holder and the bidder for the sale of the securities on:
 - (a) the terms agreed to by the bidder and the holder; or
 - (b) the terms determined by the Court on application by the holder.
- (3) If the Court makes a determination under paragraph (2)(b) in relation to the terms of sale for a holder's securities of a particular

Schedule 1 Main amendments of the Corporations Law

Chapter 6A Compulsory acquisitions and buy-outs

Part 6A.1 Compulsory acquisitions and buy-outs following takeover bid

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class, the determination applies to all holders of securities in that class who have applications to the Court pending for a determination under that paragraph in relation to the terms of sale of their securities.

Part 6A.2—General compulsory acquisitions and buy-outs

Division 1—Compulsory acquisition of securities by 90% holder

664A Threshold for general compulsory acquisition power

90% holder—holder of 90% of securities in particular class

- (1) A person is a 90% holder in relation to a class of securities of a company if the person holds, either alone or with a related body corporate, full beneficial interests in at least 90% of the securities (by number) in that class.

90% holder—holder with 90% voting power and 90% of whole company or scheme

- (2) A person is also a 90% holder in relation to a class of securities of a company if:
 - (a) the securities in the class are shares or convertible into shares; and
 - (b) the person's voting power in the company is at least 90%; and
 - (c) the person holds, either alone or with a related body corporate, full beneficial interests in at least 90% by value of all the securities of the company that are either shares or convertible into shares.

Note: Subsection 667A(2) provides that the expert's report that accompanies the compulsory acquisition notice must support the paragraph (c) condition.

90% holder may acquire remainder of securities in class

- (3) Under this section, a 90% holder in relation to a class of securities of a company may compulsorily acquire all the securities in that
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class in which neither the person nor any related bodies corporate has full beneficial interests if either:

- (a) the holders of securities in that class (if any) who have objected to the acquisition between them hold less than 10% by value of those remaining securities at the end of the objection period set out in the notice under paragraph 664C(1)(b); or
- (b) the Court approves the acquisition under section 664F.

If subsection (2) applies to the 90% holder, the holder may compulsorily acquire securities in a class only if the holder gives compulsory acquisition notices in relation to all classes of shares and securities convertible into shares of which they do not already have full beneficial ownership.

Note: Subsection 92(3) defines *securities* for the purposes of this Chapter.

- (4) This section has effect despite anything in the constitution of the company whose securities are to be acquired.
- (5) This Part does not apply to shares that give the shareholder, as a shareholder, a right to occupy or use real property that the company owns or holds under lease, whether the right is a lease or licence or a contractual right.
- (6) The 90% holder's power to compulsorily acquire securities under a notice given under section 664C ends if the 90% holder contravenes section 664D by offering benefits outside the terms proposed in the compulsory acquisition notice under section 664C.

664AA Time limit on exercising compulsory acquisition power

The 90% holder in relation to a class of securities of a company may compulsorily acquire securities in that class under section 664A only if the holder lodges the compulsory acquisition notice for the acquisition with ASIC under paragraph 664C(2)(a) within whichever of the following periods ends last:

- (a) the period of 12 months after the commencement of this section; or

- (b) the period of 6 months after the 90% holder becomes the 90% holder in relation to that class.

664B The terms for compulsory acquisition

The 90% holder may acquire the securities in the class for a cash sum only and must pay the same amount for each security in the class acquired.

664C Compulsory acquisition notice

Compulsory acquisition notice

- (1) To compulsorily acquire securities under section 664A, the 90% holder must prepare a notice in the prescribed form that:
 - (a) sets out the cash sum for which the 90% holder proposes to acquire the securities; and
 - (b) specifies a period of at least 1 month during which the holders may return the objection forms; and
 - (c) informs the holders about the compulsory acquisition procedure under this Part, including:
 - (i) their right to obtain the names and addresses of the other holders of securities in that class from the company register; and
 - (ii) their right to object to the acquisition by returning the objection form that accompanies the notice within the period specified in the notice; and
 - (d) gives details of the consideration given for any securities in that class that the 90% holder or an associate has purchased within the last 12 months; and
 - (e) discloses any other information that is:
 - (i) known to the 90% holder or any related bodies corporate; and
 - (ii) material to deciding whether to object to the acquisition; and
 - (iii) not disclosed in an expert's report under section 667A.

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- (2) The 90% holder must then:
- (a) lodge the notice with ASIC; and
 - (b) give each other person (other than a related body corporate) who is a holder of securities in the class on the day on which the notice is lodged with ASIC:
 - (i) the notice; and
 - (ii) a copy of the expert's report, or of all experts' reports, under section 667A; and
 - (iii) an objection form; and
 - (c) give the company copies of those documents; and
 - (d) give copies of those documents to the relevant securities exchange if the company is listed.

Note: Everyone who holds the securities on the day on which the notice is lodged with ASIC is entitled to notice. Under subsection 664E(1), anyone who acquires the securities during the objection period may object to the acquisition.

Time for dispatching notice to holders

- (3) The 90% holder must dispatch the notices under paragraph (2)(b) on the day the 90% holder lodges the notice with ASIC or on the next business day.

Manner of giving notice to holders

- (4) The 90% holder may give the notice to a holder:
- (a) personally; or
 - (b) by sending it by post to the address for the holder in the register of members, debenture holders or option holders.
- A notice sent by post is taken to be given 3 days after it is posted.
- (5) The notice may be sent:
- (a) if the notice is to be sent to the holder in an external territory or outside Australia—by pre-paid airmail post or by courier; or
 - (b) if the notice is to be sent to the holder in Australia—by pre-paid ordinary post or by courier.

This subsection does not limit the manner in which the document may be sent to the holder.

Note: Section 109X makes general provision for service of documents.

Notice not to be withdrawn

- (6) The 90% holder may not:
- (a) withdraw a notice under this section; or
 - (b) if the 90% holder has given a notice under this section in relation to those securities and the objection period for that notice has not ended—give another notice under this section in relation to securities.

664D Benefits outside compulsory acquisition procedure

- (1) If the 90% holder gives a notice under section 664C to compulsorily acquire securities, the 90% holder or an associate must not offer, give or agree to give a benefit to a person during the objection period if:
- (a) the benefit is likely to induce the person, or an associate of the person, to:
 - (i) dispose of securities in that class; or
 - (ii) not object to the acquisition of those securities under the notice; and
 - (b) the benefit is not provided for in the notice.
- (2) If the 90% holder proposes to give a notice under section 664C to acquire securities within the next 4 months, the 90% holder or an associate must not offer, give or agree to give a benefit to a person if:
- (a) the benefit is likely to induce the person, or an associate of the person, to:
 - (i) dispose of securities in that class; or
 - (ii) not object to the acquisition of those securities under the notice; and
 - (b) the benefit is not proposed to be provided for in the notice.

Section 664E

- (3) If the 90% holder gives a notice under section 664C to compulsorily acquire securities, the 90% holder or an associate must not give a benefit to a person:
- (a) within 1 month after the end of the objection period (see subsection 664F(2)); or
 - (b) during any proceedings by the Court to determine an application under subsection 664F(1) by the 90% holder; if:
 - (c) the benefit is likely to induce the person, or an associate of the person, to:
 - (i) not object, or pursue an objection, to the acquisition of those securities under the notice; or
 - (ii) dispose of securities in that class; and
 - (d) the benefit is not offered to all holders of securities in that class under the notice.
- (4) This section does not prohibit simultaneous notices under section 664C to compulsorily acquire different classes of securities in the company.

664E Holder's right to object to the acquisition

- (1) A person who holds securities covered by the compulsory acquisition notice may object to the acquisition of the securities by signing an objection form and returning it to the 90% holder. The objection:
- (a) relates to all securities that are covered by the notice and are held by the person at the end of the objection period; and
 - (b) cannot be withdrawn.
- (2) The 90% holder must lodge with ASIC a copy of any objection form returned under subsection (1) as soon as practicable after it is returned.
- (3) As soon as practicable after the end of the objection period, the 90% holder must:
- (a) prepare a list that sets out:

- (i) the names of people who hold securities covered by the compulsory acquisition notice and have objected to the acquisition; and
 - (ii) details of the securities they hold; and
 - (b) lodge the list with ASIC; and
 - (c) give a copy of the list to the company; and
 - (d) if the company is listed—give a copy to the relevant securities exchange.
- (4) If people who hold at least 10% of the securities covered by the compulsory acquisition notice object to the acquisition before the end of the objection period, the 90% holder must give everyone to whom the compulsory acquisition notice was sent under section 664C:
- (a) a notice that the proposed acquisition will not occur; or
 - (b) a notice that the 90% holder has applied to the Court for approval of the acquisition under section 664F;
- within 1 month after the end of the objection period.

664F The Court's power to approve acquisition

- (1) If people who hold at least 10% of the securities covered by the compulsory acquisition notice object to the acquisition before the end of the objection period, the 90% holder may apply to the Court for approval of the acquisition of the securities covered by the notice.
- (2) The 90% holder must apply within 1 month after the end of the objection period.
- (3) If the 90% holder establishes that the terms set out in the compulsory acquisition notice give a fair value for the securities, the Court must approve the acquisition of the securities on those terms. Otherwise it must confirm that the acquisition will not take place.

Note: See section 667C on valuation.

Section 664G

- (4) The 90% holder must bear the costs that a person incurs on legal proceedings in relation to the application unless the Court is satisfied that the person acted improperly, vexatiously or otherwise unreasonably. The 90% holder must bear their own costs.

664G Signpost—completing the acquisition of the securities

See section 666A for how to complete the acquisition.

**Division 2—Compulsory buy-out of convertible securities
by 100% holder**

665A 100% holder must offer to buy out holders of convertible securities

- (1) A person is a 100% holder of securities in a class if the person, either alone or with a related body corporate, holds full beneficial interests in all the securities in the class.
- (2) A 100% holder in relation to a class of securities (the *main class*) who becomes a 100% holder through compulsory acquisitions under this Part must offer to buy out the holders of securities in another class that are convertible into main class securities in accordance with sections 665B and 665C. This subsection does not apply to securities if a notice is given in relation to the securities under section 661B, 662B or 664C.

Note: For when securities are convertible into main class securities, see the definition of *convertible securities* in section 9.

665B 100% holder to tell holders of convertible securities of their right to be bought out

Notice to holders of convertible securities

- (1) The 100% holder must:
- (a) prepare a notice in the prescribed form that:
- (i) states that the person giving the notice has acquired all the securities in the main class; and
-

Section 665B

- (ii) sets out the information that was included in the compulsory acquisition notice given in relation to securities in the main class under paragraphs 664C(1)(d) and (e); and
 - (iii) sets out the cash sum for which they are willing to acquire the convertible securities; and
 - (iv) informs the holder of convertible securities about their right to be bought out under this Part; and
- (b) lodge the notice with ASIC; and
- (c) give each other person who is a holder of convertible securities on the day on which the notice is lodged with ASIC:
- (i) the notice; and
 - (ii) a copy of the expert's report, or all experts' reports, under section 667A; and
- (d) give a copy of the documents to the company that issued the securities; and
- (e) give a copy of the documents to each relevant securities exchange on the same day as it is lodged with ASIC if the company is listed.

Note 1: Subparagraph (a)(iv)—Section 667A deals with the contents of an expert's report.

Note 2: The notice is to be given to everyone who holds convertible securities on the day on which the notice is lodged with ASIC. Under section 665C, anyone who holds the securities after that day may require the 100% holder to acquire the securities.

Time for dispatching notice to holders

- (2) The 100% holder must dispatch the notices and reports under paragraph (1)(c):
- (a) within 1 month after they become the 100% holder; and
 - (b) on the day the 100% holder lodges the notice with ASIC or on the next business day.

The notices cannot be withdrawn.

Section 665C

Manner of giving notice to holders

- (3) The 100% holder may give the notice or report to a holder:
- (a) personally; or
 - (b) by sending it by post to the address for the holder in the register of members, debenture holders or option holders.

A notice or report sent by post is taken to be given 3 days after it is posted.

- (4) The notice may be sent:
- (a) if the notice is to be sent to the holder in an external Territory or outside Australia—by pre-paid airmail post or by courier; or
 - (b) if the notice is to be sent to the holder in Australia—by pre-paid ordinary post or by courier.

This subsection does not limit the manner in which the document may be sent to the holder.

Note: Section 109X makes general provision for service of documents.

665C Right of holders of convertible securities to be bought out

- (1) Within 1 month after notice under section 665B is given in relation to convertible securities, the holder of the convertible securities may give the 100% holder a notice requiring the 100% holder to acquire the securities.
- (2) The notice by the holder of convertible securities gives rise to a contract between the holder and the 100% holder for the sale of the securities on:
- (a) terms agreed to by the 100% holder and the holder of the convertible securities; or
 - (b) the terms determined by the Court on application by the holder of the convertible securities.
- (3) If the Court makes a determination under paragraph (2)(b) in relation to the terms of sale for a holder's convertible securities of a particular class, the determination applies to all holders of convertible securities in that class who have applications to the

Court pending for a determination under that paragraph in relation to the terms of sale of their convertible securities.

Division 3—Notice that person has become 85% holder of a class of securities

665D Notice by 85% holder to company

85% holder—holder of 85% of securities in particular class

- (1) A person is an 85% holder in relation to a class of securities of a company if the person holds, either alone or with a related body corporate, full beneficial interests in at least 85% of the securities (by number) in that class.

85% holder—holder with 85% voting power and 85% of whole company

- (2) A person is also an 85% holder in relation to a class of securities of a company if:
 - (a) the securities in the class are shares or convertible into shares; and
 - (b) the person's voting power in the company is at least 85%; and
 - (c) the person holds, either alone or with a related body corporate, full beneficial interests in at least 85% by value of all the securities of the company that are either shares or convertible into shares.

Person becoming 85% holder to give notice to company

- (3) A person who becomes an 85% holder in relation to a class of securities of a company must notify the company in writing that they have become an 85% holder in relation to that class. The person must give the notice within 14 days after the person becomes aware of the information.

Section 665E

Person continuing to be 85% holder to give notice to company

- (4) A person who:
- (a) gives a company a notice under subsection (3) in relation to a class of securities; and
 - (b) is an 85% holder in relation to the class on any anniversary of becoming an 85% holder in relation to the class;
- must notify the company in writing that they continue to be an 85% holder in relation to the class. The person must give the notice within 14 days after the anniversary.

665E Notice by company to other members

Company to notify members

- (1) A company that is given a notice by a person under section 665D in relation to a class of securities must notify its members in writing that:
- (a) the person:
 - (i) has become an 85% holder in relation to the class; or
 - (ii) continues to be an 85% holder in relation to the class;and
 - (b) the person will be able to acquire the securities in that class under this Part if the person becomes a 90% holder in relation to that class.

Time for notifying members

- (2) The company must notify its members before, or at the same time as, whichever of the following it first gives to its members after the company is given the notice under section 665D:
- (a) a notice under another provision of this Law
 - (b) a report under a provision of this Law.

Information about 85% holder to be prominent if included in other material given to members

- (3) If a company notifies its members under this section by including the information referred to in paragraphs (1)(a) and (b) in:
- (a) a notice given to members under another provision of this Law; or
 - (b) a report given to members under a provision of this Law; the information must appear prominently in the notice or report.

Part 6A.3—Completion of compulsory acquisition of securities

666A Completing the acquisition of securities

Completion to be by private treaty or statutory procedure

- (1) A person entitled to acquire securities under section 661A or 664A must either:
 - (a) pay, issue or transfer the consideration to the holder, take a transfer of the securities from the holder and have the company that issued the securities register the transfer; or
 - (b) complete the procedure laid down in section 666B; by the end of the period referred to in subsection (2) or (3).

Time for completing compulsory acquisition following takeover

- (2) For an acquisition under section 661A, the period ends 14 days after the later of:
 - (a) the end of 1 month after the compulsory acquisition notice was lodged with ASIC under section 661B; or
 - (b) the end of 14 days after the last statement under section 661D was given if a request is made under that section; or
 - (c) if an application to stop the acquisition is made to the Court under section 661E—the application is finally determined.

Time for completing compulsory acquisition under Part 6A.2

- (3) For an acquisition under section 664A or 664F, the period ends 14 days after the later of:
 - (a) the end of the objection period; or
 - (b) if an application for approval of the acquisition is made to the Court under section 664F in relation to the securities—the application is finally determined.

666B Statutory procedure for completion

- (1) Under this section, the person acquiring the securities must:
- (a) give the company that issued the securities a copy of the compulsory acquisition notice under section 661B or 664C together with a transfer of the securities:
 - (i) signed as transferor by someone appointed by the person acquiring the securities; and
 - (ii) signed as transferee by the person acquiring the securities; and
 - (b) pay, issue or transfer the consideration for the transfer to the company that issued the securities.

The person appointed under subparagraph (a)(i) has authority to sign the transfer on behalf of the holder of the securities.

- (2) If the person acquiring the securities complies with subsection (1), the company that issued the securities must:
- (a) register the person as the holder of the securities; and
 - (b) hold the consideration received under subsection (1) in trust for the person who held the securities immediately before registration; and
 - (c) give written notice to the person referred to in paragraph (b) as soon as practicable that the consideration has been received and is being held by the company pending their instructions as to how it is to be dealt with.
- (3) If the consideration held under subsection (2) consists of, or includes, money, that money must be paid into a bank account opened and maintained for that purpose only.

Part 6A.4—Experts' reports and valuations

667A Expert's report

- (1) An expert's report under section 663B, 664C or 665B must:
 - (a) be prepared by a person nominated by ASIC under section 667AA; and
 - (b) state whether, in the expert's opinion, the terms proposed in the notice give a fair value for the securities concerned; and
 - (c) set out the reasons for forming that opinion.

Note: See section 667C on valuation.

- (2) If the person giving the compulsory acquisition notice is relying on paragraph 664A(2)(c) to give the notice, the expert's report under section 664C must also:
 - (a) state whether, in the expert's opinion, the person (either alone or together with a related body corporate) has full beneficial ownership in at least 90% by value of all the securities of the company that are shares or convertible into shares; and
 - (b) set out the reasons for forming that opinion.
- (3) If the person giving the compulsory acquisition notice obtains 2 or more reports, each of which were obtained for the purposes of that notice, a copy of each report must be given to the holder of the securities.

667AA Expert to be nominated

- (1) A person who proposes to obtain an expert's report for the purposes of section 663B, 664C or 665B must request ASIC in writing to nominate a person to prepare the expert's report.
- (2) Within 14 days after receiving a request under subsection (1), ASIC must nominate:

- (a) an appropriate person to prepare the report; or
 - (b) up to 5 appropriate persons, one of whom the person making the request may choose to prepare the report.
- (3) In determining whether a person is an appropriate person to prepare an expert's report, and without limiting the matters that ASIC may consider, ASIC must consider the nature of the company to be valued.

667B Expert must not be an associate and must disclose prior dealings and relationships

- (1) The expert who provides the report must not be an associate of:
- (a) the person giving the notice; or
 - (b) the company that issued the securities.
- (2) The report must set out details of:
- (a) any relationship between the expert and:
 - (i) the person giving the notice or an associate of the person giving the notice; or
 - (ii) the company that issued the securities or an associate of the company;including any circumstances in which the expert gives them advice, or acts on their behalf, in the proper performance of the functions attaching to the expert's professional capacity or business relationship with them; and
 - (b) any financial or other interest of the expert that could reasonably be regarded as being capable of affecting the expert's ability to give an unbiased opinion in relation to the matter being reported on; and
 - (c) any fee, payment or other benefit (whether direct or indirect) that the expert has received or will or may receive in connection with the report.

Section 667C

667C Valuation of securities

- (1) To determine what is fair value for securities for the purposes of this Chapter:
 - (a) first, assess the value of the company as a whole; and
 - (b) then allocate that value among the classes of issued securities in the company (taking into account the relative financial risk, and voting and distribution rights, of the classes); and
 - (c) then allocate the value of each class pro rata among the securities in that class (without allowing a premium or applying a discount for particular securities in that class).
- (2) Without limiting subsection (1), in determining what is fair value for securities for the purposes of this Chapter, the consideration (if any) paid for securities in that class within the previous 6 months must be taken into account.

Part 6A.5—Records of unclaimed consideration

668A Company's power to deal with unclaimed consideration for compulsory acquisition

Records of unclaimed compulsory acquisition consideration

- (1) If a company is paid consideration in respect of securities that are compulsorily acquired under Part 6A.1 or 6A.3, the company must maintain records of:
 - (a) the consideration paid (including any benefit accruing from the consideration and any property substituted for the whole or any part of that consideration); and
 - (b) the people who are entitled to that consideration; and
 - (c) any transfers of the consideration to the people entitled to it.
- (2) The company must keep the records at:
 - (a) its registered office; or
 - (b) its principal place of business in Australia; or
 - (c) another place in Australia approved by ASIC.
- (3) A person may ask the company to let the person inspect all or any of the records kept by the company under this section. The company must let the person inspect the records:
 - (a) if the company requires payment of an amount not exceeding the prescribed amount—within 7 days after the day on which the company receives that amount; or
 - (b) in any other case—within 7 days after the day on which the request is made.
- (4) By the end of February each year, the company must publish in the *Gazette* a copy of the records kept under subsection (1) as at the end of the previous December.

Section 668B

668B Unclaimed consideration to be transferred to ASIC

- (1) If the company has not transferred the unclaimed consideration to the person entitled to it within 12 months after the publication of a copy of the records in the *Gazette*, the company must transfer the consideration to ASIC within 1 month after the end of that 12 month period.
- (2) The company is then discharged from liability to any person in respect of the consideration.
- (3) ASIC must deal with the consideration under Part 9.7.
- (4) Except as provided by subsection (2), this Part does not deprive a person of any right or remedy to which the person is entitled against a liquidator or company.

Part 6A.6—ASIC powers

669 ASIC's power to exempt and modify

- (1) ASIC may:
 - (a) exempt a person from a provision of this Chapter; or
 - (b) declare that this Chapter applies to a person as if specified provisions were omitted, modified or varied as specified in the declaration.
 - (2) The exemption or declaration may:
 - (a) apply to all or specified provisions of this Chapter; and
 - (b) apply to all persons, specified persons, or a specified class of persons; and
 - (c) relate to all securities, specified securities or a specified class of securities; and
 - (d) relate to any other matter generally or as specified.
 - (3) An exemption may apply unconditionally or subject to specified conditions. A person to whom a condition specified in an exemption applies must comply with the condition. The Court may order the person to comply with the condition in a specified way. Only ASIC may apply to the Court for the order.
 - (4) The exemption or declaration must be in writing and ASIC must publish notice of it in the *Gazette*.
 - (5) For the purposes of this section, the *provisions of this Chapter* include:
 - (a) regulations made for the purposes of this Chapter; and
 - (b) definitions in this Law or the regulations as they apply to references in:
 - (i) this Chapter; or
 - (ii) regulations made for the purposes of this Chapter; and
 - (c) Division 12 of Part 11.2.
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Section 670A

Chapter 6B—Rights and liabilities in relation to Chapter 6 and 6A matters

670A Misstatements in, or omissions from, takeover and compulsory acquisition and buy-out documents

- (1) A person must not give:
- (a) a bidder's statement
 - (b) a takeover offer document
 - (c) a notice of variation of a takeover offer
 - (d) a target's statement
 - (e) a compulsory acquisition notice under section 661B or 664C
 - (f) a compulsory buy-out notice under section 662B, 663B or 665B
 - (g) a report that is included in, or accompanies, a statement or notice referred to in paragraphs (a) to (f)
- if there is:
- (h) for all documents—a misleading or deceptive statement in the document; or
 - (i) for a bidder's statement or target's statement—an omission from the document of material required by section 636 or 638; or
 - (j) for a bidder's statement or a target's statement—a new circumstance that:
 - (i) has arisen since the document was lodged; and
 - (ii) would have been required by section 636 or 638 to be included in the document if it had arisen before the document was lodged; or
 - (k) for an expert's report under subsection 636(2) or section 640, 663B, 664C or 665B—an omission from the report of material required by subsection 648A(3) or 667B(2).

Note 1: See section 670D for defences.

Section 670B

Note 2: Section 995 imposes liabilities in respect of other conduct related to the dealings in securities.

Forecasts and other forward-looking statement

- (2) A person is taken to make a misleading statement about a future matter (including the doing of, or refusing to do, an act) if they do not have reasonable grounds for making the statement. This subsection does not limit the meaning of a reference to a misleading statement or a statement that is misleading in a material particular.

Offence if statement, omission or new matter materially adverse

- (3) A person commits an offence if they contravene subsection (1) and:
- (a) the misleading or deceptive statement; or
 - (b) the omission or new circumstance;
- is materially adverse from the point of view of the holder of securities to whom the document is given.

670B Right to recover for loss or damage resulting from contravention

- (1) A person who suffers loss or damage that results from a contravention of subsection 670A(1) may recover the amount of the loss or damage from a person referred to in the following table if the loss or damage is one that the table makes the person liable for. This is so even if the person did not commit, and was not involved in, the contravention.

People liable on the document	[operative table]
<i>For these documents</i>	
these people...	...are liable for loss or damages caused by
<i>bidder's statement or takeover offer document</i>	

Section 670B

People liable on the document		[operative table]
<i>For these documents</i>		
	these people...	...are liable for loss or damages caused by
1	the bidder	any contravention of subsection 670A(1) in relation to the document
2	each director of a bidder that is a body if the consideration offered under the bid is not a cash sum only	any contravention of subsection 670A(1) in relation to the document
3	a director of a bidder that is a body unless the director proves that they: (a) were not present when the directors resolved to adopt the statement or offer document; or (b) voted against the resolution; if the consideration offered under the bid is a cash sum only	any contravention of subsection 670A(1) in relation to the document See also items 10 and 11.
<i>notice of variation of a takeover offer</i>		
4	the bidder	any contravention of subsection 670A(1) in relation to the document
5	a director of a bidder that is a body	any contravention of subsection 670A(1) in relation to the document See also items 10 and 11.
<i>a target's statement</i>		
6	the target	any contravention of subsection 670A(1) in relation to the document
7	a director of the target unless the director proves that they: (a) were not present when the directors resolved to adopt the statement; or (b) voted against the resolution	any contravention of subsection 670A(1) in relation to the document See also items 10 and 11.
<i>a compulsory acquisition or compulsory buy-out notice</i>		

Section 670B

People liable on the document [operative table]

For these documents

these people...

...are liable for loss or damages caused by

8	the person giving the notice	any contravention of subsection 670A(1) in relation to the document
9	a director of a body corporate giving the notice unless the director proves that they: (a) were not present when the directors resolved to give the notice; or (b) voted against the resolution	any contravention of subsection 670A(1) in relation to the document See also items 10 and 11.

all documents

10	a person named in the document, with their consent, as having made a statement: (a) that is included in the document; or (b) on which a statement made in the document is based	the inclusion of the statement in the document
11	a person who contravenes, or is involved in a contravention of, subsection 670A(1)	that contravention

(2) An action under subsection (1) may begin at any time within 6 years after the day on which the cause of action arose.

(3) This Part does not affect any liability that a person has under any other law.

Note: Conduct that contravenes subsection 670A(1) is expressly excluded from the operation of section 995.

Section 670C

670C People liable on takeover or compulsory acquisition statement to inform maker about deficiencies in the statement

- (1) A person referred to in the table in subsection 670B(1) in relation to a document must notify the issuer of the document in writing as soon as practicable if they become aware during the bid period or objection period that:
 - (a) a material statement in the document is misleading or deceptive; or
 - (b) there is a material omission from the document of information required by section 636, 638 or 640; or
 - (c) a material new circumstance that:
 - (i) has arisen since the document was lodged; and
 - (ii) would have been required by section 636, 638 or 640 to be included in the document if it had arisen before the document was lodged.
- (2) An expert whose report accompanies, or is included in, a target's statement under section 640 must notify the target in writing as soon as practicable if they become aware during the takeover period that:
 - (a) a material statement in the report is misleading or deceptive; or
 - (b) there has been a significant change affecting information included in the report.
- (3) An expert whose report accompanies, or is included in, a bidder's statement under subsection 636(2) must notify the bidder in writing as soon as practicable if they become aware during the takeover period that:
 - (a) a material statement in the report is misleading or deceptive; or
 - (b) there has been a significant change affecting information included in the report.

670D Defences against prosecutions under subsection 670A(3) and actions under section 670B

Not knowing statement misleading or deceptive

- (1) A person does not commit an offence against subsection 670A(3), and is not liable under section 670B for a contravention of subsection 670A(1), because of a misleading or deceptive statement in a document if the person proves that they did not know that the statement was misleading or deceptive.

Not knowing there was an omission

- (2) A person does not commit an offence against subsection 670A(3), and is not liable under section 670B for a contravention of subsection 670A(1), because of an omission from a document in relation to a particular matter if the person proves that they did not know that there was an omission from the document in relation to that matter.

Reasonable reliance on information given by someone else—statements and omissions

- (3) A person does not commit an offence against subsection 670A(3), and is not liable under section 670B for a contravention against subsection 670A(1), because of a misleading or deceptive statement in, or an omission from, a document if the person proves that they placed reasonable reliance on information given to them by:
 - (a) if the person is a body—someone other than a director, employee or agent of the body; or
 - (b) if the person is an individual—someone other than an employee or agent of the individual.
- (4) For the purposes of subsection (3), a person is not the agent of a body or individual merely because they perform a particular professional or advisory function for the body or individual.

Section 670E

Withdrawal of consent—statements and omissions

- (5) A person who is named in a document as:
- (a) making a statement included in the document; or
 - (b) making a statement on the basis of which a statement is included in the document;
- does not commit an offence against subsection 670A(3), and is not liable under section 670B for a contravention against subsection 670A(1), because of a misleading or deceptive statement in, or an omission from, a document if the person proves that they publicly withdrew their consent to being named in the document in that way.

Unawareness of new matter

- (6) A person does not commit an offence against subsection 670A(3), and is not liable under section 670B for a contravention of subsection 670A(1), because of a new circumstance that has arisen since the document was lodged if the person proves that they were not aware of the matter.

670E Liability for proposing a bid or not carrying through with bid

- (1) A person who:
- (a) enters into a transaction relating to securities in reliance on:
 - (i) a public proposal for a takeover bid; or
 - (ii) an announcement of a market bid; and
 - (b) suffers loss or damage that results from a contravention of section 631:
- may recover the amount of the loss or damage from:
- (c) the person who contravened the section; or
 - (d) any person involved in the contravention.
- (2) To determine the amount of compensation payable under subsection (1), deduct the price of the securities at which the transaction was entered into from the price of the securities at which the transaction would have been likely to be entered into if the proposal or announcement had not been made.
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670F Defences

A person does not commit an offence under subsection 631(1) or (2), and is not liable under section 670E for a contravention of those subsections if the person proves that they could not reasonably have been expected to comply with those subsections because:

- (a) at the time of the proposal or announcement, circumstances existed that the person did not know of and could not reasonably have been expected to know of; or
- (b) after the proposal or announcement, a change in circumstances occurred that was not caused, directly or indirectly, by the person.

Section 671A

Chapter 6C—Information about ownership of listed companies and managed investment schemes

671A Chapter extends to some listed bodies that are not companies

This Chapter applies to the acquisition of relevant interests in the securities of listed bodies that are not companies but are incorporated or formed in this jurisdiction in the same way as it applies to the acquisition of relevant interests in the securities of companies.

Note: Section 9 defines *company*, *jurisdiction* and *listed*.

Part 6C.1—Substantial holding information

671B Information about substantial holdings must be given to company, responsible entity and relevant securities exchange

Requirement to give information

- (1) A person must give the information referred to in subsection (3) to a listed company, or the responsible entity for a listed registered managed investment scheme, if:
 - (a) the person begins to have, or ceases to have, a substantial holding in the company or scheme; or
 - (b) the person has a substantial holding in the company or scheme and there is a movement of at least 1% in their holding; or
 - (c) the person makes a takeover bid for securities of the company or scheme.

The person must also give the information to each relevant securities exchange.

Section 671B

Note 1: Section 9 defines *substantial holding* and *associate*.

Note 2: The information must be given even if the situation changes by the time the information is to be given.

- (2) For the purposes of this section, there is a ***movement of at least 1%*** in a person's holding if the percentage worked out using the following formula increases or decreases by 1 or more percentage points from the percentage they last disclosed under this Part in relation to the company or scheme:

$$\frac{\text{Person's and associates' votes}}{\text{Total votes in company or scheme}} \times 100$$

where:

person's and associates' votes is the total number of votes attached to all the voting shares in the company or interests in the scheme (if any) that the person or an associate has a relevant interest in.

total votes in company or scheme is the total number of votes attached to all voting shares in the company or interests in the scheme.

Note: Subsection (7) expands the normal concept of relevant interest to take account of exchange traded options and conditional agreements.

Information that must be given

- (3) The information to be given is:
- (a) the person's name and address; and
 - (b) details of their relevant interest in:
 - (i) voting shares in the company; or
 - (ii) interests in the scheme; and
 - (c) details of any relevant agreement through which they would have a relevant interest in:
 - (i) voting shares in the company; or
 - (ii) interests in the scheme; and
 - (d) the name of each associate who has a relevant interest in voting shares in the company or interests in the scheme, together with details of:
-

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Chapter 6C Information about ownership of listed companies and managed investment schemes

Part 6C.1 Substantial holding information

Section 671B

- (i) the nature of their association with the associate; and
- (ii) the relevant interest of the associate; and
- (iii) any relevant agreement through which the associate has the relevant interest; and
- (e) if the information is being given because of a movement in their holding—the size and date of that movement; and
- (f) if the information is being given because a person has ceased to be an associate—the name of the person; and
- (g) any other particulars that are prescribed.

Note: Subsection (7) expands the normal concept of relevant interest to take account of exchange traded options and conditional agreements.

Information to be in prescribed form and accompanied by certain documents

- (4) The information must be given in the prescribed form and must be accompanied by:
 - (a) a copy of any document setting out the terms of any relevant agreement that:
 - (i) contributed to the situation giving rise to the person needing to provide the information; and
 - (ii) is in writing and readily available to the person; and
 - (b) a statement by the person giving full and accurate details of any contract, scheme or arrangement that:
 - (i) contributed to the situation giving rise to the person needing to provide the information; and
 - (ii) is not both in writing and readily available to the person.

If the person is required to give a copy of a contract, scheme or arrangement, the copy must be endorsed with a statement that the copy is a true copy.

- (5) The information does not need to be accompanied by the documents referred to in subsection (4) if the transaction that gives rise to the person needing to provide the information takes place on a stock exchange approved under section 769.

Deadline for giving information

- (6) The person must give the information:
 - (a) within 2 business days after they become aware of the information; or
 - (b) by 9.30 am on the next trading day of the relevant securities exchange after they become aware of the information if:
 - (i) a takeover bid is made for voting shares in the company or voting interests in the scheme; and
 - (ii) the person becomes aware of the information during the bid period.

Relevant interests—exchange traded options and conditional agreements

- (7) For the purposes of this section, a person has a relevant interest in securities if the person would have a relevant interest in the securities but for subsection 609(6) (exchange traded options) or 609(7) (conditional agreements).

671C Civil liability

- (1) A person who contravenes section 671B is liable to compensate a person for any loss or damage the person suffers because of the contravention.
- (2) It is a defence in proceedings brought under this section if the person who contravenes section 671B proves that they contravened that section:
 - (a) because of inadvertence or mistake; or
 - (b) because they were not aware of a relevant fact or occurrence.In determining whether the defence is available, disregard the person's ignorance of, or a mistake on the person's part concerning, a matter of law.
- (3) If 2 or more persons each contravene section 671B because of the same act or omission, their liability under this section for the contravention is joint and individual.

Part 6C.2—Tracing beneficial ownership of shares

672A Disclosure notices

- (1) ASIC, a listed company or the responsible entity for a listed managed investment scheme, may direct:
 - (a) a member of the company or scheme; or
 - (b) a person named in a previous disclosure under section 672B as having a relevant interest in, or having given instructions about, voting shares in the company or interests in the scheme;to make the disclosure required by section 672B.
- (2) ASIC must exercise its powers under this section if requested to do so by a member of the company or scheme unless it considers that it would be unreasonable to do so in all the circumstances.

672B Disclosure by member of relevant interests and instructions

- (1) A person given a direction under section 672A must disclose to the person giving the direction:
 - (a) full details of their own relevant interest in the shares or interests in the scheme and of the circumstances that give rise to that interest; and
 - (b) the name and address of each other person who has a relevant interest in any of the shares or interests together with full details of:
 - (i) the nature and extent of the interest; and
 - (ii) the circumstances that give rise to the other person's interest; and
 - (c) the name and address of each person who has given the person instructions about:
 - (i) the acquisition or disposal of the shares or interests; or

Section 672C

- (ii) the exercise of any voting or other rights attached to the shares or interests; or
- (iii) any other matter relating to the shares or interests; together with full details of those instructions (including the date or dates on which they were given).

A matter referred to in paragraph (b) or (c) need only be disclosed to the extent to which it is known to the person required to make the disclosure.

- (2) The disclosure must be made within 2 business days after:
 - (a) the person is given the direction; or
 - (b) if the person applies for an exemption under section 673 from the obligation to make the disclosure and ASIC refuses to grant the exemption—ASIC notifies the person of its decision on the application; or
 - (c) if the direction is given by a company or responsible entity—the company or responsible entity pays any fee payable under the regulations made for the purposes of section 672D.
- (3) The person does not have to comply with a direction given by the company or the responsible entity if the person proves that the giving of the direction is vexatious.

672C ASIC may pass information on to person who made request

If ASIC receives information in response to a direction under section 672A about shares in a company or interests in a listed managed investment scheme, ASIC:

- (a) may pass the information on to the company or the responsible entity for the scheme; and
- (b) if ASIC gave the direction in response to a request under subsection 672A(2)—must pass the information on to the person who made the request unless ASIC considers it would be unreasonable in all the circumstances to do so.

Section 672D

672D Fee for complying with a direction given by a company or scheme under this Part

- (1) The regulations may prescribe fees that companies and responsible entities are to pay to persons for complying with directions given under this Part.
- (2) A person is liable to repay a fee paid to the person for complying with a direction under section 672A if the person does not comply with the direction on time even if the person does so later. The fee may be recovered as a debt due to the company or responsible entity that paid it to the person.

672E No notice of rights

A company or responsible entity is not, because of anything done under this Part:

- (a) to be taken for any purpose to have notice of; or
 - (b) put on inquiry as to;
- a person's right in relation to a share in the company or an interest in the listed managed investment scheme.

672F Civil liability

- (1) A person who contravenes section 672B is liable to compensate a person for any loss or damage the person suffers because of the contravention.
- (2) It is a defence in proceedings brought under this section if the person who contravenes section 672B proves that they contravened that section:
 - (a) because of inadvertence or mistake; or
 - (b) because they were not aware of a relevant fact or occurrence.In determining whether the defence is available, disregard the person's ignorance of, or a mistake on the person's part concerning, a matter of law.

- (3) If 2 or more persons each contravene section 672B because of the same act or omission, their liability under this section for the contravention is joint and individual.

Part 6C.3—ASIC powers

673 ASIC's power to exempt and modify

- (1) ASIC may:
 - (a) exempt a person from a provision of this Chapter; or
 - (b) declare that this Chapter applies to a person as if specified provisions were omitted, modified or varied as specified in the declaration.
 - (2) In deciding whether to give the exemption or declaration, ASIC must consider the purposes of this Chapter set out in section 602.
 - (3) The exemption or declaration may:
 - (a) apply to all or specified provisions of this Chapter; and
 - (b) apply to all persons, specified persons, or a specified class of persons; and
 - (c) relate to all securities, specified securities or a specified class of securities; and
 - (d) relate to any other matter generally or as specified.
 - (4) An exemption may apply unconditionally or subject to specified conditions. A person to whom a condition specified in an exemption applies must comply with the condition. The Court may order the person to comply with the condition in a specified way. Only ASIC may apply to the Court for the order.
 - (5) The exemption or declaration must be in writing and ASIC must publish notice of it in the *Gazette*.
 - (6) For the purposes of this section, the *provisions of this Chapter* include:
 - (a) regulations made for the purposes of this Chapter; and
 - (b) definitions in this Law or the regulations as they apply to references in:
 - (i) this Chapter; or
-

- (ii) regulations made for the purposes of this Chapter; and
- (c) Division 12 of Part 11.2.

Chapter 6D—Fundraising

Part 6D.1—Application of the fundraising provisions

700 Coverage of the fundraising rules

Securities covered

- (1) Subsection 92(3) defines *securities* for the purposes of this Chapter.

Offers and invitations both covered

- (2) For the purposes of this Chapter:
 - (a) offering securities for issue includes inviting applications for the issue of the securities; and
 - (b) offering securities for sale includes inviting offers to purchase the securities.

Person offering securities

- (3) For the purposes of this Chapter, the person who offers securities is the person who has the capacity, or who agrees, to issue or transfer the securities if the offer is accepted.

Geographical coverage of Chapter

- (4) This Chapter applies to offers of securities that are received in this jurisdiction, regardless of where any resulting issue, sale or transfer occurs.

Note: This Chapter in effect applies to all offers received anywhere in Australia because the Corporations Law operates as a national law.

701 Treatment of offers of interests in managed investment scheme

This Chapter applies to offers of interests in managed investment schemes as if:

- (a) making the interests available were issuing the interests; and
- (b) the person making the interests available were the body whose securities were issued; and
- (c) the assets and liabilities, financial position and performance, profits and losses and prospects of the scheme were those of the body; and
- (d) a person who has the capacity to determine the outcome of decisions about the financial and operating policies governing the operation of the scheme were able to control the body.

702 Treatment of offers of options over securities

For the purposes of this Chapter:

- (a) an offer of an option over securities is not to be taken to be an offer of the underlying securities; and
- (b) the grant of an option without an offer of the option is taken to be an offer of the option; and
- (c) an offer to grant an option is taken to be an offer to issue the security constituted by the option.

Note 1: If a disclosure document is needed for the option and there is no further offer involved in exercising the option, the issue or sale of the underlying securities on the exercise of the option does not need a disclosure document.

Note 2: Paragraph (b)—the grant of the option will not require a disclosure document if no consideration is payable on the grant or the exercise of the option (see subsections 708(15) and (16)).

703 Chapter may not be contracted out of

A condition of a contract for the sale or issue of securities is void if it provides that a party to the contract is:

- (a) required or bound to waive compliance with any requirement of this Chapter; or
-

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Chapter 6D Fundraising

Part 6D.1 Application of the fundraising provisions

Section 703

- (b) taken to have notice of any contract, document or matter not specifically referred to in the disclosure document for the offer.

Part 6D.2—Disclosure to investors about securities

Division 1—Overview

704 When disclosure to investors is needed

Sections 706, 707 and 708 say when an offer of securities needs disclosure to investors under this Part.

Note 1: Section 727 prohibits offering securities without disclosure.

Note 2: If the offer needs disclosure, section 734 applies advertising restrictions. These continue throughout the whole offer process. Different restrictions apply before and after the disclosure document is lodged.

Note 3: The way the offers are made to people must not breach the securities hawking prohibition in section 736.

705 Types of disclosure document

The following table shows what disclosure documents to use if an offer of securities needs disclosure to investors under this Part.

Disclosure document	
Type	Sections
1 <i>prospectus</i> The standard full-disclosure document.	content [710, 711, 713] procedure [717] liability [728 and 729] defences [731, 733]

Section 706

Disclosure document	
Type	Sections
2 <i>short form prospectus</i> May be used for any offer. Section 712 allows a prospectus to refer to material lodged with ASIC instead of setting it out. Investors are entitled to a copy of this material if they ask for it.	content [712]
3 <i>profile statement</i> Section 721 allows a brief profile statement (rather than the prospectus) to be sent out with offers with ASIC approval. The prospectus must still be prepared and lodged with ASIC. Investors are entitled to a copy of the prospectus if they ask for it.	content [714] procedure [717] liability [728 and 729] defences [732, 733]
4 <i>offer information statement</i> Section 709 allows an offer information statement to be used instead of a prospectus for an offer to issue securities if the amount raised from issues of securities is \$5 million or less.	content [715] procedure [717] liability [728 and 729] defences [732, 733]

Division 2—Offers that need disclosure to investors

706 Issue offers that need disclosure

An offer of securities for issue needs disclosure to investors under this Part unless section 708 says otherwise.

707 Sale offers that need disclosure

Only some sales need disclosure

- (1) An offer of securities for sale needs disclosure to investors under this Part only if disclosure is required by subsection (2), (3) or (5).

Off-market sale by controller

- (2) An offer of a body's securities for sale needs disclosure to investors under this Part if:
- (a) the person making the offer controls the body; and
 - (b) either:
 - (i) the securities are not quoted; or
 - (ii) although the securities are quoted, they are not offered for sale in the ordinary course of trading on a stock market of a securities exchange;
- and section 708 does not say otherwise.

Note: See section 50AA for when a person controls a body.

Sale amounting to indirect issue

- (3) An offer of a body's securities for sale within 12 months after their issue needs disclosure to investors under this Part if the body issued the securities:
- (a) without disclosure to investors under this Part; and
 - (b) with the purpose of the person to whom they were issued:
 - (i) selling or transferring them; or
 - (ii) granting, issuing or transferring interests in, or options or warrants over, them;
- and section 708 does not say otherwise.

Note 1: Section 706 normally requires disclosure for the issue of securities. This subsection is intended to prevent avoidance of section 706. However, to establish a contravention of this subsection, the only purpose that needs to be shown is that referred to in paragraph (b).

Note 2: The issuer and the seller must both consent to the disclosure document (see section 720).

Section 707

Evidence of intention—indirect issue

- (4) Unless the contrary is proved, a body is taken to issue securities with the purpose referred to in paragraph (3)(b) if any of the securities are subsequently sold, or offered for sale, within 12 months after their issue.

Sale amounting to indirect off-market sale by controller

- (5) An offer of a body's securities for sale within 12 months after their sale by a person who controlled the body at the time of the sale needs disclosure to investors under this Part if:
- (a) at the time of the sale by the controller either:
 - (i) the securities were not quoted; or
 - (ii) although the securities were quoted, they were not offered for sale in the ordinary course of trading on a stock market of a securities exchange; and
 - (b) the controller sold the securities without disclosure to investors under this Part; and
 - (c) the controller sold the securities with the purpose of the person to whom they were sold:
 - (i) selling or transferring them; or
 - (ii) granting, issuing or transferring interests in, or options or warrants over, them;
- and section 708 does not say otherwise.

Note 1: Subsection (2) normally requires disclosure for a sale by a controller. This subsection is intended to prevent avoidance of subsection (2). However, to establish a contravention of this subsection, the only purpose that needs to be shown is that referred to in paragraph (c).

Note 2: See section 50AA for when a person controls a body.

Note 3: The controller and the seller must both consent to the disclosure document (see section 720).

Evidence of intention—indirect sale by controller

- (6) Unless the contrary is proved, a person who controls a body is taken to sell securities with the purpose referred to in paragraph
-

(5)(c) if any of the securities are subsequently sold, or offered for sale, within 12 months after their sale by the controller.

708 Offers that do not need disclosure

Small scale offerings (20 issues or sales in 12 months)

- (1) Personal offers of a body's securities by a person do not need disclosure to investors under this Part if:
- (a) none of the offers results in a breach of the 20 investors ceiling (see subsections (3) and (4)); and
 - (b) none of the offers results in a breach of the \$2 million ceiling (see subsections (3) and (4)).

This subsection does not apply to an offer for sale to which subsection 707(3) (sale amounting to indirect issue) or (5) (sale amounting to indirect sale by controller) applies.

Note 1: Subsection 727(4) makes it an offence to issue or transfer securities without disclosure to investors once 20 issues or transfers have occurred or \$2 million has been raised.

Note 2: Under section 740 ASIC may make a determination aggregating the transactions of bodies that ASIC considers to be closely related.

- (2) For the purposes of subsection (1), a personal offer is one that:
- (a) may only be accepted by the person to whom it is made; and
 - (b) is made to a person who is likely to be interested in the offer, having regard to:
 - (i) previous contact between the person making the offer and that person; or
 - (ii) some professional or other connection between the person making the offer and that person; or
 - (iii) statements or actions by that person that indicate that they are interested in offers of that kind.
- (3) An offer by a body to issue securities:
- (a) results in a breach of the 20 investors ceiling if it results in the number of people to whom securities of the body have been issued exceeding 20 in any 12 month period; and

Section 708

- (b) results in a breach of the \$2 million ceiling if it results in the amount raised by the body by issuing securities exceeding \$2 million in any 12 month period.
 - (4) An offer by a person to transfer a body's securities:
 - (a) results in a breach of the 20 investors ceiling if it results in the number of people to whom the person sells securities of the body exceeding 20 in any 12 month period; and
 - (b) results in a breach of the \$2 million ceiling if it results in the amount raised by the person from selling the body's securities exceeding \$2 million in any 12 month period.
 - (5) In counting issues and sales of the body's securities, and the amount raised from issues and sales, for the purposes of subsection (1), disregard issues and sales that result from offers that:
 - (a) do not need a disclosure document because of any other subsection of this section; or
 - (b) are not received in Australia; or
 - (c) are made under a disclosure document.
- Note: Also see provisions on restrictions on advertising (section 734) and securities hawking provisions (Part 6D.3).
- (6) In counting issues and sales of the body's securities, and the amount raised from issues and sales, for the purposes of subsection (1), disregard any issues and sales made by a body if:
 - (a) the body was a managed investment scheme (but not a registered managed investment scheme) at the time that the offer of interests in the scheme that resulted in the issues or sales was made; and
 - (b) the body became a registered managed investment scheme within 12 months after that offer was made; and
 - (c) the offer would have been exempted under any other subsection of this section if the managed investment scheme had been a registered managed investment scheme at the time that the offer was made.
 - (7) In working out the amount of money raised by the body by issuing securities, include the following:
-

- (a) the amount payable for the securities at the time when they are issued
- (b) if the securities are shares issued partly-paid—any amount payable at a future time if a call is made
- (c) if the security is an option—any amount payable on the exercise of the option
- (d) if the securities carry a right to convert the securities into other securities—any amount payable on the exercise of that right.

Sophisticated investors

- (8) An offer of a body's securities does not need disclosure to investors under this Part if:
 - (a) the minimum amount payable for the securities on acceptance of the offer by the person to whom the offer is made is at least \$500,000; or
 - (b) the amount payable for the securities on acceptance by the person to whom the offer is made and the amounts previously paid by the person for the body's securities of the same class that are held by the person add up to at least \$500,000; or
 - (c) it appears from a certificate given by a qualified accountant no more than 6 months before the offer is made that the person to whom the offer is made:
 - (i) has net assets of at least \$2.5 million; or
 - (ii) has a gross income for each of the last 2 financial years of at least \$250,000 a year.

Note 1: Section 9 defines *qualified accountant*.

Note 2: Paragraph (c)—A dealer has obligations under Division 3 of Part 7.4 when making recommendations about securities and ASIC has power under section 826 to revoke a dealer's licence if the dealer contravenes paragraph 708(8)(c).

- (9) In calculating the amount payable, or paid, for securities for the purposes of paragraph (8)(a) or (b), disregard any amount payable, or paid, to the extent to which it is to be paid, or was paid, out of money lent by the person offering the securities or an associate.

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- (10) An offer of a body's securities does not need disclosure to investors under this Part if:
- (a) the offer is made through a licensed dealer; and
 - (b) the dealer is satisfied on reasonable grounds that the person to whom the offer is made has previous experience in investing in securities that allows them to assess:
 - (i) the merits of the offer; and
 - (ii) the value of the securities; and
 - (iii) the risks involved in accepting the offer; and
 - (iv) their own information needs; and
 - (v) the adequacy of the information given by the person making the offer; and
 - (c) the dealer gives the person before, or at the time when, the offer is made a written statement of the dealer's reasons for being satisfied as to those matters; and
 - (d) the person to whom the offer is made signs a written acknowledgment before, or at the time when, the offer is made that the dealer has not given the person a disclosure document under this Part in relation to the offer.

Professional investors

- (11) An offer of securities does not need disclosure to investors under this Part if it is made to:
- (a) a person who is a licensed or exempt dealer and is acting as principal; or
 - (b) a person who is a licensed or exempt investment adviser and is acting as principal; or
 - (c) a body registered under the *Life Insurance Act 1995*; or
 - (d) a body registered under the *Financial Corporations Act 1974*; or
 - (e) a regulated superannuation fund, an approved deposit fund, a pooled superannuation trust, or a public sector superannuation scheme within the meaning of the *Superannuation Industry (Supervision) Act 1993* if the fund, trust or scheme has net assets of at least \$10 million; or

- (f) a terminating building society within the meaning of the *Financial Corporations Act 1974*; or
- (g) a friendly society within the meaning of the *Life Insurance Act 1995*; or
- (h) a person who controls at least \$10 million (including any amount held by an associate or under a trust that the person manages) for the purpose of investment in securities.

Note 1: Section 68 defines *exempt dealer* and *exempt investment adviser*.

Note 2: An underwriter to a securities issue or sale will generally be a licensed dealer.

Offers of securities to people associated with the body

- (12) An offer of a body's securities does not need disclosure to investors under this Part if it is made to:
 - (a) an executive officer of the body or a related body or their spouse, parent, child, brother or sister; or
 - (b) a body corporate controlled by a person referred to in paragraph (a).

Certain offers to present holder of securities

- (13) An offer of securities for issue does not need disclosure to investors under this Part if it is:
 - (a) an offer of fully-paid shares in a company to 1 or more existing holders of shares in the company under a dividend reinvestment plan or bonus share plan; or
 - (b) an offer of interests in a managed investment scheme to 1 or more existing holders of interests in the scheme if:
 - (i) the offer is made under a distribution reinvestment plan or switching facility; or
 - (ii) the scheme is of a kind commonly known as a cash common fund or cash management trust.
- (14) An offer of a disclosing entity's debentures for issue does not need disclosure to investors under this Part if the offer is made to 1 or more existing debenture holders.

Section 708

Issues or sales for no consideration

- (15) An offer of securities (other than options) does not need disclosure to investors under this Part if no consideration is to be provided for the issue or transfer of the securities.
- (16) An offer of options does not need disclosure to investors under this Part if:
 - (a) no consideration is to be provided for the issue or transfer of the options; and
 - (b) no consideration is to be provided for the underlying securities on the exercise of the option.

Compromise or arrangement under Part 5.1

- (17) An offer of securities does not need disclosure to investors under this Part if it is made under a compromise or arrangement under Part 5.1 approved at a meeting held as a result of an order under subsection 411(1) or (1A).

Takeovers

- (18) An offer of securities does not need disclosure to investors under this Part if it is:
 - (a) made as consideration for an offer to acquire securities under a takeover bid under Chapter 6; and
 - (b) accompanied by a bidder's statement.

Note: Although this offer does not need a disclosure document, similar disclosures must be made about the securities in the bidder's statement under section 636.

Debentures of certain bodies

- (19) An offer of a body's debentures for issue or sale does not need disclosure to investors under this Part if the body is:
 - (a) an Australian ADI; or
 - (b) registered under the *Life Insurance Act 1995*.

Offers by exempt bodies

- (20) An offer of a body's securities does not need disclosure to investors under this Part if the body is an exempt body of this jurisdiction.

Note: Section 66A defines *exempt body*.

- (21) An offer of a body's securities for issue does not need disclosure to investors under this Part if the body is an exempt public authority of a State or Territory.

Note: Debentures, stock or bonds issued by a government are not securities for the purposes of this Chapter (see subsection 92(3)).

Division 3—Types of disclosure documents

709 Prospectuses, short-form prospectuses, profile statements and offer information statements

Prospectus or short-form prospectus

- (1) If an offer of securities needs disclosure to investors under this Part, a prospectus must be prepared for the offer unless subsection (4) allows an offer information statement to be used instead. Under section 712, the prospectus may simply refer to material already lodged with ASIC instead of including it.

Note: See sections 710 to 713 for the contents of a prospectus.

Profile statement

- (2) A profile statement for an offer may be prepared in addition to the prospectus if ASIC has approved the making of offers of that kind with a profile statement instead of a disclosure document.

Note 1: See section 714 for the contents of a profile statement.

Note 2: Subsection 729(2) provides that there is still liability to investors on the prospectus when a profile statement is used.

Section 709

- (3) ASIC may approve the use of profile statements for offers of securities of a particular kind. The approval may specify information to be included in the profile statement (including information about a matter referred to in paragraphs 714(1)(a) to (d)).

Offer information statement

- (4) A body offering to issue securities may use an offer information statement for the offer instead of a prospectus if the amount of money to be raised by the body by issuing the securities, when added to all amounts previously raised by:
- (a) the body; or
 - (b) a related body corporate; or
 - (c) an entity controlled by:
 - (i) a person who controls the body; or
 - (ii) an associate of that person;
- by issuing securities under an offer information statement is \$5 million or less.

Note 1: See section 715 for the contents of an offer information statement. The statement must include financial statements that are less than 6 months old.

Note 2: Under section 740, ASIC may make a determination aggregating the transactions of bodies that ASIC considers to be closely related.

- (5) In working out the amount of money to be raised by a body or entity by issuing securities, include the following:
- (a) the amount payable for the securities at the time when they are issued
 - (b) if the securities are issued partly-paid—any amount payable at a future time if a call is made
 - (c) if the securities are options—any amount payable on the exercise of the options
 - (d) if the securities carry a right to convert the securities into other securities—any amount payable on the exercise of that right.

Division 4—Disclosure requirements

710 Prospectus content—general disclosure test

- (1) A prospectus for a body's securities must contain all the information that investors and their professional advisers would reasonably require to make an informed assessment of the matters set out in the table below. The prospectus must contain this information:
- (a) only to the extent to which it is reasonable for investors and their professional advisers to expect to find the information in the prospectus; and
 - (b) only if a person whose knowledge is relevant (see subsection (3)):
 - (i) actually knows the information; or
 - (ii) in the circumstances ought reasonably to have obtained the information by making enquiries.

Disclosures		[operative]
Offer	Matters	
1 offer to issue (or transfer) shares, debentures or interests in a managed investment scheme	<ul style="list-style-type: none">• the rights and liabilities attaching to the securities offered• the assets and liabilities, financial position and performance, profits and losses and prospects of the body that is to issue (or issued) the shares, debentures or interests	

Schedule 1 Main amendments of the Corporations Law

Chapter 6D Fundraising

Part 6D.2 Disclosure to investors about securities

Section 710

Disclosures		[operative]
Offer	Matters	
2 offer to grant (or transfer) a legal or equitable interest in securities or grant (or transfer) an option over securities	<ul style="list-style-type: none">• the rights and liabilities attaching to:<ul style="list-style-type: none">- the interest or option- the underlying securities• for an option—the capacity of the person making the offer to issue or deliver the underlying securities• if the person making the offer is:<ul style="list-style-type: none">- the body that issued or is to issue the underlying securities; or- a person who controls that body; the assets and liabilities, financial position and performance, profits and losses and prospects of that body• if subsection 707(3) or (5) applies to the offer—the assets and liabilities, financial position and performance, profits and losses and prospects of the body whose securities are offered	

Note: Section 713 makes special provision for prospectuses for continuously quoted securities.

- (2) In deciding what information should be included under subsection (1), have regard to:
- (a) the nature of the securities and of the body; and
 - (b) if the securities are investments in a managed investment scheme—the nature of the scheme; and
 - (c) the matters that likely investors may reasonably be expected to know; and
 - (d) the fact that certain matters may reasonably be expected to be known to their professional advisers.
- (3) For the purposes of this section, a person's knowledge is relevant only if they are one of the following:
- (a) the person offering the securities

- (b) if the person offering the securities is a body—a director of the body
- (c) a proposed director of the body whose securities will be issued under the offer
- (d) a person named in the prospectus as an underwriter of the issue or sale
- (e) a person named in the prospectus as a stockbroker to the issue or sale if they participate in any way in the preparation of the prospectus
- (f) a person named in the prospectus with their consent as having made a statement:
 - (i) that is included in the prospectus; or
 - (ii) on which a statement made in the prospectus is based
- (g) a person named in the prospectus with their consent as having performed a particular professional or advisory function.

Note: Section 729 says who is liable for misstatements in, and omissions from, a disclosure document.

711 Prospectus content—specific disclosures

Terms and conditions of offer

- (1) The prospectus must set out the terms and conditions of the offer.

Disclosure of interests and fees of certain people involved in the offer

- (2) The prospectus must set out the nature and extent of the interests (if any) that each person referred to in subsection (4) holds, or held at any time during the last 2 years, in:
 - (a) the formation or promotion of the body; or
 - (b) property acquired or proposed to be acquired by the body in connection with:
 - (i) its formation or promotion; or
 - (ii) the offer of the securities; or
 - (c) the offer of the securities.

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- (3) The prospectus must set out the amount that anyone has paid or agreed to pay, or the nature and value of any benefit anyone has given or agreed to give:
- (a) to a director, or proposed director, to induce them to become, or to qualify as, a director of the body; and
 - (b) for services provided by a person referred to in subsection (4) in connection with:
 - (i) the formation or promotion of the body; or
 - (ii) the offer of the securities; and
 - (c) if the prospectus is for interests in a managed investment scheme—to the responsible entity:
 - (i) to procure acquisitions of interests in the scheme; or
 - (ii) for services provided under the constitution of the scheme.

To comply with this subsection it is not sufficient merely to state in the prospectus that a person has been paid or will be paid normal, usual or standard fees.

- (4) Disclosures need to be made under subsections (2) and (3) in relation to:
- (a) any directors and proposed directors of the body
 - (b) a person named in the prospectus as performing a function in a professional, advisory or other capacity in connection with the preparation or distribution of the prospectus
 - (c) if the securities are interests in a managed investment scheme—the person making the interests available and, if the person is a body, its directors
 - (d) a promoter of the body
 - (e) a stockbroker or underwriter (but not a sub-underwriter) to the issue or sale.

Quotation of securities

- (5) If the prospectus for an offer of securities states or implies that the securities are to be quoted on a stock market of a securities exchange (whether in Australia or elsewhere), the prospectus must state that:
-

- (a) the securities have been admitted to quotation on that stock market; or
- (b) an application for admission of the securities to quotation on that stock market has been made to that securities exchange; or
- (c) an application for admission of the securities to quotation on that stock market will be made to that securities exchange within 7 days after the date of the prospectus.

Note 1: Paragraph 724(1)(b) gives times within which the person should seek and obtain admission to quotation.

Note 2: Subsection 716(1) requires the prospectus to be dated.

Expiry date

- (6) The prospectus must state that no securities will be issued on the basis of the prospectus after the expiry date specified in the prospectus. The expiry date must not be later than 13 months after the date of the prospectus. The expiry date of a replacement prospectus must be the same as that of the original prospectus it replaces.

Note 1: Subsection 716(1) requires the prospectus to be dated.

Note 2: Section 719 deals with replacement prospectuses.

Lodgment with ASIC

- (7) The prospectus must state that:
 - (a) a copy of the prospectus has been lodged with ASIC; and
 - (b) ASIC takes no responsibility for the content of the prospectus.

Prescribed information

- (8) The prospectus must set out the information required by the regulations.

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712 Prospectus content—short form prospectuses

Prospectus may simply refer to material lodged with ASIC

- (1) Instead of setting out information that is contained in a document that has been lodged with ASIC, a prospectus may simply refer to the document. The reference must:
 - (a) identify the document or the part of the document that contains the information; and
 - (b) inform people of their right to obtain a copy of the document (or part) under subsection (5).
- (2) The reference must also include:
 - (a) if the information is primarily of interest to professional analysts or advisers or investors with similar specialist information needs:
 - (i) a description of the contents of the document (or part); and
 - (ii) a statement to the effect that the information in the document (or part) is primarily of interest to those people; or
 - (b) in any other case—sufficient information about the contents of the document to allow a person to whom the offer is made to decide whether to obtain a copy of the document (or part).
- (3) The document (or part) referred to under subsection (1) is taken to be included in the prospectus.
- (4) A person who wishes to take advantage of subsection (1) may lodge a document with ASIC even if this Law does not require the document to be lodged.
- (5) If the prospectus is taken to include a document, or part of a document, under subsection (1), the person making the offer must give a copy of the document (or part) free of charge to anyone who asks for it during the application period of the prospectus.

713 Special prospectus content rules for continuously quoted securities

Alternative general disclosure test

- (1) A prospectus for an offer of:
 - (a) continuously quoted securities of a body; or
 - (b) options to acquire continuously quoted securities of a body;satisfies section 710 if it complies with subsections (2), (3) and (4) of this section.
- (2) The prospectus must contain all the information investors and their professional advisers would reasonably require to make an informed assessment of:
 - (a) the effect of the offer on the body; and
 - (b) if the securities are interests in a managed investment scheme—the effect of the offer on the scheme; and
 - (c) the rights and liabilities attaching to the securities offered; and
 - (d) if the securities are options—the rights and liabilities attaching to:
 - (i) the options themselves; and
 - (ii) the underlying securities.The prospectus must contain this information only to the extent to which it is reasonable for investors and their professional advisers to expect to find the information in the prospectus.
- (3) The prospectus must state that:
 - (a) as a disclosing entity, the body or scheme is subject to regular reporting and disclosure obligations; and
 - (b) copies of documents lodged with ASIC in relation to the body may be obtained from, or inspected at, an ASIC office.
- (4) The prospectus must either:
 - (a) inform people of their right to obtain a copy of any of the following documents:

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- (i) the annual financial report most recently lodged with ASIC by the body or scheme
 - (ii) any half-year financial report lodged with ASIC by the body or scheme after the lodgment of that annual financial report and before the lodgment of the copy of the prospectus with ASIC
 - (iii) any continuous disclosure notices given by the body or scheme after the lodgment of that annual financial report and before the lodgment of the copy of the prospectus with ASIC; or
- (b) include, or be accompanied by, a copy of the document.

If the prospectus informs people of their right to obtain a copy of the document, the person making the offer must give a copy of the document free of charge to anyone who asks for it during the application period for the prospectus.

Information excluded from continuous disclosure notice

- (5) Information about the offer must also be set out in the prospectus if the information:
- (a) has been excluded from a continuous disclosure notice in accordance with the listing rules of the securities exchange to which the notice was given; and
 - (b) is information that investors and their professional advisers would reasonably require for the purpose of making an informed assessment of:
 - (i) the assets and liabilities, financial position and performance, profits and losses and prospects of the body; and
 - (ii) the rights and liabilities attaching to the securities being offered.

The prospectus must contain this information only to the extent to which it is reasonable for investors and their professional advisers to expect to find the information in the prospectus.

ASIC power to exclude entity from this section

- (6) ASIC may determine in writing that a body or scheme may not rely on this section if it is satisfied that, in the previous 12 months, any of the following provisions were contravened in relation to the body or scheme:
- (a) the provisions of Chapter 2M
 - (b) section 1001A
 - (c) section 724
 - (d) section 728.

ASIC must publish a copy of the determination in the *Gazette*.

While the determination is in force, section 710 and not this section applies to securities of the body or scheme.

714 Contents of profile statement

- (1) A profile statement must:
- (a) identify the body and the nature of the securities; and
 - (b) state the nature of the risks involved in investing in the securities; and
 - (c) give details of all amounts payable in respect of the securities (including any amounts by way of fee, commission or charge); and
 - (d) state that the person given the profile statement is entitled to a copy of the prospectus free of charge; and
 - (e) state that:
 - (i) a copy of the statement has been lodged with ASIC; and
 - (ii) ASIC takes no responsibility for the content of the statement; and
 - (f) give any other information required by the regulations or by ASIC approval under subsection 709(3).
- (2) The profile statement must state that no securities will be issued on the basis of the statement after the expiry date specified in the statement. The expiry date must not be later than 13 months after the date of the prospectus. The expiry date of a replacement

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statement must be the same as that of the original statement it replaces.

Note 1: Subsection 716(1) requires the profile statement to be dated.

Note 2: Section 719 deals with supplementary and replacement profile statements.

715 Contents of offer information statement

- (1) An offer information statement for the issue of a body's securities must:
 - (a) identify the body and the nature of the securities; and
 - (b) describe the body's business; and
 - (c) describe what the funds raised by the offers are to be used for; and
 - (d) state the nature of the risks involved in investing in the securities; and
 - (e) give details of all amounts payable in respect of the securities (including any amounts by way of fee, commission or charge); and
 - (f) state that:
 - (i) a copy of the statement has been lodged with ASIC; and
 - (ii) ASIC takes no responsibility for the content of the statement; and
 - (g) state that the statement is not a prospectus and that it has a lower level of disclosure requirements than a prospectus; and
 - (h) state that investors should obtain professional investment advice before accepting the offer; and
 - (i) include a copy of a financial report for the body; and
 - (j) include any other information that the regulations require to be included in the statement.
 - (2) The financial report included under paragraph (1)(i) must:
 - (a) be a report for a 12 month period and have a balance date that occurs within the last 6 months before the securities are first offered under the statement; and
 - (b) be prepared in accordance with the accounting standards; and
-

(c) be audited.

- (3) The statement must state that no securities will be issued on the basis of the statement after the expiry date specified in the statement. The expiry date must not be later than 13 months after the date of the statement. The expiry date of a replacement statement must be the same as that of the original statement it replaces.

Note 1: Subsection 716(1) requires the statement to be dated.

Note 2: Section 719 deals with replacement statements.

716 Disclosure document date and consents

Date of disclosure document

- (1) A disclosure document must be dated. The date is the date on which it is lodged with ASIC.

Consent of person to whom statement attributed

- (2) A disclosure document may only include a statement by a person, or a statement said in the document to be based on a statement by a person, if:
- (a) the person has consented to the statement being included in the document in the form and context in which it is included; and
 - (b) the document states that the person has given this consent; and
 - (c) the person has not withdrawn this consent before the document is lodged with ASIC.

Division 5—Procedure for offering securities

717 Overview of procedure for offering securities

The following table summarises what a person who wants to offer securities must do to make an offer of securities that needs

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disclosure to investors under this Part and gives signposts to relevant sections:

Offering securities (disclosure documents and procedure)

	Action required	Sections	Comments and related sections
1	Prepare disclosure document, making sure that it: <ul style="list-style-type: none"> • sets out all the information required • does not contain any misleading or deceptive statements • is dated and that the directors consent to the disclosure document.	710 711 712 713 714 715 716	Section 728 prohibits offering securities under a disclosure document that is materially deficient. Section 729 deals with the liability for breaches of this prohibition. Sections 731, 732 and 733 set out defences.
2	Lodge the disclosure document with ASIC	718	Subsection 727(3) prohibits processing applications for non-quoted securities for 7 days after the disclosure document is lodged.
3	Offer the securities, making sure that the offer and any application form is either included in or accompanies: <ul style="list-style-type: none"> • the disclosure document; or • a profile statement if ASIC has approved the use of a profile statement for offers of that kind. 	721	Sections 727 and 728 make it an offence to: <ul style="list-style-type: none"> • offer securities without a disclosure document • offer securities if the disclosure document is materially deficient. Subsection 729(3) deals with liability on the prospectus if a profile statement is used. The securities hawking provisions (section 736) restrict the way in which the securities can be offered.

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Offering securities (disclosure documents and procedure)

Action required	Sections	Comments and related sections
<p>4 If it is found that the disclosure document lodged was deficient or a significant new matter arises, either:</p> <ul style="list-style-type: none"> • lodge a supplementary or replacement document under section 719; or • return money to applicants under section 724. 	<p>719 724</p>	<p>Section 728 prohibits making offers after becoming aware of a material deficiency in the disclosure document or a significant new matter.</p> <p>Section 730 requires people liable on the disclosure document to inform the person making the offer about material deficiencies and new matters.</p>
<p>5 Hold application money received on trust until the securities are issued or transferred or the money returned.</p>	<p>722</p>	<p>Investors may have a right to have their money returned if certain events occur (see sections 724, 737 and 738).</p>
<p>6 Issue or transfer the securities, making sure that:</p> <ul style="list-style-type: none"> • the investor used an application form distributed with the disclosure document; and • the disclosure document is current and not materially deficient; and • any minimum subscription condition has been satisfied. 	<p>723</p>	<p>Section 721 says which disclosure document must be distributed with the application form.</p> <p>Section 729 identifies the people who may be liable if:</p> <ul style="list-style-type: none"> • securities are issued in response to an improper application form; or • the disclosure document is not current or is materially deficient. <p>Sections 731, 732 and 733 provide defences for the contraventions.</p> <p>Section 737 provides remedies for an investor.</p>

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718 Lodging of disclosure document

A disclosure document to be used for an offer of securities must be lodged with ASIC.

Note 1: Subsection 727(3) makes it an offence to process applications for non-quoted securities under an offer that needs a disclosure document until 7 days after the disclosure document is lodged.

Note 2: See section 720 for the consents that need to be obtained before lodgment.

Note 3: Section 351 says what signatures are necessary for documents that are to be lodged with ASIC.

719 Lodging supplementary or replacement document

Need for a supplementary or replacement document

- (1) If the person making the offer becomes aware of:
- (a) a misleading or deceptive statement in the disclosure document; or
 - (b) an omission from the disclosure document of information required by section 710, 711, 712, 713, 714 or 715; or
 - (c) a new circumstance that:
 - (i) has arisen since the disclosure document was lodged; and
 - (ii) would have been required by section 710, 711, 712, 713, 714 or 715 to be included in the disclosure document if it had arisen before the disclosure document was lodged;

that is materially adverse from the point of view of an investor, the person may lodge a supplementary or replacement document with ASIC.

Note 1: Section 728 makes it an offence to continue making offers after the person has become aware of a misleading or deceptive statement, omission or new circumstance that is materially adverse from the point of view of an investor unless the deficiency is corrected.

Note 2: Because of section 712, a prospectus may be taken to include information in another document. This should be taken into account when considering whether the prospectus is deficient.

- Note 3: The power to issue a supplementary or replacement document is not limited to the situations dealt with in this section.
- Note 4: This section applies to a document that has already been previously supplemented or replaced.
- Note 5: See section 720 for the consents that need to be obtained before lodgment.

Form of supplementary document

- (2) At the beginning of a supplementary document, there must be:
- (a) a statement that it is a supplementary document; and
 - (b) an identification of the disclosure document it supplements; and
 - (c) an identification of any previous supplementary documents lodged with ASIC in relation to the offer; and
 - (d) a statement that it is to be read together with the disclosure document it supplements and any previous supplementary documents.

The supplementary document must be dated. The date is the date on which it is lodged with ASIC.

Form of replacement document

- (3) At the beginning of a replacement document, there must be:
- (a) a statement that it is a replacement document; and
 - (b) an identification of the disclosure document it replaces.

The replacement document must be dated. The date is the date on which it is lodged with ASIC.

Consequences of lodging a supplementary document

- (4) If a supplementary document is lodged with ASIC, the disclosure document is taken to be the disclosure document together with the supplementary document for the purposes of the application of this Chapter to events that occur after the lodgment.

Note: This subsection means, for example, that offers made after lodgment of the supplementary document must be accompanied by copies of both the original disclosure document and the supplementary document.

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Consequences of lodging a replacement document

- (5) If a replacement document is lodged with ASIC, the disclosure document is taken to be the replacement document for the purposes of the application of this Chapter to events that occur after the lodgment.

Note: This subsection means, for example, that offers made after lodgment of the replacement document must be accompanied by copies of the replacement document and not the original disclosure document.

720 Consents needed for lodgment

Consents for issue offers

The lodgment of a disclosure document, or a supplementary or replacement document, for the offer of a body's securities requires the consent of:

Consents required for lodgment		[operative]
Type of offer	People whose consent is required	
<i>Issue offers</i>		
1 offer of securities for issue	every director of the body every person named in the document as a proposed director of the body if securities interests in a managed investment scheme made available by a body— every director of that body if securities interests in a managed investment scheme made available by an individual—that individual	

Consents required for lodgment		[operative]
Type of offer	People whose consent is required	
<p style="text-align: center;"><i>sale offers (sale by controller)</i></p> <p>2 offer of securities for sale that needs a disclosure document because of subsection 707(2)</p>	<p>if seller an individual—that individual</p> <p>if seller a body—every director of the body</p>	
<p style="text-align: center;"><i>sale offers (sale amounting to indirect issue)</i></p> <p>3 offer of securities for sale that needs a disclosure document because of subsection 707(3)</p>	<p>every director of the body whose securities are offered for sale</p> <p>if seller an individual—that individual</p> <p>if seller a body—every director of the body</p>	
<p style="text-align: center;"><i>sale offers (sale amounting to indirect sale by controller)</i></p> <p>4 offer of securities for sale that needs a disclosure document because of subsection 707(5)</p>	<p>if seller an individual—that individual</p> <p>if seller a body—every director of the body</p> <p>if individual controls the body whose securities are offered for sale—that individual</p> <p>if body controls the body whose securities are offered for sale—every director of the controlling body</p>	

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721 Offer must be made in, or accompanied by, the disclosure document

Offers using prospectus alone

- (1) Offers of securities for which a prospectus is being used must be made in, or accompanied by, the prospectus unless subsection (2) allows a profile statement to be used instead.

Note 1: Subsection 727(1) makes it an offence to make an offer of securities unless the offer is made in or accompanied by the disclosure document and subsection 723(1) makes it an offence to issue securities unless they are applied for on a form that was issued in or together with the disclosure document.

Note 2: Section 736 makes it an offence to make unsolicited offers in a way that amounts to securities hawking.

Note 3: Section 728 makes it an offence for a person to offer securities if the disclosure document is deficient in a way that is material from the point of view of an investor.

Offers using prospectus and profile statement

- (2) An offer of securities may be made in, or accompanied by, a profile statement if:
- (a) under subsection 709(3), ASIC has approved the making of offers of that kind with a profile statement instead of a prospectus; and
 - (b) the profile statement complies with the requirements specified in ASIC approval.
- (3) If the offer that is made to a person is made in or accompanied by a profile statement, the person making the offer must give the person a copy of the prospectus free of charge if the person asks for it.

Offers using offer information statement

- (4) Offers for which an offer information statement is being used must be made in, or accompanied by, the offer information statement.

Note 1: Subsection 727(1) makes it an offence to make an offer of securities unless the offer is made in or accompanied by the disclosure document and subsection 723(1) makes it an offence to issue

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securities unless they are applied for on a form that was issued in or together with the disclosure document.

Note 2: Section 736 makes it an offence to make unsolicited offers in a way that amounts to securities hawking.

Note 3: Section 728 makes it an offence for a person to offer securities if the disclosure document is deficient in a way that is material from the point of view of an investor.

722 Application money to be held on trust

- (1) If a person offers securities for issue or sale under a disclosure document, the person must hold:
 - (a) all application money received from people applying for securities under the disclosure document; and
 - (b) all other money paid by them on account of the securities before they are issued or transferred;in trust under this section for the applicants until:
 - (c) the securities are issued or transferred; or
 - (d) the money is returned to the applicants.
- (2) If the application money needs to be returned to an applicant, the person must return the money as soon as practicable.

723 Issuing or transferring the securities under a disclosure document

Applications must be made on form included in, or accompanied by, disclosure document

- (1) If an offer of securities needs a disclosure document, the securities may only be issued or transferred in response to an application form. The securities may only be issued or transferred if the person issuing or transferring them has reasonable grounds to believe that:
 - (a) the form was included in, or accompanied by:
 - (i) the disclosure document; or
 - (ii) if subsection 721(2) allows a profile statement to be used—the prospectus or the profile statement;

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when the form was distributed by the person issuing or transferring the securities; or

- (b) the form was copied, or directly derived, by the person making the application from a form referred to in paragraph (a).

Minimum subscription condition must be fulfilled before issue or transfer

- (2) If a disclosure document for an offer of securities states that the securities will not be issued or transferred unless:

- (a) applications for a minimum number of the securities are received; or
(b) a minimum amount is raised;

the person making the offer must not issue or transfer any of the securities until that condition is satisfied. For the purpose of working out whether the condition has been satisfied, a person who has agreed to take securities as underwriter is taken to have applied for those securities.

Note 1: Under section 722, the application money must be held in trust until the issue or transfer of the securities.

Note 2: This subsection prevents the issue or transfer of the securities not only to those who apply for them in response to the disclosure document but also to those who do not need to apply for them (for example, because they are to take the securities under an underwriting agreement).

Issue or transfer void if quotation condition not fulfilled

- (3) If a disclosure document for an offer of securities states or implies that the securities are to be quoted on a stock market of a securities exchange (whether in Australia or elsewhere) and:

- (a) an application for the admission of the securities to quotation is not made within 7 days after the date of the disclosure document; or
(b) the securities are not admitted to quotation within 3 months after the date of the disclosure document;

then:

- (c) an issue or transfer of securities in response to an application made under the disclosure document is void; and
- (d) the person offering the securities must return the money received by the person from the applicants as soon as practicable.

724 Choices open to person making the offer if disclosure document condition not met or disclosure document defective

- (1) If a person offers securities under a disclosure document and:
 - (a) the disclosure document states that the securities will not be issued or transferred unless:
 - (i) applications for a minimum number of the securities are received; or
 - (ii) a minimum amount raised;and that condition is not satisfied within 4 months after the date of the disclosure document; or
 - (b) the disclosure document states or implies that the securities are to be quoted on a stock market of a securities exchange (whether in Australia or elsewhere) and:
 - (i) an application for the admission to quotation is not made within 7 days after the date of the disclosure document; or
 - (ii) the securities are not admitted to quotation within 3 months after the date of the disclosure document; or
 - (c) the person becomes aware that:
 - (i) the disclosure document contains a misleading or deceptive statement; or
 - (ii) there is an omission from the disclosure document of information required by section 710, 711, 712, 713, 714 or 715;that is materially adverse from the point of view of an investor; or
 - (d) the person becomes aware of a new circumstance that:
 - (i) has arisen since the disclosure document was lodged; and

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- (ii) would have been required by section 710, 711, 712, 713, 714 or 715 to be included in the disclosure document if it had arisen before the disclosure document was lodged; and
- (iii) is materially adverse from the point of view of an investor;

the person must deal under subsection (2) with any applications for the securities made under the disclosure document that have not resulted in an issue or transfer of the securities. For the purpose of working out whether a condition referred to in paragraph (a) has been satisfied, a person who has agreed to take securities as underwriter is taken to have applied for those securities.

- (2) The person must either:
 - (a) repay the money received by the person from the applicants; or
 - (b) give the applicants:
 - (i) the documents required by subsection (3); and
 - (ii) 1 month to withdraw their application and be repaid; or
 - (c) issue or transfer the securities to the applicants and give them:
 - (i) the documents required by subsection (3); and
 - (ii) 1 month to withdraw their application and be repaid.

Note: Section 719 deals with lodging supplementary and replacement documents. Section 728 makes it an offence for a person to offer securities if the disclosure document is deficient in a way that is material from the point of view of an investor.

- (3) The documents to be given are set out in the following table:

Documents to be given		[operative]
	Circumstances	Documents
1	the sole disclosure document is a prospectus	a supplementary or replacement prospectus that corrects the deficiency or changes the terms of the offer

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Documents to be given		[operative]
Circumstances	Documents	
2	the disclosure documents are a prospectus and a profile statement and subsection (1) applies to the prospectus	a statement that sets out the changes needed to the prospectus to correct the deficiency or change the terms of offer; and a statement that the person is entitled to a copy of the prospectus free of charge
3	the disclosure documents are a prospectus and a profile statement and subsection (1) applies to the profile statement <i>Note that item 2 and this item may both apply to the offer.</i>	a supplementary or replacement profile statement that corrects the deficiency or changes the terms of the offer
4	the disclosure document is an offer information statement	a supplementary or replacement offer information statement that corrects the deficiency or changes the terms of the offer

725 Expiration of disclosure document

- (1) If a person offers securities under a disclosure document and the disclosure document passes its expiry date, the person must deal with applications for the securities under the document in accordance with subsections (2) and (3).
- (2) If an application is received on or before the expiry date, the person may issue or transfer securities to the applicant.

Note: Subsection 723(1) (when read with subsections 719(4) and (5)) requires the person issuing or transferring the securities to have reasonable grounds to believe that the application form was included

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in, or accompanied by, a disclosure document that was current at the time.

- (3) If an application is received after the expiry date, the person must either:
- (a) return any money received by the person from the applicant;
or
 - (b) give the applicant:
 - (i) a new disclosure document; and
 - (ii) 1 month to withdraw their application and be repaid; or
 - (c) issue or transfer the securities to the applicant and give them:
 - (i) a new disclosure document; and
 - (ii) 1 month to withdraw their application and be repaid.

Part 6D.3—Prohibitions, liabilities and remedies

Division 1—Prohibitions and liabilities

726 Offering securities in a body that does not exist

A person must not offer securities of:

- (a) a body that has not been formed or does not exist; or
- (b) a managed investment scheme that needs to be, or will need to be, registered and that has not been registered;

if the offer would need disclosure to investors under Part 6D.2 if the body or scheme did exist or had been registered. This is so even if it is proposed to form, incorporate or register the body or scheme.

727 Offering securities without a current disclosure document

Offer of securities needs lodged disclosure document

- (1) A person must not make an offer of securities, or distribute an application form for an offer of securities, that needs disclosure to investors under Part 6D.2 unless a disclosure document for the offer has been lodged with ASIC.

Offer form to be included in or accompanied by disclosure document

- (2) A person must not make an offer of securities, or distribute an application form for an offer of securities, that needs disclosure to investors under Part 6D.2 unless:
 - (a) if a prospectus is used for the offer—the offer or form is:
 - (i) included in the prospectus; or
 - (ii) accompanied by a copy of the prospectus; or
 - (b) if both a prospectus and a profile statement are used for the offer—the offer or form is:

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- (i) included in the prospectus or profile statement; or
- (ii) accompanied by a copy of the prospectus or profile statement; or
- (c) if an offer information statement is used for the offer—the offer or form is:
 - (i) included in the statement; or
 - (ii) accompanied by a copy of the statement.

Note: Sections 706, 707 and 708 say when the offer needs disclosure to investors under Part 6D.2.

Non-quoted securities—waiting period after lodgment before processing applications for securities

- (3) A person must not accept an application for, or issue or transfer, non-quoted securities offered under a disclosure document until the period of 7 days after lodgment of the disclosure document has ended. ASIC may extend the period by notice in writing to the person offering the securities. The period as extended must end no more than 14 days after lodgment.

Issue or transfer not to breach section 708 ceiling

- (4) If a person relies on subsection 708(1) to make offers of securities without disclosure to investors under Part 6D.2, the person must not issue or transfer securities without disclosure to investors under that Part if the issue or transfer would result in a breach of the 20 investors ceiling or the \$2 million ceiling (see subsections 708(3), (4), (5), (6) and (7)).

728 Misstatement in, or omission from, disclosure document

Misleading or deceptive statements, omissions and new matters

- (1) A person must not offer securities under a disclosure document if there is:
 - (a) a misleading or deceptive statement in:
 - (i) the disclosure document; or

- (ii) any application form that accompanies the disclosure document; or
- (iii) any document that contains the offer if the offer is not in the disclosure document or the application form; or
- (b) an omission from the disclosure document of material required by section 710, 711, 712, 713, 714 or 715; or
- (c) a new circumstance that:
 - (i) has arisen since the disclosure document was lodged; and
 - (ii) would have been required by section 710, 711, 712, 713, 714 or 715 to be included in the disclosure document if it had arisen before the disclosure document was lodged.

Note 1: The person may make further offers after making up the deficiency in the current disclosure document by lodging a supplementary or replacement document.

Note 2: See sections 731, 732 and 733 for defences.

Note 3: Section 995 imposes liabilities in respect of other conduct related to the offering of the securities.

Forecasts and other forward-looking statements

- (2) A person is taken to make a misleading statement about a future matter (including the doing of, or refusing to do, an act) if they do not have reasonable grounds for making the statement. This subsection does not limit the meaning of a reference to a misleading statement or a statement that is misleading in a material particular.

Offence if statement, omission or new matter materially adverse

- (3) A person commits an offence if they contravene subsection (1) and:
 - (a) the misleading or deceptive statement; or
 - (b) the omission or new circumstance;is materially adverse from the point of view of an investor.

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729 Right to recover for loss or damage resulting from contravention

Right to compensation

- (1) A person who suffers loss or damage because an offer of securities under a disclosure document contravenes subsection 728(1) may recover the amount of the loss or damage from a person referred to in the following table if the loss or damage is one that the table makes the person liable for. This is so even if the person did not commit, and was not involved in, the contravention.

People liable on disclosure document		[operative]
These people...	are liable for loss or damage caused by...	
1	the person making the offer	any contravention of subsection 728(1) in relation to the disclosure document
2	each director of the body making the offer if the offer is made by a body	any contravention of subsection 728(1) in relation to the disclosure document
3	a person named in the disclosure document with their consent as a proposed director of the body whose securities are being offered	any contravention of subsection 728(1) in relation to the disclosure document
4	an underwriter (but not a sub-underwriter) to the issue or sale named in the disclosure document with their consent	any contravention of subsection 728(1) in relation to the disclosure document
5	a person named in the disclosure document with their consent as having made a statement: (a) that is included in the disclosure document; or (b) on which a statement made in the disclosure document is based	the inclusion of the statement in the disclosure document

People liable on disclosure document [operative]

These people...	are liable for loss or damage caused by...
6 a person who contravenes, or is involved in the contravention of, subsection 728(1)	that contravention

Note: Item 2—*director* includes a shadow director (see section 9).

- (2) A person who acquires securities as a result of an offer that was accompanied by a profile statement is taken to have acquired the securities in reliance on both the profile statement and the prospectus for the offer.
- (3) An action under subsection (1) may begin at any time within 6 years after the day on which the cause of action arose.
- (4) This Part does not affect any liability that a person has under any other law.

Note: Conduct that contravenes subsection 728(1) is expressly excluded from the operation of section 995.

730 People liable on disclosure document to inform person making the offer about deficiencies in the disclosure document

A person referred to in the table in section 729 must notify the person making the offer in writing as soon as practicable if they become aware during the application period that:

- (a) a material statement in the disclosure document is misleading or deceptive; or
- (b) there is a material omission from the disclosure document of material required by section 710, 711, 712, 713, 714 or 715; or
- (c) a material new circumstance that:
 - (i) has arisen since the disclosure document was lodged; and
 - (ii) would have been required by section 710, 711, 712, 713, 714 or 715 to be included in the disclosure

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document if it had arisen before the disclosure document was lodged.

731 Due diligence defence for prospectuses

Reasonable inquiries and reasonable belief—statements

- (1) A person does not commit an offence against subsection 728(3), and is not liable under section 729 for a contravention of subsection 728(1), because of a misleading or deceptive statement in a prospectus if the person proves that they:
 - (a) made all inquiries (if any) that were reasonable in the circumstances; and
 - (b) after doing so, believed on reasonable grounds that the statement was not misleading or deceptive.

Reasonable inquiries and reasonable belief—omissions

- (2) A person does not commit an offence against subsection 728(3), and is not liable under section 729 for a contravention of subsection 728(1), because of an omission from a prospectus in relation to a particular matter if the person proves that they:
 - (a) made all inquiries (if any) that were reasonable in the circumstances; and
 - (b) after doing so, believed on reasonable grounds that there was no omission from the prospectus in relation to that matter.

732 Lack of knowledge defence for offer information statements and profile statements

Not knowing statement misleading or deceptive

- (1) A person does not commit an offence against subsection 728(3), and is not liable under section 729 for a contravention of subsection 728(1), because of a misleading or deceptive statement in an offer information statement or profile statement if the person proves that they did not know that the statement was misleading or deceptive.

Not knowing there was an omission

- (2) A person does not commit an offence against subsection 728(3), and is not liable under section 729 for a contravention of subsection 728(1), because of an omission from an offer information statement or profile statement in relation to a particular matter if the person proves that they did not know that there was an omission from the statement in relation to that matter.

733 General defences for all disclosure documents

Reasonable reliance on information given by someone else—statements and omissions

- (1) A person does not commit an offence against subsection 728(3), and is not liable under section 729 for a contravention against subsection 728(1), because of a misleading or deceptive statement in, or an omission from, a disclosure document if the person proves that they placed reasonable reliance on information given to them by:
- (a) if the person is a body—someone other than a director, employee or agent of the body; or
 - (b) if the person is an individual—someone other than an employee or agent of the individual.
- (2) For the purposes of subsection (1), a person is not the agent of a body or individual merely because they perform a particular professional or advisory function for the body or individual.

Withdrawal of consent—statements and omissions

- (3) A person who is named in a disclosure document as:
- (a) being a proposed director or underwriter; or
 - (b) making a statement included in the document; or
 - (c) making a statement on the basis of which a statement is included in the document;
- does not commit an offence against subsection 728(3), and is not liable under section 729 for a contravention against subsection

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728(1), because of a misleading or deceptive statement in, or an omission from, a disclosure document if the person proves that they publicly withdrew their consent to being named in the document in that way.

Unawareness of new matter

- (4) A person does not commit an offence against subsection 728(3), and is not liable under section 729 for a contravention of subsection 728(1), because of a new circumstance that has arisen since the disclosure document was lodged if the person proves that they were not aware of the matter.

734 Restrictions on advertising and publicity

No advertising or publicity for offers covered by the exception for 20 issues in 12 months

- (1) A person must not:
- (a) advertise; or
 - (b) publish a statement that directly or indirectly refers to; an offer, or intended offer, of securities that would need a disclosure document but for subsection 708(1) (exception for 20 issues in 12 months).

Advertising or publicity for offers that need a disclosure document

- (2) If an offer, or intended offer, of securities needs a disclosure document, a person must not:
- (a) advertise the offer or intended offer; or
 - (b) publish a statement that:
 - (i) directly or indirectly refers to the offer or intended offer; or
 - (ii) is reasonably likely to induce people to apply for the securities;unless the advertisement or publication is authorised by subsection (4), (5), (6) or (7).

Image advertising

- (3) In deciding whether a statement:
- (a) indirectly refers to an offer, or intended offer, of securities; or
 - (b) is reasonably likely to induce people to apply for securities;
- have regard to whether the statement:
- (c) forms part of the normal advertising of a body's products or services and is genuinely directed at maintaining its existing customers, or attracting new customers, for those products or services; and
 - (d) communicates information that materially deals with the affairs of the body; and
 - (e) is likely to encourage investment decisions being made on the basis of the statement rather than on the basis of information contained in a disclosure document.

Dissemination of disclosure document

- (4) A person may disseminate a disclosure document that has been lodged with ASIC without contravening subsection (2). This does not apply if an order under section 739 is in force in relation to the offer.

Advertising and publicity before the disclosure document is lodged

- (5) Before the disclosure document is lodged, an advertisement or publication does not contravene subsection (2) if it:
- (a) if the offer is of securities in a class already quoted—includes a statement that:
 - (i) a disclosure document for the offer will be made available when the securities are offered; and
 - (ii) anyone who wishes to acquire the securities will need to complete the application form that will be in or will accompany the disclosure document; and
 - (b) in any other case—contains the following but nothing more:
 - (i) a statement that identifies the offeror and the securities

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- (ii) a statement that a disclosure document for the offer will be made available when the securities are offered
- (iii) a statement that anyone who wants to acquire the securities will need to complete the application form that will be in or will accompany the disclosure document
- (iv) a statement of how to arrange to receive a copy of the disclosure document.

To satisfy paragraph (b), the advertisement or publication must include all of the statements referred to in subparagraphs (i), (ii) and (iii). It may include the statement referred to in subparagraph (iv).

Advertising and publicity after the disclosure document is lodged

- (6) After the disclosure document is lodged, an advertisement or publication does not contravene subsection (2) if it includes a statement that:
 - (a) the offers of the securities will be made in, or accompanied by, a copy of the disclosure document; and
 - (b) anyone wishing to acquire the securities will need to complete the application form that will be in or will accompany the disclosure document.

General exceptions

- (7) An advertisement or publication does not contravene subsection (2) if it:
 - (a) relates to an offer of securities of a listed body and consists of a notice or report by the body, or one of its officers, about its affairs to the relevant securities exchange; or
 - (b) consists solely of a notice or report of a general meeting of the body; or
 - (c) consists solely of a report about the body that is published by the body and:
 - (i) does not contain information that materially affects affairs of the body other than information previously

- made available in a disclosure document that has been lodged, an annual report or a report referred to in paragraph (a) or (b); and
- (ii) does not refer (whether directly or indirectly) to the offer; or
- (d) is a news report or is genuine comment, in a newspaper or periodical or on radio or television relating to:
- (i) a disclosure document that has been lodged or information contained in such a disclosure document; or
 - (ii) a notice or report covered by paragraph (a), (b) or (c); or
- (e) is a report about the securities of a body or proposed body published by someone who is not:
- (i) the body; or
 - (ii) acting at the instigation of, or by arrangement with, the body; or
 - (iii) a director of the body; or
 - (iv) a person who has an interest in the success of the issue or sale of the securities.

Paragraphs (d) and (e) do not apply if anyone gives consideration or another benefit for publishing the report.

Liability of publishers

- (8) A person does not contravene subsection (1) or (2) by publishing an advertisement or statement if they publish it in the ordinary course of a business of:
- (a) publishing a newspaper or magazine; or
 - (b) broadcasting by radio or television;
- and the person did not know and had no reason to suspect that its publication would amount to a contravention of a provision of this Chapter.

Note: Depending on the circumstances of the publication, the person may, however, commit an offence by being involved in someone else's contravention of subsection (1) or (2).

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Pathfinder documents

- (9) A person does not contravene subsection (1) or (2) by sending a draft disclosure document for securities to a person if an offer of the securities to the person would not require a disclosure document because of subsection 708(8) or (10) (sophisticated investors) or 708(11) (professional investors).

735 Obligation to keep consents and other documents

A person who offers securities under a disclosure document must keep a consent required in respect of the document by subsection 716(2) or section 720.

736 Securities hawking prohibited

- (1) A person must not offer securities for issue or sale in the course of, or because of, an unsolicited:
- (a) meeting with another person; or
 - (b) telephone call to another person;
- unless the offer is exempted under subsection (2).

Note: Section 700 extends offers to include invitations and distributing application forms.

- (2) Subsection (1) does not prohibit an offer of securities if:
- (a) the offer does not need a disclosure document because of subsection 708(8) or (10) (sophisticated investors); or
 - (b) the offer does not need a disclosure document because of subsection 708(11) (professional investors); or
 - (c) the offer is an offer of listed securities made by telephone by a licensed securities dealer; or
 - (d) the offer is made to a client by a licensed securities dealer through whom the client has bought or sold securities in the last 12 months.

Division 2—Remedies

737 Remedies for investors

Right to withdraw and have money returned

- (1) If securities are issued to a person in contravention of section 724 (situation calling for a supplementary or replacement document), the person has the right to return the securities and to have their application money repaid. This is so even if the company that issued the securities is being wound up.
- (2) A right referred to in subsection (1) is exercisable by written notice given to the company within 1 month after the date of the issue.
- (3) If the body or the seller does not repay the money as required by subsection (1), the directors of the body or seller are personally liable to repay the money.

738 Securities may be returned and refund obtained

If securities are issued or transferred to a person as a result of an offer that contravenes section 736, the person may return the securities within 1 month after the issue or transfer. If they do so, they are entitled to be repaid the amount they paid for the securities.

Part 6D.4—ASIC's powers

739 ASIC stop orders

- (1) If ASIC is satisfied that an offer of securities under a disclosure document lodged with ASIC would contravene section 728, ASIC may order that no offers, issues, sales or transfers of the securities be made while the order is in force.
- (2) Before making an order under subsection (1), ASIC must:
 - (a) hold a hearing; and
 - (b) give a reasonable opportunity to any interested people to make oral or written submissions to ASIC on whether an order should be made.
- (3) If ASIC considers that any delay in making an order under subsection (1) pending the holding of a hearing would be prejudicial to the public interest, ASIC may make an interim order that no offers, issues, sales or transfers of the securities be made while the interim order is in force. The interim order may be made without holding a hearing and lasts for 21 days after the day on which it is made unless revoked before then.
- (4) At any time during the hearing, ASIC may make an interim order that no offers, issues, sales or transfers of the securities be made while the interim order is in force. The interim order lasts until:
 - (a) ASIC makes an order under subsection (1) after the conclusion of the hearing; or
 - (b) the interim order is revoked;whichever happens first.
- (5) An order under subsection (1), (3) or (4) must be in writing and must be served on the person who is ordered not to offer, issue, sell or transfer securities under the disclosure document.

740 Anti-avoidance determinations

- (1) ASIC may determine in writing that a number of different bodies are closely related and that their transactions should be aggregated for the purposes of this Chapter. If ASIC does so:
- (a) an issue, sale or transfer of securities in any other bodies is taken to also be an issue, sale or transfer of the securities of each of the other bodies by those bodies; and
 - (b) any money received from an issue, sale or transfer of securities in any of the bodies is taken to also be received by each of the other bodies from an issue, sale or transfer of its own securities.

ASIC must give written notice of the determination to each of the bodies.

- (2) ASIC may determine in writing that the transactions of a body and of a person who controls the body should be aggregated for the purposes of this Chapter. If ASIC does so:
- (a) an issue of securities in the body is taken to also be the transfer of the securities by the controller; and
 - (b) any money received from an issue of securities in the body is taken to also be received by the controller from a transfer of the securities; and
 - (c) a sale or transfer of securities in the body by the controller is taken to also be the issue of the securities by the body; and
 - (d) any money received from a sale or transfer of securities in the body by the controller is taken to also be received by the body from an issue of the securities.

ASIC must give written notice of the determination to the body and the controller.

741 ASIC's power to exempt and modify

- (1) ASIC may:
- (a) exempt a person from a provision of this Chapter; or

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- (b) declare that this Chapter applies to a person as if specified provisions were omitted, modified or varied as specified in the declaration.
- (2) The exemption or declaration may do all or any of the following:
 - (a) apply to all or specified provisions of this Chapter
 - (b) apply to all persons, specified persons, or a specified class of persons
 - (c) relate to all securities, specified securities or a specified class of securities
 - (d) relate to any other matter generally or as specified.
- (3) An exemption may apply unconditionally or subject to specified conditions. A person to whom a condition specified in an exemption applies must comply with the condition. The Court may order the person to comply with the condition in a specified way. Only ASIC may apply to the Court for the order.
- (4) The exemption or declaration must be in writing and ASIC must publish notice of it in the *Gazette*.
- (5) For the purposes of this section, the *provisions of this Chapter* include:
 - (a) regulations made for the purposes of this Chapter; and
 - (b) definitions in this Law or the regulations as they apply to references in:
 - (i) this Chapter; or
 - (ii) regulations made for the purposes of this Chapter; and
 - (c) Division 12 of Part 11.2.

6 Part 9.4B

Repeal the Part, substitute:

Part 9.4B—Civil consequences of contravening civil penalty provisions

1317E Declarations of contravention

- (1) If a Court is satisfied that a person has contravened 1 of the following provisions, it must make a declaration of contravention:
 - (a) subsections 180(1) and 181(1) and (2), 182(1) and (2), 183(1) and (2) (officers' duties)
 - (b) subsection 209(2) (related parties rules)
 - (c) subsections 254L(2), 256D(3), 259F(2) and 260D(2) (share capital transactions)
 - (d) subsection 344(1) (requirements for financial reports)
 - (e) subsection 588G(2) (insolvent trading)
 - (f) subsection 601FC(1)
 - (g) subsection 601FD(1)
 - (h) subsection 601FE(1)
 - (i) section 601FG
 - (j) subsection 601JD(1).

These provisions are the *civil penalty provisions*.

Note: Once a declaration has been made ASIC can then seek a pecuniary penalty order (section 1317G) or a disqualification order (section 206C).

- (2) A declaration of contravention must specify the following:
 - (a) the Court that made the declaration
 - (b) the civil penalty provision that was contravened
 - (c) the person who contravened the provision
 - (d) the conduct that constituted the contravention
 - (e) the corporation or registered scheme to which the conduct related.

1317F Declaration of contravention is conclusive evidence

A declaration of contravention is conclusive evidence of the matters referred to in subsection 1317E(2).

1317G Pecuniary penalty orders

- (1) A Court may order a person to pay the Commonwealth a pecuniary penalty of up to \$200,000 if:
 - (a) a declaration of contravention by the person has been made under section 1317E; and
 - (b) the contravention:
 - (i) materially prejudices the interests of the corporation or scheme, or its members; or
 - (ii) materially prejudices the corporation's ability to pay its creditors; or
 - (iii) is serious.
- (2) The penalty is a civil debt payable to ASIC on the Commonwealth's behalf. ASIC or the Commonwealth may enforce the order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgment debt.

1317H Compensation orders

Compensation for damage suffered

- (1) A Court may order a person to compensate a corporation or registered scheme for damage suffered by the corporation or scheme if:
 - (a) the person has contravened a civil penalty provision in relation to the corporation or scheme; and
 - (b) the damage resulted from the contravention.The order must specify the amount of the compensation.

Damage includes profits

- (2) In determining the damage suffered by the corporation or scheme for the purposes of making a compensation order, include profits made by any person resulting from the contravention or the offence.

Damage includes diminution of value of scheme property

- (3) In determining the damage suffered by the scheme for the purposes of making a compensation order, include any diminution in the value of the property of the scheme.
- (4) If the responsible entity for a registered scheme is ordered to compensate the scheme, the responsible entity must transfer the amount of the compensation to scheme property. If anyone else is ordered to compensate the scheme, the responsible entity may recover the compensation on behalf of the scheme.

Recovery of damage

- (5) A compensation order may be enforced as if it were a judgment of the Court.

1317J Who may apply for a declaration or order

Application by ASIC

- (1) ASIC may apply for a declaration of contravention, a pecuniary penalty order or a compensation order.

Application by corporation

- (2) The corporation, or the responsible entity for the registered scheme, may apply for a compensation order.
- (3) The corporation, or the responsible entity for the registered scheme, may intervene in an application for a declaration of contravention or a pecuniary penalty order in relation to the corporation or scheme. The corporation or responsible entity is entitled to be heard on all matters other than whether the declaration or order should be made.

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No one else may apply

- (4) No person may apply for a declaration of contravention, a pecuniary penalty order or a compensation order unless permitted by this section.
- (5) Subsection (4) does not exclude the operation of the *Director of Public Prosecutions Act 1983* or that Act as applying as a law of this jurisdiction.

1317K Time limit for application for a declaration or order

Proceedings for a declaration of contravention, a pecuniary penalty order, or a compensation order, may be started no later than 6 years after the contravention.

1317L Civil evidence and procedure rules for declarations of contravention and civil penalty orders

The Court must apply the rules of evidence and procedure for civil matters when hearing proceedings for:

- (a) a declaration of contravention; or
- (b) a pecuniary penalty order.

1317M Civil proceedings after criminal proceedings

A court must not make a declaration of contravention or a pecuniary penalty order against a person for a contravention if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

1317N Criminal proceedings during civil proceedings

- (1) Proceedings for a declaration of contravention or pecuniary penalty order against a person are stayed if:
 - (a) criminal proceedings are started or have already been started against the person for an offence; and

- (b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.
- (2) The proceedings for the declaration or order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the declaration or order are dismissed.

1317P Criminal proceedings after civil proceedings

Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether:

- (a) a declaration of contravention has been made against the person; or
- (b) a pecuniary penalty order has been made against the person; or
- (c) a compensation order has been made against the person; or
- (d) the person has been disqualified from managing a corporation under Part 2D.6.

1317Q Evidence given in proceedings for penalty not admissible in criminal proceedings

Evidence of information given or evidence of production of documents by an individual is not admissible in criminal proceedings against the individual if:

- (a) the individual previously gave the evidence or produced the documents in proceedings for a pecuniary penalty order against the individual for a contravention of a civil penalty provision (whether or not the order was made); and
- (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.

However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the pecuniary penalty order.

1317R ASIC requiring person to assist

- (1) ASIC may require a person to give all reasonable assistance in connection with:
 - (a) an application for a declaration of contravention or a pecuniary penalty order; or
 - (b) criminal proceedings for an offence against this Law.
 - (2) ASIC can require the person to assist in connection with an application for a declaration or order if, and only if:
 - (a) it appears to ASIC that someone other than the person required to assist may have contravened a civil penalty provision; and
 - (b) ASIC suspects or believes that the person required to assist can give information relevant to the application.
 - (3) ASIC can require the person to assist in connection with criminal proceedings if, and only if:
 - (a) it appears to ASIC that the person required to assist is unlikely to be a defendant in the proceedings; and
 - (b) the person required to assist is, in relation to a person who is or should be a defendant in the proceedings:
 - (i) an employee or agent (including a banker or auditor) of the other person; or
 - (ii) if the other person is a corporation—an officer of the other person; or
 - (iii) if the other person is an individual—a partner of the other person.
 - (4) ASIC can require the person to assist regardless of whether:
 - (a) an application for the declaration or penalty order has actually been made; or
 - (b) criminal proceedings for the offence have actually begun.
 - (5) The person cannot be required to assist if they are or have been a lawyer for:
 - (a) in an application for a declaration or penalty order—the person suspected of the contravention; or
-

- (b) in criminal proceedings—a defendant or likely defendant in the proceedings.
- (6) The requirement to assist must be given in writing.
- (7) The Court may order the person to comply with the requirement in a specified way. Only ASIC may apply to the Court for an order under this subsection.
 - Note: The person must comply with the requirement and may commit an offence if they do not, even if there is no order under this subsection (see section 104 and subsection 1311(1)).
- (8) This section does not limit and is not limited by section 49 of the ASC Law.

1317S Relief from liability for contravention of civil penalty provision

- (1) In this section:

eligible proceedings:

- (a) means proceedings for a contravention of a civil penalty provision (including proceedings under section 588M, 588W or 1317H of the Corporations Law of this jurisdiction); and
 - (b) does not include proceedings for an offence (except so far as the proceedings relate to the question whether the court should make an order under section 588K or 1317H of that Law).
- (2) If:
 - (a) eligible proceedings are brought against a person; and
 - (a) in the proceedings it appears to the court that the person has, or may have, contravened a civil penalty provision but that:
 - (i) the person has acted honestly; and
 - (ii) having regard to all the circumstances of the case (including, where applicable, those connected with the person's appointment as an officer of a corporation or of a Part 5.7 body), the person ought fairly to be excused for the contravention;
-

Section 1317S

the court may relieve the person either wholly or partly from a liability to which the person would otherwise be subject, or that might otherwise be imposed on the person, because of the contravention.

- (3) In determining under subsection (2) whether a person ought fairly to be excused for a contravention of section 588G, the matters to which regard is to be had include, but are not limited to:
 - (a) any action the person took with a view to appointing an administrator of the company or Part 5.7 body; and
 - (b) when that action was taken; and
 - (c) the results of that action.
- (4) If a person thinks that eligible proceedings will or may be begun against them, they may apply to the Court for relief.
- (5) On an application under subsection (4), the Court may grant relief under subsection (2) as if the eligible proceedings had been begun in the Court.
- (6) For the purposes of subsection (2) as applying for the purposes of a case tried by a judge with a jury:
 - (a) a reference in that subsection to the court is a reference to the judge; and
 - (b) the relief that may be granted includes withdrawing the case in whole or in part from the jury and directing judgment to be entered for the defendant on such terms as to costs as the judge thinks appropriate.
- (7) Nothing in this section limits, or is limited by, section 1318.

7 After section 1325

Insert:

1325A Orders if contravention of Chapter 6, 6A, 6B or 6C

- (1) The Court may make any order or orders (including a remedial order) that it considers appropriate if a person:
- (a) contravenes a provision of Chapter 6, 6A, 6B or 6C; or
 - (b) contravenes a condition on a consent given by ASIC under section 652B; or
 - (c) states in a notice under section 672B about securities that they do not know particular information about:
 - (i) the securities; or
 - (ii) someone who has a relevant interest in, or has given instructions in relation to, the securities.

Note 1: Section 9 defines *remedial order*.

Note 2: Sections 659B and 659C deal with court proceedings during and after a takeover bid.

- (2) The Court may make any order or orders (including a remedial order) that it considers appropriate if:
- (a) the consideration offered under a takeover bid is or includes securities; and
 - (b) the offers under the bid or the bidder's statement states or implies that the securities are to be quoted on a stock market of a securities exchange (whether in Australia or elsewhere) and:
 - (i) an application for admission to quotation is not made within 7 days after the start of the bid period; or
 - (ii) permission for admission to quotation is not granted within 7 days after the end of the bid period.

Note: Section 9 defines *remedial order*.

Section 1325B

- (3) An order under this section may be made on application by the following:
- (a) ASIC
 - (b) the company, or the responsible entity of the registered scheme, whose securities are involved in the contravention
 - (c) a member or former member of that company or scheme
 - (d) a person from whom the relevant interest in the securities were acquired
 - (e) a person whose interests are affected by the contravention.

1325B Court may order bidder to make offers

- (1) If a bidder making a takeover bid for a class of securities contravenes section 631 by failing to make offers under the bid within time and ASIC applies for an order under this section, the Court may:
- (a) order the bidder to send, to each holder of securities in that class, an offer to which the bidder's statement relates within a specified time; and
 - (b) make any ancillary orders it thinks appropriate including orders that the bidder:
 - (i) send notices setting out specified information with the offer; and
 - (ii) send copies of the notice within a specified period to the target and, if the target is listed, to the relevant securities exchange; and
 - (iii) lodge a copy of the notice with ASIC within a specified period.
- (2) Offers sent in accordance with an order under this section are taken to be made under a takeover bid.

1325C Unfair or unconscionable agreements, payments or benefits

- (1) The Court may make orders under subsection (2) if:
- (a) a body corporate gives, or enters into an agreement to give, a director or secretary of the body corporate or a related body
-

Section 1325C

- corporate a benefit (including a payment or an agreement to employ them, or engage their services, for a fixed period); and
- (b) the agreement is entered into or the benefit is given:
 - (i) within 12 months after the start of the bid period for a takeover bid for the securities of the body corporate or a related body corporate; or
 - (ii) at a time when the directors of the body corporate have reason to believe that a takeover bid is to be made in respect of securities of the body corporate or a related body corporate; and
 - (c) the Court is satisfied that the agreement or benefit was unfair or unconscionable having regard to the interests of the body corporate.
- (2) The Court may:
- (a) declare the agreement, or any part of it, to be void or to have always been void; or
 - (b) direct a person to whom a benefit is given, or another specified person, to:
 - (i) make a payment or transfer property to the body corporate; or
 - (ii) do any other act for the benefit of the body corporate; or
 - (c) make any other order it considers appropriate.
- (3) This section does not apply to an agreement or benefit that has been approved by an ordinary resolution of the body corporate (whether before or after the agreement was entered into or the benefit given) with no vote being cast by the person who is to receive the benefit or their associates.
- (4) An order under this section may be made on application by:
- (a) the body corporate; or
 - (b) ASIC; or
 - (c) members who together hold shares carrying at least 10% of the votes attached to voting shares in the body corporate or a related body corporate;
-

Section 1325D

within 12 months, or any longer period that the Court thinks appropriate in the circumstances, after the agreement is entered into or the benefit given.

1325D Contravention due to inadvertence etc.

- (1) The Court may declare that any act, document or matter:
 - (a) is not invalid merely because a person has contravened a provision of Chapter 6, 6A, 6B or 6C; and
 - (b) has had effect at all times as if there had been no contravention;if the Court is satisfied that the contravention ought to be excused in all the circumstances.
- (2) An application for an order under subsection (1) may be made by any interested person.
- (3) If the Court is satisfied that in all the circumstances a contravention of a provision of Chapter 6, 6A, 6B or 6C ought to be excused, the Court must not make an order under section 1325A, 1325B or 1325C other than:
 - (a) an order restraining the exercise of voting or other rights attached to securities; or
 - (b) an order that an exercise of voting or other rights attached to securities be disregarded.
- (4) In determining whether or not a contravention of a provision by a person ought to be excused, have regard to the contravention being caused by any of the following:
 - (a) the person's inadvertence or mistake
 - (b) the person not having been aware of a relevant fact or occurrence
 - (c) circumstances beyond the control of the person.
- (5) This section applies notwithstanding anything contained in any other provision of this Chapter.

1325E Orders to secure compliance

In order to secure compliance with an order under section 1325A, 1325B or 1325C, the Court may direct a person to:

- (a) do a specified act; or
- (b) refrain from doing a specified act.

8 After Division 11 of Part 11.2

Insert:

Division 12—Changes resulting from the Corporate Law Economic Reform Program Act 1999

1466 Meaning of *commencement*, *new Law* and *old Law*

In this Division:

commencement means the commencement of Schedule 1 to the *Corporate Law Economic Reform Program Act 1999*.

new Law means this Law as in force after commencement.

old Law means this Law as in force immediately before commencement.

1467 General—references to provisions of old Law in laws and other documents

- (1) A reference in any law of the Commonwealth or of a State or Territory, or in any document, to a provision of the old Law is to be read after commencement as a reference to the corresponding provision of the new Law except so far as the contrary intention appears in the law or document.
- (2) Without limiting subsection (1), the following table sets out provisions of the old Law that correspond to particular provisions of the new Law:

Section 1468

Corresponding provisions		
	Old Law provision	New Law provision
1	Part 3A.2	Chapter 2E
2	Part 6.3 (document lodged for the purposes of)	Chapter 6
3	Part 6.6	Chapter 6B
4	Part 6.7	Part 6C.1
5	Part 6.8	Part 6C.2
6	Part 7.12	Chapter 6D
7	Division 5 of Part 1.2 of the Corporations Law	Corporations Law
8	section 33	paragraph 608(3)(a)
9	section 91A	subsection 206A(1)
10	section 241	section 199A
11	section 241A	section 199B
12	section 242	section 205B
13	section 260	sections 232 to 235
14	section 709	section 671B
15	section 710	section 671B
16	section 711	section 671B
17	paragraph 1317EA(3)(b)	section 1317G

1468 General—references to old Law expressions used in existing laws and documents

A reference in any law of the Commonwealth or of a State or Territory, or in any document, to a term set out in the old term column of the table (within the meaning of this Law) is to be read after commencement as including a reference to the corresponding term set out in the new term column of the table (within the meaning of this Law) except so far as the contrary intention appears in the law or document.

Section 1469

Conversion of references		
Item	Old term	New term
1	takeover scheme	off-market bid
2	takeover announcement	market bid
3	Part A statement	bidder's statement
4	Part B statement	target's statement
5	Part C statement	bidder's statement
6	Part D statement	target's statement
7	prospectus	disclosure document

1469 Directors' duties—application and transitional arrangements

Column 2 of the table sets out things that have been done, or situations that have arisen, on or before the commencement of certain provisions of the new Law. Column 3 sets out how the things and situations will be dealt with after commencement—either under the old Law or the new Law.

Transitional arrangements

If...	then, after commencement...
1 before the commencement of section 191 of the new Law, a director of a proprietary company who had an interest in a contract or proposed contract with the company declared the nature of the interest in accordance with subsection 231(1) of the old Law	the director is taken to have disclosed the interest as a material personal interest in accordance with section 191 of the new Law and to have made the disclosure on the day on which section 191 of the new Law commences.
2 before the commencement of section 192 of the new Law, a director of a proprietary company gave a general notice to the directors of the company in accordance with subsection 231(5) of the old Law	the director is taken to have given standing notice in accordance with section 192 of the new Law and to have given that notice on the day on which section 192 of the new Law commences.

Section 1469

Transitional arrangements		
	If...	then, after commencement...
3	before the commencement of section 195 of the new Law, the board passed a resolution under subsection 232A(3) of the old Law	the resolution is taken to be a resolution passed in accordance with subsection 195(2) of the new Law.
4	before the commencement of section 196 of the new Law, ASIC made a declaration under section 232B of the old Law which is still in force immediately before commencement	ASIC is taken to have made a valid declaration with identical conditions under section 196 of the new Law.
5	before the commencement of section 199A or 199B of the new Law, an officer or auditor incurred a liability	sections 199A and 199B of the new Law apply if an indemnity was given, or a premium paid, in respect of the liability after commencement. In all other cases, sections 241 and 241A of the old Law continue to apply.
6	before the commencement of section 202B of the new Law, the company was served a notice in accordance with section 239 of the old Law	the company must deal with the notice as provided for in section 239 of the old Law and that section continues to apply in relation to the matter.
7	before the commencement of section 203D of the new Law, notice of a resolution was given to a company in accordance with subsection 227(3) of the old Law	the company must act in accordance with section 227 of the old Law (which continues to apply in relation to the matter).
8	on a date less than 1 month before the commencement of section 205B of the new Law, a director or secretary was appointed and no notice was lodged by the company in accordance with section 242 of the old Law	the company must lodge the notice within 1 month after the appointment in accordance with sections 242 and 242AA of the old Law (which continue to apply in relation to the matter).

Section 1469

Transitional arrangements

	If...	then, after commencement...
9	on a date less than 1 month before the commencement of section 205B of the new Law, a change occurred in the personal details of a director or secretary and no notice was lodged in accordance with section 242 of the old Law	the company must lodge the notice in accordance with sections 242 and 242AA of the old Law (which continue to apply in relation to the matter).
10	on a date less than 1 month before the commencement of section 205B of the new Law, a director or secretary stopped being a director or secretary and no notice was lodged in accordance with section 242 of the old Law	the company must lodge the notice in accordance with sections 242 and 242AA of the old Law (which continue to apply in relation to the matter).
11	on a date less than 14 days before the commencement of section 205C of the new Law, a director or secretary was required to give the company written notice under section 236 of the old Law and no such notice was given	the director or secretary is required to give the company the information in accordance with section 236 of the old Law (which continues to apply in relation to the matter).
12	on a date less than 14 days before the commencement of section 205G of the new Law, a director was required to give notice under section 235 of the old Law and the notice was not given	the director is required to give the notice in accordance with section 235 of the old Law (which continues to apply in relation to the matter).
13	before the commencement of section 206B of the new Law, a person is convicted of serious fraud or an offence mentioned in subsection 229(3) of the old Law	subsections 229(3), (3A) and (4) of the old Law continue to apply in relation to the person. The new Law applies in relation to all other people.

Section 1469

Transitional arrangements

	If...	then, after commencement...
14	on the commencement of section 206B of the new Law, a person is an insolvent under administration	<ul style="list-style-type: none"> if the person has been an insolvent under administration for 3 years—the person is no longer disqualified from managing corporations. if the person has been an insolvent under administration for less than 3 years—unless the person obtained the leave of the Court under subsection 229(5) of the old Law or obtains the leave of the Court under section 206G of the new Law, the person is disqualified from managing corporations for the shorter of the period that they will be an insolvent under administration or the period of 3 years starting from when they first became an insolvent under administration.
15	before the commencement of section 206C of the new Law, an application for a civil penalty order was made and not dealt with	section 1317EA of the old Law continues to apply in relation to such applications.
16	before the commencement of section 206D of the new Law, an application was made under subsection 599(2) and was not finally determined	section 599 of the old Law continues to apply in relation to the application and any proceedings or orders flowing from that application.
17	before the commencement of section 206E of the new Law, an application was made under section 230 of the old Law and was not finally determined	section 230 of the old Law continues to apply in relation to the application section 206E of the new Law applies as if the application had been made under Part 2D.6 of the new Law.

Section 1470

Transitional arrangements

	If...	then, after commencement...
18	before the commencement of section 206F of the new Law, a person is served with a notice to show cause why ASIC should not serve on the person a notice under subsection 600(3) of the old Law	section 600 of the old Law continues to apply in relation to the matter.
19	before the commencement of section 206A of the new Law, the person was disqualified from managing corporations under the Corporations Law or a previous corresponding law	Part 2D.6 applies as if the person were disqualified under that Part.
20	before the commencement of section 206A of the new Law, a person had permission under a previous corresponding law to section 206F or 206G to manage a corporation	Part 2D.6 applies as if the person had permission to manage the corporation under section 206F or 206G.
21	before the commencement of section 203D of the new Law, a company gives notice of intention under a corresponding previous provision to subsection 203D(2)	section 203D applies as if the notice had been given under subsection 203D(2).

1470 Related party transactions—continued application of old Law

Chapter 2E of the old Law continues to apply to the giving of a financial benefit (within the meaning of the old law) if:

- (a) the benefit was given before commencement; or
- (b) some or all materials required to be lodged with ASIC in relation to the benefit by section 243U of the old Law were lodged with ASIC before commencement; or
- (c) the benefit is given under a contract made before commencement.

Section 1471

1471 Oppressive conduct of affairs—applications made before commencement

If an application was made under section 246AA of the old Law and not finally determined before the commencement of section 232 of the new Law, then section 246AA of the old Law continues to apply in respect of the application.

1472 Proceedings on behalf of a company—intervention in proceedings started before commencement

Under Part 2F.1A (sections 236 to 242) of the new Law, a person may apply for leave to intervene, and intervene, in proceedings started before commencement.

1473 Civil penalty provisions—application of new Law

- (1) Part 9.4B of the old Law continues to apply in relation to:
 - (a) a contravention of a civil penalty provision listed in section 1317DA of the old Law; or
 - (b) an offence committed against one of those civil penalty provisions;despite its repeal.
- (2) Part 9.4B of the new Law applies in relation to a contravention of a civil penalty provision listed in section 1317E of the new law.

1474 Civil penalty orders made under old Law

- (1) An order in force under paragraph 1317EA(3)(a) of the old Law immediately before commencement continues to have effect after commencement as if it were made under section 206C of the new Law.
- (2) An order in force under paragraph 1317EA(3)(b) of the old Law immediately before commencement continues to have effect after commencement as if it were made under section 1317G of the new Law.

Section 1475

- (3) An order in force under section 1317HA or 1317HB of the old Law immediately before commencement continues to have effect after commencement as if it were made under section 1317H of the new Law.

1475 Fundraising—general application

General rule (new law applies to offers made after commencement)

- (1) Except as provided in subsection (2), this Chapter applies to offers of securities made after the commencement of this Chapter.

Prospectus, or section 1043C or 1043D notice, lodged before commencement covered by old law

- (2) If a prospectus, or a notice under section 1043C or 1043D, is lodged with ASIC before commencement, the old Law continues to apply to:
- (a) the prospectus or notice; and
 - (b) offers made under the prospectus or notice; and
 - (c) the issue or transfer of securities as a result of the offer.

1476 Fundraising—application of new section 712

Section 712 of the new Law (incorporation by reference of documents lodged with ASIC) applies to documents lodged with ASIC before commencement.

1477 Fundraising—registration of managed investment schemes

Subsection 601ED(2) of the new Law applies as if issues of interests that:

- (a) were made before commencement; and
- (b) were excluded issues under the old Law (disregarding paragraph 66(2)(da) of that Law);

were issued that did not need disclosure to investors under section 706 of the new Law.

Section 1478

1478 Fundraising—saving orders, notices etc. given under old law

A document made or given under the old Law and specified in the following table continues to have effect after commencement as if it were made or given under the corresponding provision of the new Law:

Documents saved		
	Document	Corresponding provision of the new Law
1	determination under subsection 1022AA(8)	subsection 713(8)
2	order under section 1033	section 739
3	declaration under paragraph 65(1)(a)	section 65

1479 Continued operation of some provisions of the old Law

- (1) Subsection 1023(2) of the old Law continues to apply after commencement to the acceptance of money under a prospectus lodged with ASIC before commencement.
- (2) Section 1029 of the old Law continues to apply after commencement to a consent to the issue of a prospectus lodged with ASIC before commencement.
- (3) Sections 1037 and 1041 of the old Law continue to apply after commencement to an allotment of shares made before commencement in contravention of Division 3 of Part 7.12 of the old Law.
- (4) Section 1047 of the old Law continues to apply after commencement to:
 - (a) a request made before commencement under subsection 1047(5) or (6); or
 - (b) a notice given under subsection 1047(8).

1480 Fundraising—application of section 111AF of the new Law

Section 111AF of the new Law applies after commencement as if:

- (a) a prospectus lodged before commencement under Part 7.12 of the old Law or a corresponding previous law; or
- (b) a document relating to securities that was taken to be a prospectus because of section 1030 of the old Law or a corresponding previous provision;

were a disclosure document lodged with ASIC under Chapter 6D of the new Law.

1481 Debentures—application and transitional provisions

- (1) Paragraph 124(1)(b) of the new Law applies to all debentures or trust deeds regardless of whether they were issued or made before or after commencement.
- (2) Section 563AAA applies in relation to the issue of debentures regardless of whether that event occurs before or after commencement.
- (3) A provision in force immediately before the date of commencement of section 1062 of the old Law is not void under section 260JB of the new Law if a trustee who was entitled to the benefit of the provision before that date remains a trustee of the trust deed concerned.
- (4) Subsection 260JB(1) does not deprive a trustee of an exemption or right to be indemnified for anything done or omitted to be done by the trustee while a term or provision was in force even if that provision later becomes void under subsection 260JB(1).
- (5) On commencement, each of the provisions required by section 260FB is taken to be included in a trust deed that:
 - (a) is required by section 260FA; and
 - (b) is in effect immediately before commencement; and
 - (c) would not otherwise include that provision.

Section 1482

1482 Debentures—saving orders, notices etc. given under old Law

A document made or given under the old Law and specified in the following table continues to have effect after commencement as if it were made or given under the corresponding provision of the new Law:

Documents saved		
	Document	Corresponding provision of the new law
1	approval under paragraph 1052(1)(h)	section 260MB
2	application under subsection 1056(2) or 1057(1)	section 260NA
3	order under subsection 1056(6) or 1057(2)	section 260NB

1483 Takeovers—general rule (takeovers started before new provisions commence covered by old law)

If:

- (a) a Part A statement for a takeover scheme is lodged with ASIC; or
- (b) a takeover announcement is made;

before commencement, Chapter 6 of the old Law continues to apply to the scheme or announcement.

1484 Takeovers—old Law continues to apply to certain Panel proceedings

Part 6.9 of the old Law continues to apply to:

- (a) an application made to the Panel before commencement; or
- (b) an application to the Panel in respect of a takeover scheme or takeover announcement to which Chapter 6 of the old Law applies under section 1483.

1485 Takeovers—application of new provisions to interests acquired before commencement

Chapter 6 of the new Law applies to relevant interests and other interests acquired before commencement.

1486 Takeovers—section 1043B notices

The prohibitions in subsections 606(1) and (2) of the new Law do not apply to an acquisition pursuant to an invitation or offer if section 615 of the old Law would not have applied to the acquisition because of section 622A of the old Law (acquisitions under section 1043B notices) if the old Law had remained in force after commencement.

1487 Takeovers—saving orders, notices etc. given under old law

A document made or given under the old Law and specified in the following table continues to have effect after commencement as if it were made or given under the corresponding provision of the new Law:

Documents saved		
	Document	Corresponding provision of the new Law
1	declaration of unacceptable circumstances under section 733	section 657A
2	order under section 734	section 657D
3	interim order under section 733A or 733B	section 657E
4	order under section 736	section 657G
5	order under section 737, paragraph 738(1)(e) or section 739, 741 or 742	section 1325A
6	order under paragraph 738(1)(f)	section 1325B
7	order under section 740	section 1325C
8	declaration under section 743	section 1325D

Section 1488

1488 Takeovers—notification obligations under Parts 6.7 and 6.8 of the old law

An obligation under Part 6.7 or 6.8 of the old Law continues after commencement as if that Part had not been repealed if the period for complying with the obligation has commenced but not ended before commencement.

1489 Takeovers—ASIC power to pass on information obtained under the old Law

Section 672C of the new Law applies to information obtained under Part 6.8 of the old Law as if it had been obtained in response to a direction under section 672A of the new Law.

1490 Takeovers—application of section 111AG of the new Law

Section 111AG of the new Law applies after commencement as if a takeover scheme as defined in section 603 of the old Law or a corresponding previous law were an off-market takeover bid.

1491 Compulsory acquisitions—application of Part 6A.5 of the new Law

Part 6A.5 of the new Law (sections 668A and 668B) applies to consideration paid before commencement.

1492 Compulsory acquisitions—unclaimed moneys

If, immediately before commencement, a company holds property in trust for a person under subsection 701(11) of the old Law, the company must continue to hold the property in trust for the person in accordance with subsection 666B(2) of the new Law.

1493 Accounting standards—standards in force before commencement

For the avoidance of doubt, an accounting standard that was in force under section 334 immediately before commencement continues in force after that commencement as if it had been made by the AASB under that section immediately after that commencement.

Part 12 Accounting standards

Section 224

**Schedule 2—Main amendments of the
Australian Securities and Investments
Commission Act 1989**

1 Part 12

Repeal the Part, substitute:

Part 12—Accounting standards

224 Main objects of this Part

The main objects of this Part are:

- (a) to facilitate the development of accounting standards that require the provision of financial information that:
 - (i) allows users to make and evaluate decisions about allocating scarce resources; and
 - (ii) assists directors to discharge their obligations in relation to financial reporting; and
 - (iii) is relevant to assessing performance, financial position, financing and investment; and
 - (iv) is relevant and reliable; and
 - (v) facilitates comparability; and
 - (vi) is readily understandable; and
- (b) to facilitate the Australian economy by:
 - (i) reducing the cost of capital; and
 - (ii) enabling Australian entities to compete effectively overseas; and
 - (iii) having accounting standards that are clearly stated and easy to understand; and
- (c) to maintain investor confidence in the Australian economy (including its capital markets).

Division 1—The Australian financial reporting system

225 Establishment, functions and powers of the Financial Reporting Council

Establishment

- (1) A Financial Reporting Council is established.

Functions

- (2) The FRC functions are:
- (a) to provide broad oversight of the process for setting accounting standards in Australia and to give the Minister reports and advice on that process; and
 - (b) to appoint the members of the AASB (other than the Chair); and
 - (c) to approve and monitor the AASB's:
 - (i) priorities; and
 - (ii) business plan; and
 - (iii) budget; and
 - (iv) staffing arrangements (including level, structure and composition of staffing); and
 - (d) to determine the AASB's broad strategic direction; and
 - (e) to give the AASB directions, advice or feedback on matters of general policy and the AASB's procedures; and
 - (f) to monitor the development of international accounting standards and the accounting standards that apply in major international financial centres, and:
 - (i) to further the development of a single set of accounting standards for world-wide use with appropriate regard to international developments; and
 - (ii) to promote the adoption of international best practice accounting standards in the Australian accounting standard setting process if doing so would be in the best

Part 12 Accounting standards

Section 226

interests of both the private and public sectors in the
Australian economy; and

- (g) to monitor:
 - (i) the operation of accounting standards to assess their continued relevance and their effectiveness in achieving their objectives in respect of both the private and public sectors of the Australian economy; and
 - (ii) the effectiveness of the AASB's consultative arrangements; and
- (h) to seek contributions towards the costs of the Australian accounting standard setting process; and
- (i) to monitor and periodically review the level of funding, and the funding arrangements, for the AASB; and
- (j) to establish appropriate consultative mechanisms; and
- (k) to advance and promote the main objects of this Part; and
- (l) any other functions that the Minister confers on the FRC by written notice to the FRC Chairman.

Powers

- (3) As well as any other powers conferred by this Act, the FRC has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (4) Without limiting subsection (3), the FRC may establish committees and advisory groups.

Restriction on powers

- (5) The FRC does not have power to direct the AASB in relation to the development, or making, of a particular standard.
- (6) The FRC does not have power to veto a standard formulated and recommended by the AASB.

226 Establishment of the Australian Accounting Standards Board

- (1) An Australian Accounting Standards Board is established.
-

Note: Subsection 236B(3) specifies the qualifications needed for appointment to the Board.

(2) The AASB:

- (a) is a body corporate with perpetual succession; and
- (b) must have a common seal; and
- (c) may acquire, hold and dispose of real and personal property; and
- (d) may sue and be sued in its corporate name.

Note: The *Commonwealth Authorities and Companies Act 1997* applies to the AASB. This Act makes provision for reporting obligations (annual report, interim reports and estimates), accounting records, audit, banking, investment of funds and duties of officers.

(3) All courts, judges and persons acting judicially must:

- (a) take judicial notice of the imprint of the common seal of the AASB appearing on a document; and
- (b) presume that the document was duly sealed.

227 AASB's functions and powers

Functions

(1) The functions of the AASB are:

- (a) to develop a conceptual framework, not having the force of an accounting standard, for the purpose of evaluating proposed accounting standards and international standards; and
- (b) to make accounting standards under section 334 of the Corporations Law for the purposes of the national scheme laws; and
- (c) to formulate accounting standards for other purposes; and
- (d) to participate in and contribute to the development of a single set of accounting standards for world-wide use; and
- (e) to advance and promote the main objects of this Part.

Note 1: The standards made under paragraph (b) are given legal effect by the Corporations Law. The standards formulated under paragraph (c) do

Part 12 Accounting standards

Section 227

not have legal effect under the Corporations Law itself but may be applied or adopted by some other authority.

Note 2: See section 224 and sections 228 to 233 for the framework within which the AASB is to formulate and make accounting standards.

- (2) In carrying out its functions under paragraphs (1)(a) and (d), the AASB must have regard to the interests of Australian corporations which raise or propose to raise capital in major international financial centres.

Powers

- (3) The AASB has power to:
- (a) engage staff and consultants; and
 - (b) establish committees, advisory panels and consultative groups; and
 - (c) receive money contributed towards its operating costs; and
 - (d) do anything else that is necessary for, or reasonably incidental to, the performance of its functions.

Manner of making and formulating standards

- (4) Without limiting paragraph (1)(b) or (c), the AASB may make or formulate an accounting standard by issuing the text of an international accounting standard. The text of the international accounting standard may be modified to the extent necessary to take account of the Australian legal or institutional environment and, in particular, to ensure that any disclosure and transparency provisions in the standard are appropriate to the Australian legal or institutional environment.

Manner of participating in the development of international standards

- (5) Without limiting paragraph (1)(d), the AASB may distribute the text of a draft international accounting standard (whether or not modified to take account of the Australian legal or institutional environment) for the purposes of consultation.

Constitutional basis

- (6) This Part confers functions and powers to the extent to which they are not in excess of the legislative power of the Commonwealth.
- (7) Without limiting subsection (6), this Part confers functions and powers to the extent to which doing so promotes, encourages and facilitates the integration and efficiency of, and investment in, Australia's national economy.

Division 2—Accounting standards

228 Purposive interpretation of standards

Objects of this Part

- (1) In interpreting an accounting standard made or formulated by the AASB, a construction that would promote the objects of this Part is to be preferred to a construction that would not promote those objects.

Note: Section 224 states the main objects of this Part.

Purposes or objects of particular standard

- (2) In interpreting an accounting standard made or formulated by the AASB, a construction that would promote a purpose or object of the standard (to the extent to which it is not inconsistent with the objects of this Part) is to be preferred to a construction that would not promote that purpose or object. This is so even if the purpose or object is not expressly stated in the standard.

229 Generic and specific standards

- (1) Accounting standards made or formulated by the AASB may:
 - (a) be of general or limited application (including a limitation to specified bodies or undertakings); and
 - (b) differ according to differences in time, place or circumstance.
 - (2) In making and formulating accounting standards, the AASB:
-

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- (a) must have regard to the suitability of a proposed standard for different types of entities; and
- (b) may apply different accounting requirements to different types of entities; and
- (c) must ensure that there are appropriate accounting standards for each type of entity that must comply with accounting standards.

230 Comparative amounts

The accounting standards for the preparation of financial reports for a period may require the inclusion in those reports of comparative amounts for earlier periods.

231 Cost/benefit analysis

- (1) The AASB must carry out a cost/benefit analysis of the impact of a proposed accounting standard before making or formulating the standard. This does not apply where the standard is being made or formulated by issuing the text of an international standard (whether or not modified to take account of the Australian legal or institutional environment).

Note: Subsection 227(3) allows the AASB to make or formulate a standard by issuing the text of an international standard. Under subsection (2) of this section, the AASB will have done a cost/benefit analysis of the international standard used in that way.

- (2) The AASB must carry out a cost/benefit analysis of the impact of a proposed international accounting standard before:
 - (a) providing comments on a draft of the standard; or
 - (b) proposing the standard for adoption as an international standard.
- (3) The AASB has to comply with subsections (1) and (2) only to the extent to which it is reasonably practicable to do so in the circumstances.

- (4) The Minister may direct the AASB to give the Minister details of a cost/benefit analysis carried out under this section. The AASB must comply with the direction.

232 FRC views

In performing its functions, the AASB must:

- (a) follow the broad strategic direction determined by the FRC under paragraph 225(2)(d); and
- (b) follow the general policy directions given by the FRC under paragraph 225(2)(e); and
- (c) take into account the advice and feedback on matters of general policy given by the FRC under paragraph 225(2)(e).

233 International accounting standards

The Minister may give the AASB a direction about the role of international accounting standards in the Australian accounting standard setting system. Before giving a direction under this section, the Minister must receive and consider a report from the FRC about the desirability of giving the direction. The AASB must comply with the direction.

234 Validity of accounting standards

A failure to comply with this Division in relation to the making of an accounting standard does not affect the validity of the standard.

Division 3—Administrative provisions

Subdivision A—The Financial Reporting Council

235A Membership of FRC

- (1) The members of the Council are appointed by the Minister in writing. The Minister may appoint a person by specifying an organisation or body that is to choose the person who is appointed.

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Section 235B

- (2) The members hold office on the terms and conditions that are determined by the Minister.
- (3) The Minister must appoint one of the members to be Chairman of the Council. The appointment must be in writing. The Council may appoint one of its members to be Deputy Chairman of the Council.

235B Annual report

- (1) As soon as practicable after 30 June in each year, and in any event before 31 October, the FRC must give the Minister a report on:
 - (a) the operations of:
 - (i) the FRC and its committees and advisory groups; and
 - (ii) the AASB and its committees, advisory panels and consultative groups; and
 - (b) the achievement of the objects set out in section 224; during the year that ended on 30 June in that year.
- (2) The report must include details of any change to the AASB's priorities or business plan that was made as a result of action taken by the FRC.
- (3) The Minister may grant an extension of time in special circumstances.
- (4) The Minister must table the report in each House of the Parliament as soon as practicable.
- (5) If the FRC is established during the last 3 months of a year ending on 30 June:
 - (a) the FRC is not required to prepare an annual report for that year; and
 - (b) the period from the time of establishment to the end of that year must be dealt with in the next annual report.
- (6) If the FRC is established during the first 9 months of a year ending on 30 June, the annual report for that year must cover the period from the time of establishment to the end of that year.

235C Procedure

The FRC may determine its own procedural rules (including rules as to notice of meetings, quorum and voting).

Subdivision B—The Australian Accounting Standards Board

236A Procedure

- (1) Meetings of the AASB are to be chaired by:
 - (a) the Chair; or
 - (b) the Deputy Chair if the Chair is absent; or
 - (c) a member chosen by the members present if both the Chair and the Deputy Chair are absent.
- (2) If a meeting of the AASB, or a part of one of its meetings, concerns the contents of accounting standards or international accounting standards, the meeting or that part of it must be held in public.
- (3) The AASB must:
 - (a) comply with any directions about its procedure that the FRC gives under paragraph 225(2)(e); and
 - (b) take into account the advice and feedback about its procedure that the FRC gives under paragraph 225(2)(e).
- (4) Otherwise, the AASB may determine its own procedural rules (including rules as to notice of meetings, quorum and voting).

236B Appointment of members of the AASB

Appointment of Chair

- (1) The Minister appoints the Chair of the AASB.

Appointment of other members

- (2) The FRC appoints the other members of the AASB. The AASB may appoint one of its members to be Deputy Chair of the AASB.
-

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Section 236C

Qualification for appointment

- (3) A person must not be appointed as a member of the AASB unless their knowledge of, or experience in, business, accounting, law or government qualifies them for the appointment.

Appointment document

- (4) An appointment under subsection (1) or (2) is to be made in writing.

Period of appointment

- (5) The appointment document must specify the period of the appointment (not exceeding 5 years). A member holds office for the period specified in the appointment document and is eligible for reappointment.

Terms and conditions of appointment

- (6) The Chair holds office on the terms and conditions that are determined by the Minister. The other members hold office on the terms and conditions determined by the FRC.

236C Resignation and termination of appointment

Resignation

- (1) A member of the AASB may resign their appointment by giving a written resignation to:
- (a) if the member is the Chair of the AASB—the Minister; or
 - (b) in any other case—the Chair of the FRC.

Termination of Chair's appointment

- (2) The Chair is not to be removed from office except as provided by subsection (3) or (4).
- (3) The Minister may terminate the appointment of the Chair of the AASB for:
-

- (a) misbehaviour or physical or mental incapacity; or
 - (b) breach of the terms and conditions of their appointment.
- (4) The Minister must terminate the appointment of the Chair of the AASB if the Chair:
- (a) becomes bankrupt; or
 - (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (c) compounds with their creditors; or
 - (d) makes an assignment of their remuneration or property for the benefit of their creditors; or
 - (e) contravenes section 237.

Termination of ordinary member's appointment

- (5) A member of the AASB (other than the Chair) is not to be removed from office except as provided by subsection (6) or (7).
- (6) The FRC may terminate the appointment of a member of the AASB (other than the Chair) for:
- (a) misbehaviour or physical or mental incapacity; or
 - (b) breach of the terms and conditions of the member's appointment.
- (7) The FRC must terminate the appointment of a member of the AASB (other than the Chair) if the member:
- (a) becomes bankrupt; or
 - (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (c) compounds with their creditors; or
 - (d) makes an assignment of their remuneration or property for the benefit of their creditors; or
 - (e) contravenes section 237.

236D Acting appointments

- (1) The Minister may appoint a person to act as Chair of the AASB:
-

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- (a) during a vacancy in the office of Chair (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Chair is absent from duty or from Australia, or is for any reason unable to perform the duties of the office.
- (2) The AASB may appoint one of its members to act as Deputy Chair of the AASB:
- (a) during a vacancy in the office of Deputy Chair (whether or not an appointment has previously been made to the office); or
 - or
 - (b) during any period, or during all periods, when the Deputy Chair is absent from duty or from Australia, or is for any reason unable to perform the duties of the office.
- (3) The FRC may appoint a person to act as a member of the AASB (other than the Chair):
- (a) during a vacancy in the office of member (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the member is absent from duty or from Australia, or is for any reason unable to perform the duties of the office.
- (4) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
- (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

Subdivision C—Confidentiality

237 Confidentiality

- (1) The FRC and the AASB must take all reasonable measures to protect from unauthorised use or disclosure information given to it in confidence.

-
- (2) For the purposes of subsection (1), the disclosure of information is taken to be authorised if the disclosure:
- (a) is required or permitted by a law of the Commonwealth or a prescribed law of this or any other jurisdiction; or
 - (b) is made in order to enable an authority or person in a country outside Australia and the external Territories to perform or exercise a function or power that corresponds, or is analogous, to any of the FRC's or the AASB's functions or powers; or
 - (c) is made to a body that sets international accounting standards; or
 - (d) is made to ASIC for the purposes of its performance of its functions under national scheme laws.

Subdivision D—Financial matters

238 Application of money

The money of the AASB must be applied only:

- (a) in payment or discharge of the costs, expenses and other obligations incurred by the AASB in the performance of its functions or the exercise of its powers under this Act; and
- (b) in meeting the administrative expenses of the FRC and the committees and advisory groups it establishes; and
- (c) in payment of any remuneration and allowances payable to any person appointed under this Part.

Schedule 3—Consequential amendments of the Corporations Law

Part 1—Amendments relating to new Chapter 6D (Fundraising)

1 Subparagraph 8(5)(c)(xi)

Omit “1039”, substitute “703”.

2 Section 9

Insert:

admit to quotation: securities are *admitted to quotation* on a stock market of a securities exchange if the exchange has given unconditional permission for quotation of the securities on the stock market.

3 Section 9 (definition of *application period*)

Repeal the definition.

4 Section 9

Insert:

continuously quoted securities are securities that:

- (a) are in a class of securities that were quoted ED securities at all times in the 12 months before the date of the prospectus; and
- (b) are securities of an entity that was not covered by any of the following at any time in that 12 months:
 - (i) an exemption under section 111AS or 111AT, or a modification under section 111AV
 - (ii) an exemption under paragraph 741(1)(a), or a declaration under paragraph 741(1)(b), relating to a provision that is a disclosing entity provision for the purposes of Division 4 of Part 1.2A

and, for these purposes, securities are not in different classes merely because of a temporary difference in the dividend, or distribution rights, attaching to the securities or because different amounts have been paid up on the securities.

5 Section 9

Insert:

continuous disclosure notice means:

- (a) a document used to notify a securities exchange of information relating to a body under provisions of the securities exchange's listing rules referred to in subsection 1001A(1); or
- (b) a document under section 1001B lodged in relation to the body.

6 Section 9 (paragraph (a) of the definition of *dealers licence*)

Omit “, 807 or 1017A”, substitute “or 807”.

7 Section 9

Insert:

disclosure document for an offer of securities means:

- (a) a prospectus for the offer; or
- (b) a profile statement for the offer; or
- (c) an offer information statement for the offer.

8 Section 9 (definition of *eligible communications service*)

Repeal the definition.

9 Section 9 (definition of *excluded invitation*)

Repeal the definition.

10 Section 9 (definition of *excluded issue*)

Repeal the definition.

11 Section 9 (definition of *excluded offer*)

Repeal the definition.

12 Section 9 (definition of *excluded prospectus*)

Repeal the definition.

13 Section 9

Insert:

financial report means an annual financial report or a half-year financial report prepared under Chapter 2M.

Note: Section 295 deals with the contents of annual financial reports and section 302 deals with the contents of half-year financial reports.

14 Section 9 (definition of *minimum subscription*)

Repeal the definition.

15 Section 9

Insert:

offer information statement means an offer information statement that is lodged with ASIC.

16 Section 9

Insert:

profile statement means a profile statement that is lodged with ASIC.

17 Section 9 (definition of *promoter*)

Repeal the definition.

18 Section 9 (definition of *prospectus*)

Repeal the definition, substitute:

prospectus means a prospectus that is lodged with ASIC.

19 Section 9

Insert:

qualified accountant means a member of a professional body that is approved by ASIC in writing for the purposes of this definition.

20 Section 9 (definition of *replacement prospectus*)

Repeal the definition.

21 Section 9 (paragraph (c) of the definition of *securities exchange*)

Omit “Part 7.12”, substitute “Chapter 6D”.

22 Section 9 (definition of *securities law*)

After “6”, insert “, 6A, 6B, 6C, 6D”.

23 Section 9 (definition of *stock exchange*)

Omit “, section 869 or 1115 or Part 7.12”, substitute “or section 869 or 1115”.

24 Section 9

Insert:

State Fair Trading Act means the following Acts for each jurisdiction:

State Fair Trading Acts		
	Jurisdiction	Act
1	New South Wales	Fair Trading Act 1987 (NSW)
2	Victoria	Fair Trading Act 1985
3	Queensland	Fair Trading Act 1987
4	South Australia	Fair Trading Act 1987
5	Western Australia	Fair Trading Act 1987
6	Tasmania	Fair Trading Act 1990

Schedule 3 Consequential amendments of the Corporations Law

Part 1 Amendments relating to new Chapter 6D (Fundraising)

State Fair Trading Acts		
	Jurisdiction	Act
7	Northern Territory	Fair Trading Act 1990
8	Australian Capital Territory	Fair Trading Act 1992

25 Section 9 (definition of *supplementary prospectus*)

Repeal the definition.

26 Section 9 (definition of *underlying*)

Repeal the definition.

27 Section 9

Insert:

underlying securities means:

- (a) in relation to an option over securities—those securities; and
- (b) in relation to scrip that is constituted by documents that are, or are documents of title to, securities—those securities.

28 Subsection 45A(1) (note 2)

Omit “lodgment of a prospectus under Part 7.12”, substitute “disclosure to investors under Chapter 6D”.

29 Subsection 57A(3)

Repeal the subsection, substitute:

- (3) A financial institution (as defined by section 111AZA) is not a corporation for the purposes of this Law.

30 Section 66

Repeal the section.

31 Section 69A

Repeal the section.

32 Section 78

Repeal the section.

33 Section 79

Omit “Subject to section 1006, a person”, substitute “A person”.

34 Subsections 92(3), (4), (5) and (6)

Repeal the subsections, substitute:

(3) In Chapters 6 to 6D (inclusive):

securities means:

- (a) shares in a body
- (b) debentures of a body
- (c) interests in a registered managed investment scheme
- (d) legal or equitable rights or interests in:
 - (i) shares; or
 - (ii) debentures; or
 - (iii) interests in a registered managed investment scheme
- (e) options to acquire (whether by way of issue or transfer) a security covered by paragraph (a), (b), (c) or (d).

It does not cover a futures contract or an option approved by a securities exchange as an exchange traded option.

Note: Section 9 defines *body* and sections 9 and 72 define *futures contract*.

35 Section 99

Repeal the section.

36 Subsection 102A(3)

Omit “1020A,”.

37 Paragraph 111AF(1)(a)

Repeal the paragraph, substitute:

- (a) a disclosure document in relation to securities in that class has been lodged with ASIC under Chapter 6D; or

38 Paragraphs 111AF(1)(b) and (c)

Omit “prospectus” (wherever occurring), substitute “disclosure document”.

39 Section 111AQ

Omit “1022AA”, substitute “713”.

40 Section 111AQ

Omit “1022”, substitute “710”

41 Section 111AX

Omit “1084”, substitute “741”.

42 Subsection 111AZF(2) (table item 4)

Omit “Parts 7.11 and 7.12”, substitute “Chapter 6D and Part 7.11”.

43 Subsection 111AZF(2) (table item 4)

Omit “The application of those Parts to financial institutions is subject to the exceptions in sections 1015A and 1083A.”

44 Section 8 of the Small business guide in Part 1.5

Omit “the company to lodge a prospectus with ASIC”, substitute “disclosure to investors under Chapter 6D”.

45 Section 11 of the Small business guide in Part 1.5 (note at end)

Omit “1018”, substitute “707”.

46 Subsection 113(3)

Omit “the lodgment with ASIC of a prospectus under Part 7.12”, substitute “disclosure to investors under Chapter 6D”.

47 Subsection 163(3) (note)

Repeal the note, substitute:

Note: An offer of shares associated with a proposed change of type may need disclosure to investors under Part 6D.2 (see sections 706, 707 and 708).

48 Section 254Y (note)

Omit “subsection 1024E(7)”, substitute “subsections 258E(2) and (3)”.

49 Paragraph 258E(b)

Omit “share capital; or”, substitute “share capital.”.

50 Paragraph 258E(c)

Repeal the paragraph.

51 At the end of section 258E

Add:

(2) A company may cancel shares returned to it under section 651C, 724(2), 737 or 738 and any reduction in the company’s share capital that is involved is authorised by this subsection.

(3) Any reduction in a company’s share capital because of an order under section 1325A is authorised by this subsection.

52 Subsection 601ED(2)

Omit “were excluded issues (disregarding paragraph 66(2)(da))”, substitute “did not need disclosure to investors under Part 6D.2 (see sections 706 and 708)”.

53 Paragraph 601MB(1)(b)

Omit “Part 7.12”, substitute “Chapter 6D”.

54 Paragraph 601PA(2)(b)

Omit “excluded issues”, substitute “Chapter 6D not applying”.

55 Subsection 765(2)

Repeal the subsection.

56 Division 1 of Part 7.11

Repeal the Division.

57 Part 7.12

Repeal the Part.

58 Subparagraph 995(2)(b)(ii)

Repeal the subparagraph, substitute:

(ii) a notice published in relation to securities;

59 After subsection 995(2)

Insert:

(2A) Conduct that contravenes:

(a) section 670A (misleading or deceptive takeover document);

or

(b) section 728 (misleading or deceptive fundraising document);

does not contravene subsection (2). For this purpose, conduct contravenes the provision even if the conduct does not constitute an offence, or does not lead to any liability, because of the availability of a defence.

60 Subsection 995(4)

Omit “Part 7.12”, substitute “Chapter 6D”.

61 After section 995

Insert:

995A Application of State Fair Trading Act provisions

The provisions of the State Fair Trading Act do not apply to dealings in securities.

62 Section 996

Repeal the section.

63 Paragraph 1001B(1)(b)

Omit “prospectus” (twice occurring), substitute “disclosure document”.

64 Division 3 of Part 7.11

Repeal the Division.

65 Subsection 1005(1)

Omit “or Part 7.12”.

Note: The heading to section 1005 is altered by omitting “or Part 7.12”.

66 Subsection 1005(4)

Omit “or Part 7.12” (twice occurring).

67 Subdivision B of Division 4 of Part 7.11

Repeal the Subdivision.

68 Division 5 of Part 7.11

Repeal the Division.

69 Subparagraph 1274(2)(a)(ia)

Omit “7.12 or”.

70 After section 1324

Insert:

1324A Provisions relating to prosecutions

In the prosecution of a person for an offence in respect of a contravention of a provision of Chapter 5C or 6D or Part 7.11, the Court may do either or both of the following:

- (a) grant an injunction under section 1324 against the person in relation to:
 - (i) the conduct that constitutes, or is alleged to constitute, the offence; or
 - (ii) other conduct of that kind

- (b) make an order under section 1324B in respect of the person.

1324B Order to disclose information or publish advertisements

Without limiting section 1324, if, on the application of ASIC, the Court is satisfied that a person has engaged in conduct constituting a contravention of a provision of Chapter 5C or 6D or Part 7.11, the Court may make either or both of the following orders against that person or a person involved in the contravention:

- (a) an order requiring the person to whom it is directed to disclose, in the manner specified in the order, to:
- (i) the public; or
 - (ii) a particular person; or
 - (iii) a particular class of persons;
- the information, or information of a kind, that is specified in the order and is in the person's possession or to which the person has access
- (b) an order requiring the person to whom it is directed to publish, at the person's own expense, in the manner and at times specified in the order, advertisements whose terms are specified in, or are to be determined in accordance with, the order.

71 Subsection 1325(1)

Omit "Part 7.11 or 7.12" (wherever occurring), substitute "Chapter 5C or 6D or Part 7.11".

72 Subsection 1325(2)

Omit "Part 7.11 or 7.12", substitute "Chapter 5C or 6D or Part 7.11".

73 Subsection 1325(3)

Omit "Part 7.11 or 7.12" (wherever occurring), substitute "Chapter 5C or 6D or Part 7.11".

74 Section 1326

After "1324", insert ",1324A, 1324B,".

75 Schedule 3

Repeal the items relating to sections 996, 1018, 1019 and 1020, subsections 1023A(1), 1023B(2), 1024(2), 1024C(3), 1024D(2), 1024E(8) and 1024G(4) to (7), sections 1025, 1026, 1027 and 1028, subsections 1031(6), 1031(8) and 1031(9) and sections 1032, 1036, 1040, 1043, 1043B 1078, 1079 and 1081 and insert each of the following items in their appropriate place according to the order that the provision referred to in the item appears in the Corporations Law:

Subsection 721(1)

200 penalty units or imprisonment for 5 years, or both.

Subsection 721(4)

200 penalty units or imprisonment for 5 years, or both.

Subsection 722(1)

25 penalty units or imprisonment for 6 months, or both.

Subsection 724(1)

25 penalty units or imprisonment for 6 months, or both.

Subsection 725(1)

25 penalty units or imprisonment for 6 months, or both.

Section 726

200 penalty units or imprisonment for 5 years, or both.

Subsection 727(1)

200 penalty units or imprisonment for 5 years, or both.

Subsection 727(2)

200 penalty units or imprisonment for 5 years, or both.

Subsection 727(3)

200 penalty units or imprisonment for 5 years, or both.

Subsection 727(4)

200 penalty units or imprisonment for 5 years, or both.

Subsection 728(3)

200 penalty units or imprisonment for 5 years, or both.

Section 730

50 penalty units or imprisonment for 1 year, or both.

Schedule 3 Consequential amendments of the Corporations Law
Part 1 Amendments relating to new Chapter 6D (Fundraising)

Subsection 734(1)

25 penalty units or imprisonment for 6 months, or both.

Subsection 734(2)

25 penalty units or imprisonment for 6 months, or both.

Section 735

10 penalty units or imprisonment for 3 months, or both.

Subsection 736(1)

25 penalty units or imprisonment for 6 months, or both.

Part 2—Amendments relating to new Chapter 2L (Debentures)

76 Section 9 (definition of *borrowing corporation*)

Repeal the definition.

77 Section 9

Insert:

borrower, in relation to a debenture, means the body that is or will be liable to repay money under the debenture.

78 Section 9 (definition of *debenture*)

Repeal the definition, substitute:

debenture of a body means a chose in action that includes an undertaking by the body to repay as a debt money deposited with or lent to the body. The chose in action may (but need not) include a charge over property of the body to secure repayment of the money. However, a debenture does not include:

- (a) an undertaking to repay money deposited with or lent to the body by a person if:
 - (i) the person deposits or lends the money in the ordinary course of a business carried on by the person; and
 - (ii) the body receives the money in the ordinary course of carrying on a business that neither comprises nor forms part of a business of borrowing money and providing finance
 - (b) an undertaking by an Australian ADI to repay money deposited with it, or lent to it, in the ordinary course of its banking business
 - (c) an undertaking to pay money under:
 - (i) a cheque; or
 - (ii) an order for the payment of money; or
 - (iii) a bill of exchange
-

- (d) an undertaking to pay money under a promissory note that has a face value of at least \$50,000
- (e) an undertaking by a body corporate to pay money to a related body corporate
- (f) an undertaking to repay money that is prescribed by the regulations.

For the purposes of this definition, if a chose in action that includes an undertaking by a body to pay money as a debt is offered as consideration for the acquisition of securities under an off-market takeover bid, or is issued under a compromise or arrangement under Part 5.1, the undertaking is taken to be an undertaking to repay as a debt money deposited with or lent to the body.

79 Section 9 (definition of *eligible money market dealer*)

Omit “paragraph 65(1)(a)”, substitute “section 65”.

80 Section 9 (definition of *excluded corporation*)

Repeal the definition.

81 Section 9 (definition of *exempt securities*)

Repeal the definition.

82 Section 9 (definition of *guarantor body*)

Repeal the definition.

83 Section 9

Insert:

guarantor, in relation to a debenture, means a body that has guaranteed, or has agreed to guarantee, the repayment of any money deposited or lent to the borrower under the debenture.

84 Section 65

Repeal the section, substitute:

65 Eligible money market dealer

ASIC may declare a body corporate to be an authorised dealer in the short term money market by notice published in the *Gazette*.

85 Paragraph 111AH(1)(a)

Omit “1047”, substitute “601CZB”.

86 Section 111AI

Repeal the section, substitute:

111AI Debentures that need trustee appointed under section 260FA

Debentures of a borrower are *ED securities* if section 260FA requires the borrower to appoint a trustee.

87 At the end of paragraph 124(1)(b)

Add “(despite any rule of law or equity to the contrary, this power includes a power to issue debentures that are irredeemable, redeemable only if a contingency, however remote, occurs, or redeemable only at the end of a period, however long)”.

88 Subsection 168(2)

Repeal the subsection, substitute:

- (2) For the purposes of this Chapter, choses in action (including an undertaking) that fall into one of the exceptions in paragraphs (a), (b), (e) and (f) of the definition of *debenture* in section 9 must also be entered into the register of debenture holders.

89 Paragraph 260C(3)(a)

Omit “borrowing corporation”, substitute “borrower in relation to debentures”.

Note: The heading to subsection 260C(3) is altered by omitting “*borrowing corporation*” and substituting “*debenture issuers*”.

90 Paragraph 260C(3)(b)

Omit “borrowing corporation”, substitute “borrower”.

91 Paragraph 260C(3)(c)

Repeal the paragraph, substitute:

- (c) the borrower is a borrower in relation to the debentures because it is or will be liable to repay the money; and

92 Section 302 (note 3)

Omit “borrowing corporations”, substitute “borrowers in relation to debentures”.

93 Subsection 313(1)

Omit “A borrowing corporation’s auditor”, substitute “The auditor of a borrower in relation to debentures”.

Note: The heading to section 313 is altered by omitting “**borrowing corporations and guarantor bodies**” and substituting “**debenture issuers and guarantors**”.

94 Paragraph 313(1)(a)

Omit “borrowing corporation”, substitute “borrower”.

95 Subsection 313(1)

Omit “borrowing corporation” (last occurring), substitute “borrower”.

96 Subsection 313(2)

Omit “a borrowing corporation or guarantor body”, substitute “a borrower, or guarantor, in relation to debentures”.

97 Subsection 313(2)

Omit “the borrowing corporation or guarantor body”, substitute “the borrower or guarantor”.

98 Subsection 318(1)

Omit “borrowing corporation”, substitute “borrower in relation to debentures”.

99 Subsection 318(4)

Omit “borrowing corporation”, substitute “borrower in relation to debentures”.

100 At the end of section 601CD

Add:

- (2) For the purposes of this Division, a foreign company carries on business in this jurisdiction if it:
- (a) offers debentures in this jurisdiction; or
 - (b) is a guarantor body for debentures offered in this jurisdiction;
- and Part 2L.1 applies to the debentures.

101 After Division 3 of Part 5B.2

Insert:

Division 4—Register of debenture holders for non-companies

601CZA Certain documents are debentures

For the purposes of this Division, choses in action (including an undertaking) that fall into one of the exceptions in paragraphs (a), (b), (e) and (f) of the definition of *debenture* in section 9 must also be entered into the register of debenture holders.

601CZB Register of debenture holders to be maintained by non-companies

- (1) A body that is not a company must set up and maintain a register of debenture holders if it issues debentures covered by Chapter 2L.

Note 1: Companies have to keep a register of debenture holders under sections 168 and 171.

Note 2: The register may be kept on computer (see section 1306).

- (2) The register must contain the following information about each debenture holder:
- (a) their name and address

- (b) the amount of the debentures held.
- (3) A body's failure to comply with this section in relation to a debenture does not affect the debenture itself.

601CZC Location of register

- (1) The register must be kept at:
 - (a) the body's registered office; or
 - (b) the body's principal place of business in Australia; or
 - (c) a place in Australia (whether of the body or of someone else) where the work involved in maintaining the register is done; or
 - (d) another place approved by ASIC.
- (2) The body must lodge with ASIC a notice of the address at which the register is kept within 7 days after the register is:
 - (a) established at an office that is neither the body's registered office nor at its principal place of business; or
 - (b) moved from one office to another.

Notice is not required for moving the register between the registered office and an office at the principal place of business.

601CZD Application of sections 173 to 177

Sections 173 to 177 apply to a register kept under this Division as if it were kept under Chapter 2C.

Note: Sections 173 to 177 deal with rights to inspect the register and get copies, the obligations of agents who maintain the register, correction of the register, the evidential value of the register and the use of information on the register.

102 After section 563A

Insert:

563AAA Redemption of debentures

Priorities

- (1) Debentures of a company under a trust deed that are issued in place of debentures under that deed that have been redeemed have the priority that the redeemed debentures would have had if they had never been redeemed.

Deposit of debentures to secure advance

- (2) Debentures of a company are not to be taken to be redeemed merely because:
 - (a) the debentures secure advances on current account or otherwise; and
 - (b) the company's account ceases to be in debit while those debentures remain available.

103 Subsection 1302(1)

Omit "or 1047".

104 Schedule 3

Repeal the items relating to sections 1052 and 1054. Insert each of the following items in their appropriate place according to the order that the provision referred to occurs in the Corporations Law:

Subsection 260FA(1)

25 penalty units or imprisonment for 6 months, or both.

Subsection 260FA(3)

25 penalty units or imprisonment for 6 months, or both.

Section 260FB

25 penalty units or imprisonment for 6 months, or both.

Subsection 260FC(1)

25 penalty units or imprisonment for 6 months, or both.

Subsection 260FC(2)

25 penalty units or imprisonment for 6 months, or both.

Subsection 260GH(1)

200 penalty units or imprisonment for 5 years, or both.

Section 260GI

25 penalty units or imprisonment for 6 months, or both.

Section 260HE

25 penalty units or imprisonment for 6 months, or both.

Subsection 601CZB(1)

10 penalty units or imprisonment for 3 months, or both.

Section 601CZC

10 penalty units or imprisonment for 3 months, or both.

Part 3—Amendments relating to new Chapter 2D (Officers)

105 Section 9 (definition of *administration*)

Omit “or relevant body”.

106 Section 9 (paragraph (a) of the definition of *administrator*)

Omit “or relevant body”.

107 Section 9 (definition of *benefit*)

Repeal the definition, substitute:

benefit:

- (a) means any benefit, whether by way of payment of cash or otherwise; and
- (b) when used in Division 2 of Part 2D.2 (sections 200B to 1813)—means:
 - (i) a payment or other valuable consideration; or
 - (ii) an interest in property of any kind; and
 - (iii) any other benefit.

108 Section 9

Insert:

board or managerial office (when used in Division 2 of Part 2D.2 (sections 200B to 1813) in relation to a body corporate) means:

- (a) an office of director of the body corporate; and
 - (b) any other office in connection with the management of the body corporate’s affairs that is held by:
 - (i) a person who also holds an office of director of the body corporate or a related body corporate; or
 - (ii) a person who has held an office of director of the body corporate or a related body corporate at any time within
-

the 12 months immediately before the loss of, or retirement from, that office.

109 Section 9 (definition of *director*)

Repeal the definition, substitute:

director of a company or other body means:

- (a) a person who:
 - (i) is appointed to the position of a director; or
 - (ii) is appointed to the position of an alternate director and is acting in that capacity;regardless of the name that is given to their position; and
- (b) unless the contrary intention appears, a person who is not validly appointed as a director if:
 - (i) they act in the position of a director; or
 - (ii) the directors of the company or body are accustomed to act in accordance with the person's instructions or wishes.

Subparagraph (b)(ii) does not apply merely because the directors act on advice given by the person in the proper performance of functions attaching to the person's professional capacity, or the person's business relationship with the directors or the company or body.

Note: Paragraph (b)—Contrary intention—Examples of provisions for which a person referred to in paragraph (b) would not be included in the term “director” are:

- section 249C (power to call meetings of a company's members)
- subsection 251A(3) (signing minutes of meetings)
- section 205B (notice to ASIC of change of address).

110 Section 9

Insert:

general law means the principles and rules of the common law and equity.

111 Section 9 (definition of *manage*)

Repeal the definition.

112 Section 9 (definition of *officer*)

Repeal the definition, substitute:

officer of a corporation means:

- (a) a director or secretary of the corporation; or
- (b) a person:
 - (i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the corporation; or
 - (ii) who has the capacity to affect significantly the corporation's financial standing; or
 - (iii) in accordance with whose instructions or wishes the directors of the corporation are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors or the corporation); or
- (c) a receiver, or receiver and manager, of the property of the corporation; or
- (d) an administrator of the corporation; or
- (e) an administrator of a deed of company arrangement executed by the corporation; or
- (f) a liquidator of the corporation; or
- (g) a trustee or other person administering a compromise or arrangement made between the corporation and someone else.

Note: Section 201B contains rules about who is a director of a corporation.

113 Section 9

Insert:

payment (when used in Division 2 of Part 2D.2 (sections 200B to 1813)) includes a payment by way of damages for breach of contract.

114 Section 9 (definition of *person*)

Repeal the definition, substitute:

person:

- (a) has a meaning affected by section 85A; and
- (b) when used in Division 2 of Part 2D.2 (sections 200B to 1813)—includes a superannuation fund.

115 Section 9 (paragraph (a) of the definition of *public company*)

Omit “paragraph 228(1)(b) and subsection 879(1)”, substitute “subsection 849(1)”.

116 Section 9 (paragraph (b) of the definition of *public company*)

Omit “232A”, substitute “195”.

117 Section 9 (definition of *relevant body*)

Repeal the definition.

118 Section 9 (definition of *section 229 prohibition*)

Repeal the definition.

119 Section 9 (definition of *section 230 order*)

Repeal the definition.

120 Section 9 (definition of *section 599 order*)

Repeal the definition.

121 Section 9 (definition of *section 600 notice*)

Repeal the definition.

122 Paragraph 43(a)

Omit “235”, “substitute “205G”.

123 Section 60

Repeal the section.

124 Subsection 83(2)

Repeal the subsection.

125 Section 91A

Repeal the section.

126 Paragraph 103(2)(a)

Omit “232A, 232B”.

127 Subsection 109X(2)

Omit “242(1), or (3)”, substitute 205B(1), (2) or (4)”.

128 Subsection 117(2) (note 2)

Omit “242AA”, substitute “205D”.

129 Subsection 135(1) (note)

Omit “section 224B”, substitute “sections 198E, 201F and 202C”.

130 Section 141 (table item 1)

Omit “224C”, substitute “201G”.

131 Section 141 (table item 2)

Omit “224D”, substitute “201H”.

132 Section 141 (table item 3)

Omit “225A”, substitute “201K”.

133 Section 141 (table item 4)

Omit “226A”, substitute “198A”.

134 Section 141 (table item 5)

Omit “226B”, substitute “198B”.

135 Section 141 (table item 6)

Omit “226C”, substitute “198C, 201J, 203F”.

136 Section 141 (table item 7)

Repeal the item.

137 Section 141 (table item 8)

Omit “226E”, substitute “203C”.

138 Section 141 (table item 9)

Omit “227A”, substitute “203A”.

139 Section 141 (table item 11)

Omit “236A”, substitute “202A”.

140 Section 141 (table item 11)

Repeal the item, substitute:

10 Material interests—directors of proprietary companies 194

141 Section 141 (table item 31)

Omit “240(4A)”, substitute “204F”.

142 Subsection 248B(2) (note 1)

Omit “231,”.

143 Section 248C (note)

Omit “section 225A”, substitute “subsection 201K(2)”.

144 Section 248F (note 1)

Omit “sections 232A and 232B”, substitute “section 195”.

145 Paragraph 249H(3)(a)

Omit “227”, substitute “203D”.

146 Paragraph 249H(3)(b)

Omit “section; or”, substitute “section.”.

147 Paragraph 249H(3)(c)

Repeal the paragraph.

148 Section 260E

Omit “section 232”, substitute “sections 180, 181, 182, 183 and 184”.

149 Paragraph 300(8)(a)

Omit “241(2) or (3)”, substitute “199A(2) or (3)”.

150 Paragraph 300(8)(b)

Omit “and that is covered by subsection 241A(3)”, substitute “for legal costs”.

151 Subsection 300(8)

Omit “For the purposes of this subsection, *officer* has the same meaning as in section 241.”.

152 Subsection 300(8) (note)

Omit “241 and 241A”, substitute “199A and 199B”.

153 Subsection 300(11) (note)

Omit “235”, substitute “205G”.

154 Subsection 420A(2)

Omit “232”, substitute “180, 181, 182, 183 or 184”.

155 Section 348 (table item 5)

Omit “*section 242AA*”, substitute “*subsection 205D(2)*”.

156 Subsection 497(6)

After “secretary”, insert “(if the company has one)”.

157 At the end of subsection 497(6)

Add:

If the company has 2 or more directors, the director so appointed must not also attend in the capacity of a secretary.

158 Division 7 of Part 5.7B (heading)

Repeal the heading, substitute:

**Division 7—Person managing a corporation while
disqualified may become liable for corporation’s
debts**

159 Subparagraph 588Z(b)(i)

Omit “229, 230, 599, 600 or 1317EF”, substitute “206A”.

160 Paragraph 588Z(b)

Omit “(as defined by section 91A)”.

161 Section 599

Repeal the section.

162 Section 600

Repeal the section.

163 Subsection 601BC(2) (note 1)

Omit “242AA”, substitute “205D”.

164 Paragraph 601CE(c)

Omit “242(2)”, substitute “205B(3)”.

165 Paragraph 1015(1)(a)

Omit “subsection 232(7)”, substitute “Part 9.4B”.

166 Paragraph 1265(3)(a)

Omit “subsection 232(7)”, substitute “Part 9.4B”.

167 Subparagraph 1274(2)(a)(iaa)

Omit “242AA(3)”, substitute “205D(3)”.

168 After section 1274

Insert:

1274AA Register of disqualified company directors and other officers

- (1) ASIC must keep a register of persons who have been disqualified from managing corporations under this Part or prohibited from managing a corporation under any previous Law.
- (2) The register must contain a copy of:
 - (a) each order made by the Court disqualifying a person from managing a corporation, or prohibiting a person from managing a corporation, under a corresponding previous law of this jurisdiction before the commencement of this Part; and
 - (b) every notice that was served under:
 - (i) section 206F; or
 - (ii) a previous law of this jurisdiction before the commencement of this Part that corresponds to section 206F; and
 - (c) every order lodged under section 206G.
- (3) Subsections 1274(2) and (5) apply to a copy of an order or notice as if that copy were a document lodged with ASIC.

169 After section 1274B

Insert:

1274C ASIC certificate

ASIC may certify that a person was a director or secretary of a company at a particular time or during a particular period. In the absence of evidence to the contrary, a certificate is proof of the matters stated in it.

Note: See section 1274B for the evidentiary status of documents prepared by ASIC from the national database.

170 Subsection 1280(3)

Omit all the words after “a person who”, substitute “is disqualified from managing corporations under Part 2D.6”.

171 Subsection 1282(4)

Omit all the words after “a person who”, substitute “is disqualified from managing corporations under Part 2D.6”.

172 Subsection 1287(4)

Repeal the subsection, substitute:

- (4) If a person who is registered as an auditor, as a liquidator or as a liquidator of a specified corporate body is disqualified from managing corporations under Part 2D.6, then, within a period of 3 days after they become disqualified, they must lodge written particulars in the prescribed form of the circumstances because of which they become disqualified.

173 Paragraph 1292(7)(a)

Repeal the paragraph, substitute:

- (a) that the person is disqualified from managing corporations under Part 2D.6; or

174 Paragraph 1381(a)

Omit “or relevant body”.

175 Paragraph 1381(b)

Omit “or relevant body”.

176 Paragraph 1381(c)

Omit “or relevant body”.

177 Paragraph 1381(d)

Omit “, of a relevant body,”.

178 Section 1424 (table item 7)

Omit “subsection 227(3A)”, substitute “subsection 203D(2)”.

179 Schedule 3

Omit the items relating to sections 222A, 229, 230, 231, 235 and 236, subsections 242(1), (3) and (4) and 1317(1) and (4) and sections 242A, 599 and 600. Insert each of the following items in their appropriate place according to the order that the provision referred to occurs in the Corporations Law:

Section 184

Penalty: 200 penalty units or imprisonment for 5 years, or both.

Subsections 188(1) and (2)

Penalty: 5 penalty units.

Subsection 191(1)

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsection 195(1)

Penalty: 5 penalty units.

Section 199B

Penalty: 5 penalty units.

Subsection 200B(1)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 200C

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 200D

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 201D(1)

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsection 201D(2)

Penalty: 5 penalty units.

Subsection 202B(1)

Penalty: 5 penalty units.

Subsections 203D(3) and (5)

Penalty: 5 penalty units.

Section 204A

Penalty: 5 penalty units.

Subsections 204C(1) and (2)

Penalty: 5 penalty units.

Subsections 205B(1), (2), (4) and (5)

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsections 205C(1) and (2)

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsection 205E(2)

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Section 205F

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsections 205G(1), (3) and (4)

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsection 206A(1)

Penalty: 50 penalty units or imprisonment for 1 year, or both.

Section 224

Penalty: 200 penalty units or imprisonment for 5 years, or both.

Section 225

Penalty: 5 penalty units.

Part 4—Amendments relating to new Chapter 2E (Related Parties)

180 Subparagraph 8(5)(c)(vi)

Omit “243L(2)”, substitute “213(2)”.

181 Section 9 (definition of *child entity*)

Repeal the definition.

182 Section 9 (definition of *control*)

Repeal the definition, substitute:

control has the meaning given by section 50AA.

183 Section 9

Insert:

entity: for the purposes of Chapter 2E an *entity* is any of the following:

- (a) a body corporate
- (b) a partnership
- (c) an unincorporated body
- (d) an individual
- (e) for a trust that has only 1 trustee—the trustee
- (f) for a trust that has more than 1 trustee—the trustees together.

184 Section 9 (definition of *financial benefit*)

Repeal the definition, substitute:

financial benefit (when used in Chapter 2E) has a meaning that is affected by section 229.

185 Section 9 (definition of *parent entity*)

Repeal the definition.

186 Section 9 (definition of *related party*)

Repeal the definition, substitute:

related party (when used in Chapter 2E) has the meaning given by section 228.

187 Section 9

Insert:

remuneration of an officer or employee of a corporation. A benefit given to an officer or employee of a corporation is *remuneration* if and only if the benefit, were it received by a director of the corporation, would be remuneration of the director for the purposes of an accounting standard that deals with disclosure in companies' financial reports of information about related parties. For the purposes of this definition, the following are not officers of a corporation:

- (a) a receiver, or receiver and manager, of the property of the corporation
- (b) an administrator of the corporation
- (c) an administrator of a deed of company arrangement executed by the corporation
- (d) a liquidator of the corporation
- (e) a trustee or other person administering a compromise or arrangement made between the corporation and someone else.

188 Section 9 (definition of *sibling entity*)

Repeal the definition.

189 After section 50

Insert in Division 6 of Part 1.2:

50AA Control

- (1) For the purposes of this Law, an entity controls a second entity if the first entity has the capacity to determine the outcome of decisions about the second entity's financial and operating policies.
- (2) In determining whether the first entity has this capacity:
 - (a) the practical influence the first entity can exert (rather than the rights it can enforce) is the issue to be considered; and
 - (b) any practice or pattern of behaviour affecting the second entity's financial or operating policies is to be taken into account (even if it involves a breach of an agreement or a breach of trust).
- (3) The first entity does not control the second entity merely because the first entity and a third entity jointly have the capacity to determine the outcome of decisions about the second entity's financial and operating policies.
- (4) If the first entity:
 - (a) has the capacity to influence decisions about the second entity's financial and operating policies; and
 - (b) is under a legal obligation to exercise that capacity for the benefit of someone other than the first entity's members;the first entity is taken not to control the second entity.

190 Paragraph 103(2)(a)

Omit "243H, 243ZE", substitute "208, 209".

191 Section 256E (table item 5)

Omit "members of a public company, or diminish or endanger its resources", substitute "a public company's members as a whole".

192 Subsection 300(4)

Repeal the subsection.

193 Section 601LA

Omit “Part 3.2A”, substitute “Chapter 2E”.

194 Sections 601LB to 601LE

Repeal the sections, substitute:

601LB Replacement section 207

Chapter 2E applies as if section 207 were replaced by the following section:

207 Purpose

The rules in this Chapter, as they apply to a registered scheme, are designed to protect the interests of the scheme’s members as a whole, by requiring member approval for giving financial benefits to the responsible entity or its related parties that come out of scheme property or that could endanger those interests.

601LC Replacement section 208

Chapter 2E applies as if section 208 were replaced by the following section:

208 Need for member approval for financial benefit

- (1) If all the following conditions are satisfied in relation to a financial benefit:
 - (a) the benefit is given by:
 - (i) the responsible entity of a registered scheme; or
 - (ii) an entity that the responsible entity controls; or
 - (iii) an agent of, or person engaged by, the responsible entity
 - (b) the benefit either:
 - (i) is given out of the scheme property; or
 - (ii) could endanger the scheme property
 - (c) the benefit is given to:
 - (i) the person or a related party; or

- (ii) another person referred to in paragraph (a) or a related party of that person;

then, for the person referred to in paragraph (a) to give the benefit, either:

- (d) the person referred to in paragraph (a) must:
 - (i) obtain the approval of the scheme's members in the way set out in sections 217 to 227; and
 - (ii) give the benefit within 15 months after the approval; or
- (e) the giving of the benefit must fall within an exception set out in sections 210 to 216.

Note: Section 228 defines *related party*, section 191 defines *entity*, section 191 defines *control* and section 229 affects the meaning of *giving a financial benefit*.

(2) If:

- (a) the giving of the benefit is required by a contract; and
- (b) the making of the contract was approved in accordance with subparagraph (1)(d)(i) as a financial benefit given to the entity or related party; and
- (c) the contract was made:
 - (i) within 15 months after that approval; or
 - (ii) before that approval, if the contract was conditional on the approval being obtained;

member approval for the giving of the benefit is taken to have been given and the benefit need not be given within the 15 months.

- (3) Subsection (1) does not prevent the responsible entity from paying itself fees, and exercising rights to an indemnity, as provided for in the scheme's constitution under subsection 601GA(2).

601LD Omission of sections 213, 214 and 224

Chapter 2E applies as if sections 213, 214 and 224 were omitted.

Note: Instead of section 224, the rule in section 253E will apply.

601LE Modification of section 225

Chapter 2E applies as if subsection 225(1) were amended by omitting “subsection 224(1)” and substituting “section 253E”.

195 Schedule 3

Repeal the items relating to sections 243ZF and 243ZH. Insert the following item in its appropriate place according to the order that the provision referred to occurs in the Corporations Law:

Subsection 209(3)

Penalty: 2000 penalty units, or imprisonment for 5 years, or both.

Part 5—Amendments relating to new Part 2F.1 (Oppressive conduct of affairs)

196 Section 53

Omit “ or 246AA”, substitute “232, 233 or 234”.

197 At the end of paragraph 136(1)(b)

Add “or a court order is made under section 233 that requires the company to adopt the constitution”.

198 At the end of subsection 136(2)

Add:

Note: The company may need leave of the Court to modify or repeal its constitution if it was adopted as the result of a Court order (see subsection 233(3)).

199 Section 137

Repeal the section, substitute:

137 Date of effect of adoption, modification or repeal of constitution

If a new constitution is adopted or an existing constitution is modified or repealed, that adoption, modification or repeal takes effect:

- (a) if it is the result of a special resolution:
 - (i) on the date on which the resolution is passed if it specified no later date; or
 - (ii) on a date specified in, or determined in accordance with, the resolution if the relevant date is later than the date on which the resolution is passed; or
- (b) if it is the result of a Court order made under section 233:
 - (i) on the date on which the order is made if it specifies no later date; or
 - (ii) on a date specified by the order.

Schedule 3 Consequential amendments of the Corporations Law

Part 5 Amendments relating to new Part 2F.1 (Oppressive conduct of affairs)

200 Section 459B

Omit “246AA”, substitute “234”.

Note: The heading to section 459B of the Corporations Law is altered by omitting “246AA” and substituting “234”.

201 Paragraph 459C(1)(a)

Omit “246AA”, substitute “234”.

202 Section 467B

Omit “246AA”, substitute “233”.

203 Section 513A

Omit “246AA”, substitute “233”.

204 Paragraph 513D(a)

Omit “246AA”, substitute “233”.

205 Schedule 3

Repeal the item relating to section 246AA and insert the following item in its appropriate place according to the order that the provision referred to occurs in the Corporations Law:

Section 235

Penalty: 50 penalty units or imprisonment for 1 year, or both.

**Part 6—Amendments relating to new Part 2F.1A
(Proceedings on behalf of a company by
members and others)**

206 At the end of section 247A

Add:

- (3) A person who:
 - (a) is granted leave under section 237; or
 - (b) applies for leave under that section; or
 - (c) is eligible to apply for leave under that section;may apply to the Court for an order under this section.
- (4) On application, the Court may make an order authorising:
 - (a) the applicant to inspect books of the company; or
 - (b) another person to inspect books of the company on the applicant's behalf.
- (5) The Court may make the order only if it is satisfied that:
 - (a) the applicant is acting in good faith; and
 - (b) the inspection is to be made for a purpose connected with:
 - (i) applying for leave under section 237; or
 - (ii) bringing or intervening in proceedings with leave under that section.
- (6) A person authorised to inspect books may make copies of the books unless the Court orders otherwise.

207 At the end of section 300

Add:

Schedule 3 Consequential amendments of the Corporations Law

Part 6 Amendments relating to new Part 2F.1A (Proceedings on behalf of a company by members and others)

Proceedings on behalf of a company

- (14) The report for a company must also include the following details of any application for leave under section 237 made in respect of the company:
 - (a) the applicant's name; and
 - (b) a statement whether leave was granted.

- (15) The report for a company must also include the following details of any proceedings that a person has brought or intervened in on behalf of the company with leave under section 237:
 - (a) the person's name
 - (b) the names of the parties to the proceedings
 - (c) sufficient information to enable members to understand the nature and status of the proceedings (including the cause of action and any orders made by the court).

Part 7—Amendments relating to new Part 9.4B (Civil penalty provisions)

208 Section 9 (definition of *civil penalty order*)

Repeal the definition, substitute:

civil penalty order means any of the following:

- (a) a declaration of contravention under section 1317F
- (b) a pecuniary penalty order under section 1317G
- (c) a compensation order under section 1317H
- (d) an order under section 206C disqualifying a person from managing corporations.

209 Section 9 (definition of *civil penalty provision*)

Repeal the definition, substitute:

civil penalty provision has the meaning given in subsection 1317E(1).

210 Subsection 91(4A)

Omit “relating to the person”, substitute “disqualifying the person from managing corporations”.

211 Subsection 91(4A)

Repeal the subsection.

212 Section 111AZH

Repeal the section.

213 Paragraph 1.3 (note) of the Small business guide in Part 1.5

Omit “232, 233”, substitute “197”.

214 Paragraph 1.3 (note) of the Small business guide in Part 1.5

Omit “1317HA, 1317HD”, substitute “1317H”.

215 Paragraph 5.1 (note) of the Small business guide in Part 1.5

Omit “1317EA(3)”, substitute “206C, 1317G”.

216 Paragraph 5.3 (note) of the Small business guide in Part 1.5

Repeal the note, substitute:

[Sections 180, 181, 182, 183, 184, 475, 530A, 588G, 596, 601AE, 601AH, 1317H]

217 Paragraph 9 (note) of the Small business guide in Part 1.5

Repeal the note, substitute:

[588G, 1317H]

218 Subsection 254L(2) (note)

Omit “section 1317DA”, substitute “section 1317E”.

219 Section 254L (note)

Omit “Note”, substitute “Note 1”.

220 At the end of section 254L

Add:

Note 2: Section 79 defines *involved*.

221 At the end of section 254L (after the notes)

Add:

- (3) A person commits an offence if they are involved in a company’s contravention of section 254J or 254K and the involvement is dishonest.

222 Subsection 256D(3) (note)

Omit “section 1317DA”, substitute “section 1317E”.

223 Section 256D (note)

Omit “Note”, substitute “Note 1”.

224 At the end of section 256D

Add:

Note 2: Section 79 defines *involved*.

225 At the end of section 256D (after the notes)

Add:

- (4) A person commits an offence if they are involved in a company’s contravention of section 256B and the involvement is dishonest.

226 Section 256E (table item 1)

Omit “1317HA”, substitute “1317H”.

227 Section 257J (table item 1)

Omit “section 1317HA”, substitute “section 1317H”.

228 Subsection 259F(2) (note)

Omit “section 1317DA”, substitute “section 1317E”.

229 Section 259F (note)

Omit “Note”, substitute “Note 1”.

230 At the end of section 259F

Add:

Note 2: Section 79 defines *involved*.

231 At the end of section 259F (after the notes)

Add:

- (3) A person commits an offence if they are involved in a company's contravention of section 259A or subsection 259B(1) and the involvement is dishonest.

232 Subsection 260D(2) (note)

Omit "section 1317DA", substitute "section 1317E".

233 Section 260D (note)

Omit "Note", substitute "Note 1".

234 At the end of section 260D

Add:

Note 2: Section 79 defines *involved*.

235 At the end of section 260D (after the notes)

Add:

- (3) A person commits an offence if they are involved in a company's contravention of section 260A and the involvement is dishonest.

236 Section 260E

Omit "section 232", substitute "section 180, 181, 182, 183 or 184".

237 At the end of section 344

Add "a person commits an offence if they contravene subsection (1) and the contravention is dishonest".

238 Subsection 344(1) (note)

Omit "section 1317DA", substitute "section 1317E".

239 Subsection 420A(2)

Omit "section 232", substitute "180 or 181".

240 Paragraph 588E(1)(e)

Omit "section 588G", substitute "subsection 588G(2)".

241 At the end of subsection 588G(2)

Add:

Note: This subsection is a civil penalty provision (see subsection 1317E(1)).

242 Subsection 588G(3)

Repeal the subsection, substitute:

- (3) A person commits an offence if:
- (a) the person is a director of the company when it incurs a debt; and
 - (b) the company is insolvent at that time, or becomes insolvent by incurring that debt, or by incurring at that time debts including that debt; and
 - (c) the person suspected at the time when the company incurred the debt that the company was insolvent or would become insolvent as a result of incurring that debt or other debts (as in paragraph (1)(b)); and
 - (d) the person's failure to prevent the company incurring the debt was dishonest.

243 Subsection 588H(1)

Omit "section 588G", substitute "subsection 588G(2)".

244 Subsection 588J(1)

Omit "section 588G", substitute "subsection 588G(2)".

245 Subsection 588J(1)

Omit "an order under subsection 1317EA(3)", substitute "a pecuniary penalty order under section 1317G or an order under section 206C disqualifying a person from managing corporations".

246 Subsection 588J(2)

Omit "section 588G, unless the application was made under Division 4 of Part 9.4B", substitute "subsection 588G(2)".

247 Paragraph 588K(1)(a)

Schedule 3 Consequential amendments of the Corporations Law

Part 7 Amendments relating to new Part 9.4B (Civil penalty provisions)

Omit “constituted by a contravention of section 588G”, substitute “under subsection 588G(3)”.

248 Subsection 588K(2)

Repeal the subsection.

249 Paragraph 588M(1)(a)

Omit “section 588G”, substitute “subsection 588G(2) or (3)”.

250 Section 588Q

Omit “section 588G”, substitute “subsection 588G(3)”.

251 Paragraph 588U(1)(c)

Omit “section 588G”, substitute “subsection 588G(2)”.

252 Schedule 3

Repeal the item relating to subsections 1317EF(1) and (4). Insert each of the following items in their appropriate place according to the order that the provision referred to in the item appears in the Corporations Law:

Subsection 254L(3)

Penalty: 2,000 penalty units, or imprisonment for 5 years, or both.

Subsection 256D(4)

Penalty: 2,000 penalty units, or imprisonment for 5 years, or both.

Subsection 259F(3)

Penalty: 2,000 penalty units, or imprisonment for 5 years, or both.

Subsection 260D(3)

Penalty: 2,000 penalty units, or imprisonment for 5 years, or both.

Subsection 344(1)

Penalty: 2,000 penalty units, or imprisonment for 5 years, or both.

Subsection 588G(3)

Penalty: 2,000 penalty units, or imprisonment for 5 years, or both.

**Part 8—Amendments relating to new Part 12 of the
ASIC Act (Accounting standards)**

253 Subsection 334(3)

Repeal the subsection.

254 Section 336

Repeal the section.

Part 9—Amendments relating to new Chapters 6 to 6C (Takeovers)

255 Section 9 (paragraphs (b) and (c) of the definition of *acquire*)

Repeal the paragraphs, substitute:

- (b) in relation to shares—has, in Chapter 7, the meaning given by subsection 51(1).

256 Section 9

Insert:

appropriate dealer for a market bid means a member of the relevant securities exchange.

257 Section 9 (definition of *associate*)

Repeal the definition, substitute:

associate: The following are the associates of a bidder making a takeover offer, a substantial holder or a 90% holder:

- (a) if the bidder or holder is a body corporate:
 - (i) a body corporate it controls; or
 - (ii) a body corporate that controls it; or
 - (iii) a body corporate that is controlled by an entity that controls it
- (b) a person with whom the bidder or holder has, or proposes to enter into, a relevant agreement for the purpose of controlling or influencing the composition of the body's board or the conduct of the body's affairs
- (c) a person with whom the bidder or holder is acting, or proposes to act, in concert in relation to the body's affairs.

Otherwise a person's associates are determined under sections 10 to 17.

258 Section 9

Insert:

bid class of securities for a takeover bid is the class of securities to which the securities being bid for belong.

259 Section 9

Insert:

bidder for a takeover bid means the person who makes or proposes to make, or each of the people who make or propose to make, the offers under the bid (whether personally or by an agent or nominee).

Note: The dealer who announces a market bid is not the bidder; the bidder is the person or people on whose behalf the announcement is made.

260 Section 9

Insert:

bidder's statement means a bidder's statement under sections 636 and 637 as supplemented.

261 Section 9

Insert:

bid period:

- (a) for an off-market bid—starts when the bidder's statement is given to the target and ends:
 - (i) 1 month later if no offers are made under the bid; or
 - (ii) at the end of the offer period; and
- (b) for a market bid—starts when the bid is announced to the relevant securities exchange and ends at the end of the offer period.

262 Section 9 (definition of *body corporate*)

Repeal the definition, substitute:

body corporate:

- (a) includes a body corporate that is being wound up or has been dissolved; and
- (b) in this Chapter (except section 66A) and section 206E includes an unincorporated registrable body.

263 Section 9 (definition of *Chapter 6 body*)

Repeal the definition.

264 Section 9 (definition of *Chapter 6 company*)

Repeal the definition.

265 Section 9 (at the end of the definition of *chargeable matter*)

Add:

- (i) the making of an application under that Law to the Panel;
- (j) the doing of any act by the Panel in dealing with an application under that Law to the Panel.

266 Section 9 (definition of *class*)

Repeal the definition, substitute:

class has:

- (a) in relation to futures contracts—a meaning affected by subsection 72(3); and
- (b) in relation to shares or interests in a managed investment scheme—a meaning affected by section 57; and
- (c) when used in relation to securities for the purposes of Chapter 6, 6A or 6C—a meaning affected by subsection 605(2).

267 Section 9 (paragraph (ca) of the definition of *company*)

Omit “body; and”, substitute “body.”

268 Section 9 (paragraph (d) of the definition of *company*)

Repeal the paragraph.

269 Section 9

Insert:

convertible securities: Securities are convertible into another class of securities if the holder may have the other class of securities issued to them by the exercise of rights attached to those securities. An option may be a convertible security even if it is non-renounceable.

270 Section 9

Insert:

current market bid price for securities covered by a market bid is the price specified in the announcement of the bid as increased or decreased during the offer period.

271 Section 9

Insert:

date of a takeover bid is:

- (a) for an off-market bid—the date on which offers are first made under the bid; or
- (b) for a market bid—the date on which the bid is announced to the relevant securities exchange.

272 Section 9

Insert:

defeating condition for a takeover bid means a condition that:

- (a) will, in circumstances referred to in the condition, result in the rescission of, or entitle the bidder to rescind, a takeover contract; or
- (b) prevents a binding takeover contract from resulting from an acceptance of the offer unless or until the condition is fulfilled.

273 Section 9 (definition of *dispose of*)

Repeal the definition, substitute:

dispose of a futures contract has the meaning given by sections 24, 26, 27 and 28. For the purposes of Chapter 6, a person who has a relevant interest in securities *disposes* of the securities if, and only if, they cease to have a relevant interest in the securities.

274 Section 9 (definition of *enter into*)

Repeal the definition, substitute:

enter into: A person who:

- (a) enters into, or becomes a party to, a relevant agreement in relation to voting shares or other securities; or
- (b) exercises an option to have voting shares or other securities issued or granted;

is taken to enter into a transaction in relation to the shares or securities. *Enter into*, in relation to a futures contract, has a meaning affected by subsection 72(2).

275 Section 9 (paragraph (a) of the definition of *Exchange subsidiary*)

Repeal the paragraph.

276 Section 9

Insert:

exchange traded option means an option declared by a securities exchange to be an exchange traded option.

277 Section 9

Insert:

foreign holder of securities means a holder of the securities whose address, as shown in the register in which details of their holding is recorded, is a place outside Australia and the external Territories.

278 Section 9

Insert:

highest outside purchase price for a takeover bid is the highest amount paid or payable by the bidder for a security in the bid class under a purchase made outside the bid and during the bid period.

279 Section 9

Insert:

listed: A company, managed investment scheme or other body is listed if it is included in the official list of a securities exchange.

280 Section 9 (definition of *listing rules*)

Repeal the definition, substitute:

listing rules, when used in Chapter 7, has the meaning given by section 761.

281 Section 9 (definition of *make*)

Repeal the definition.

282 Section 9

Insert:

market bid means a takeover bid made under Chapter 6 as a market bid (see section 616).

283 Section 9

Insert:

necessary transfer documents for the transfer of securities to a person means the documents that are sufficient to enable the person to become the holder of the securities.

284 Section 9 (definition of *offer*)

Repeal the definition.

285 Section 9

Insert:

offer period for a takeover bid is the period for which offers under the bid remain open.

286 Section 9

Insert:

off-market bid means a takeover bid made under Chapter 6 as an off-market bid (see section 616).

287 Section 9

Insert:

on-market: a transaction of any kind is an *on-market* transaction if it is effected on a stock market of a securities exchange and is:

- (a) an on-market transaction as defined in the rules governing the operation of the exchange; or
- (b) if those rules do not define on-market transactions—effected in the ordinary course of trading on the stock market.

288 Section 9

Insert:

proportional takeover approval provisions, in relation to a company, means provisions of the kind referred to in subsection 648D(1) that are contained in, or that it is proposed to insert in, the constitution of the company.

289 Section 9

Insert:

proportional takeover bid means an off-market bid for a specified proportion of the securities in the bid class (see paragraph 618(1)(b)).

290 Section 9

Insert:

public authority of the Commonwealth or a State means:

- (a) a Minister or State Minister; or
- (b) the holder of an office established by a Commonwealth or State law; or
- (c) a body corporate incorporated for a public purpose by a Commonwealth or State law to the extent to which it is exercising a power conferred by a Commonwealth or State law.

291 Section 9 (definition of *relevant interest*)

Repeal the definition, substitute:

relevant interest, in relation to securities, has a meaning given by sections 608 and 609.

292 Section 9

Insert:

relevant securities exchange for a listed company, or listed registered managed investment scheme, means:

- (a) the securities exchange on whose stock market the company or scheme is listed; or
- (b) if the company or scheme is listed on 2 or more exchanges—each of those exchanges.

293 Section 9

Insert:

remedial order means an order that:

- (a) restrains a person from exercising any voting or other rights attached to securities
- (b) directs a body corporate not to make or to defer payment of an amount due from the body corporate in respect of securities
- (c) restrains a person from acquiring securities or an interest in securities

- (d) directs a person to dispose of, or not to dispose of, securities or interests in securities
 - (e) directs the disposal referred to in paragraph (d):
 - (i) to be made within a specified time; or
 - (ii) to be made subject to specified conditions; or
 - (iii) not to be made to a specified person or persons or to a specified class or classes of persons
 - (f) directs a specified person to pay to the body corporate an amount equal to any profit or benefit that the person obtains because of the disposal referred to in paragraph (d)
 - (g) vests securities, or an interest in securities, in ASIC
 - (h) directs a body corporate not to register the transfer or transmission of securities
 - (i) cancels securities issued as consideration for offers under a takeover bid
 - (j) declares that an exercise of the voting or other rights attached to securities be disregarded
 - (k) cancels or declares voidable:
 - (i) an agreement or offer relating to a takeover bid, or a proposed takeover bid; or
 - (ii) any other agreement or offer in connection with the acquisition of securities or relevant interests in securities
 - (l) directs a person to give specified information to the holders of securities of a body corporate
 - (m) directs a body corporate not to issue securities to a person
 - (n) if an order of a kind referred to in paragraphs (a) to (m) is in force in respect of securities—directs the registered holder of the securities to give written notice of the order to any person whom the holder knows to be entitled to exercise a right to vote attached to those securities
 - (o) directs a body corporate to repeal or modify its existing constitution or adopt a particular constitution
 - (p) if a person has failed to comply with a requirement of Chapter 6, 6A, 6B or 6C—directs that person to comply with that requirement.
-

294 Section 9

Insert:

renounceable option means an assignable option to have an allotment of shares in a body corporate made to the holder of the option.

295 Section 9 (definition of *stock market*)

Omit “and, in Chapter 6, has a meaning affected by the definition of *stock market* in section 603;”.

296 Section 9

Insert:

substantial holding: A person has a substantial holding in a body corporate, or listed registered managed investment scheme, if:

- (a) the total votes attached to voting shares in the body, or voting interests in the scheme, in which they or their associates:
 - (i) have relevant interests; and
 - (ii) would have a relevant interest but for subsection 609(6) (exchange traded options) or 609(7) (conditional agreements);

is 5% or more of the total number of votes attached to voting shares in the body, or interests in the scheme; or

- (b) the person has made a takeover bid for voting shares in the body, or voting interests in the scheme, and the takeover period has started and not yet ended.

Note: For **relevant interest**, see section 608.

297 Section 9 (definition of *takeover bid*)

Repeal the definition, substitute:

takeover bid means an off-market bid or market bid made under Chapter 6.

298 Section 9

Insert:

takeover contract means a contract that results from the acceptance of an offer made under a takeover bid.

299 Section 9 (definition of *takeover scheme*)

Repeal the definition.

300 Section 9

Insert:

target for a takeover bid means the company, listed body or managed investment scheme whose securities are to be acquired under the bid.

301 Section 9

Insert:

target's statement means a target's statement under sections 638 to 640 as supplemented.

302 Section 9

Insert:

trading day of a securities exchange or stock exchange means a day on which a stock market of the exchange or stock exchange is open for trading in securities.

303 Section 9 (definition of *unclaimed property*)

Omit "(except in section 702)".

304 Section 9

Insert:

voting interest, in relation to a managed investment scheme, means an issued interest in the scheme that confers a right to vote, not being a right to vote that is exercisable only in one or more of the following circumstances:

- (a) on a proposal that affects rights attached to the interests
- (b) on a proposal to wind up the scheme
- (c) on a proposal for the disposal of the whole of the scheme property, business and undertaking
- (d) during the winding up of the scheme.

305 Section 9

Insert:

voting power in a company has the meaning given by section 610.

306 Section 9 (definition of *voting share*)

Repeal the definition, substitute:

voting share in a body corporate means an issued share in the body that carries any voting rights beyond the following:

- (a) a right to vote while a dividend (or part of a dividend) in respect of the share is unpaid
- (b) a right to vote on a proposal to reduce the body's share capital
- (c) a right to vote on a resolution to approve the terms of a buy-back agreement
- (d) a right to vote on a proposal that affects the rights attached to the share
- (e) a right to vote on a proposal to wind the body up
- (f) a right to vote on a proposal for the disposal of the whole of the body's property, business and undertaking
- (g) a right to vote during the body's winding up.

307 Paragraphs 12(1)(b) and (c)

Repeal the paragraphs, substitute:

- (b) the primary person's voting power in a body corporate; or
- (c) a takeover bid for securities in a body corporate;

308 Paragraph 16(1)(c)

Repeal the paragraph, substitute:

- (c) one had sent, or proposes to send, to the other an offer under a takeover bid for shares held by the other;

309 Division 5 of Part 1.2

Repeal the Division.

310 Subsection 51(1)

Omit “Chapters 6 and 7”, substitute “Chapter 7”.

311 Subsection 51(2)

Repeal the subsection.

312 Section 53A

Repeal the section.

313 Paragraph 111AG(1)(a)

Repeal the paragraph, substitute:

- (a) securities in that class have been issued by the body as consideration for offers under an off-market bid; and

Note: The heading to section 111AG is altered by omitting “**a takeover scheme**” and substituting “**an off-market takeover bid**”.

314 Paragraph 111AG(1)(b)

Omit “pursuant to the takeover scheme”, substitute “under the off-market bid”.

315 Subsection 111AZF(2) (table item 3.1)

Omit “purposes, except for paragraph (d). Under that paragraph, financial institutions may be companies for the purposes of Chapter 6.”, substitute “purposes.”.

316 Paragraph 140(2)(c)

Repeal the paragraph, substitute:

- (c) imposes or increases restrictions on the right to transfer the shares already held by the member, unless the modification is made:

- (i) in connection with the company's change from a public company to a proprietary company under Part 2B.7; or
- (ii) to insert proportional takeover approval provisions into the company's constitution.

317 Subsection 168(1) (note 1)

Repeal the note, substitute:

Note 1: See also section 271 (register of charges).

318 Paragraph 169(5)(b)

Repeal the paragraph, substitute:

- (b) is not a listed company;

319 Subsection 169(6)

Omit "720 or 722", substitute "672B or 672C".

320 Subsection 252L(1)

Omit "special or extraordinary".

321 After subsection 252L

Insert:

(1A) The resolution must be:

- (a) a special resolution; or
- (b) an extraordinary resolution; or
- (c) a resolution to remove the responsible entity of a scheme that is listed and choose a new responsible entity.

322 Subsection 252M(1)

Omit "special or extraordinary".

323 Section 253E

After “as a member.”, insert “However, if the scheme is listed, the responsible entity and its associates are entitled to vote their interest on resolutions to remove the responsible entity and choose a new responsible entity.”.

324 Section 256E (table item 3)

Repeal the item.

325 Section 257J (table item 3)

Repeal the item.

326 Section 257J (table item 4)

Omit “section 42A”, substitute “subsection 609(4)”.

327 Section 257J (table item 4)

Omit “section 623A”, substitute “section 611 (item 19 of the table)”.

328 Paragraph 324(1)(e)

Omit “is a substantial shareholder for the purposes of Part 6.7”, substitute “has a substantial holding”.

329 Paragraph 324(2)(f)

Omit “is a substantial shareholder for the purposes of Part 6.7”, substitute “has a substantial holding”.

330 Paragraph 331AA(1)(e)

Omit “is a substantial shareholder for the purposes of Part 6.7”, substitute “has a substantial holding”.

331 Paragraph 331AA(2)(f)

Omit “is a substantial shareholder for the purposes of Part 6.7”, substitute “has a substantial holding”.

332 Paragraph 331AD(b)

Omit “an extraordinary resolution”, substitute “a resolution”.

333 Paragraph 331AD(d)

Omit “an extraordinary resolution” (twice occurring), substitute “a resolution”.

334 Subsection 414(2)

Omit “takeover offers, or a takeover announcement, under Chapter 6”, substitute “offers under a takeover bid”.

335 Paragraph 448C(1)(a)

Omit “is a substantial shareholder for the purposes of Part 6.7”, substitute “has a substantial holding”.

336 Paragraph 532(2)(a)

Omit “is a substantial shareholder for the purposes of Part 6.7”, substitute “has a substantial holding”.

337 Paragraph 601CQ(a)

Omit “414 or 701”, substitute “414, 661A or 664A”.

338 Subsection 601FL(1)

Repeal the subsection, substitute:

- (1) If the responsible entity of a registered scheme wants to retire, it must call a members’ meeting to explain its reason for wanting to retire and to enable the members to vote on a resolution to choose a company to be the new responsible entity. The resolution must be an extraordinary resolution if the scheme is not listed.

339 Subsection 601FM(1)

Repeal the subsection, substitute:

- (1) If members of a registered scheme want to remove the responsible entity, they may take action under Division 1 of Part 2G.4 for the calling of a members’ meeting to consider and vote on a resolution that the current responsible entity should be removed and a resolution choosing a company to be the new responsible entity.

The resolutions must be extraordinary resolutions if the scheme is not listed.

340 Subsection 601FQ(1)

Omit “extraordinary resolution”, substitute “resolution”.

341 Subsection 601FQ(1)

After “the new responsible entity.”, insert “The resolution must be an extraordinary resolution if the scheme is not listed.”.

342 Paragraph 601NE(1)(d)

Omit “an extraordinary resolution to remove”, substitute “a resolution removing”.

343 Paragraph 601NE(1)(d)

Omit “an extraordinary resolution” (second occurring), substitute “a resolution”.

344 Section 766E

Repeal the section, substitute:

766E Unacceptable ownership situation

For the purposes of this Division, an unacceptable ownership situation exists if any one person’s voting power in the Exchange exceeds 5%.

345 Subsection 779J(2)

Omit “a share or”.

346 Paragraph 857(2)(b)

Omit “is a substantial shareholder for the purposes of Part 6.7”, substitute “has a substantial holding”.

347 Subsection 879(2)

Omit “relevant interest” (twice occurring), substitute “relevant interests”.

348 Paragraph 881(2)(b)

Omit “a relevant interest”, substitute “relevant interests”.

349 Subsection 881(2)

Omit “relevant interest in those securities”, substitute “relevant interests in those securities”.

350 Subsection 881(3)

Omit “a relevant interest”, substitute “relevant interests”.

351 Subsection 881(3)

Omit “relevant interest in those securities”, substitute “relevant interests in those securities”.

352 Subsection 881(4)

Omit “relevant interest”, substitute “relevant interests”.

353 Subsection 881(5)

Omit “a relevant interest”, substitute “relevant interests”.

354 Subsection 881(5)

Omit “the relevant interest”, substitute “the relevant interests”.

355 Subsection 881(6)

Omit “relevant interest in” (twice occurring), substitute “relevant interests in”.

356 Paragraph 881(6)(a)

Omit “relevant interest”, substitute “relevant interests”.

357 Paragraph 881(6)(b)

Omit “relevant interest relates”, substitute “relevant interests relate”.

358 Paragraph 881(6)(c)

Omit “the relevant interest was acquired”, substitute “the relevant interests were acquired”.

359 Subsection 954A(1) (subparagraph (b)(ii) of the definition of *security benefit*)

Omit “takeover”, substitute “takeover bid”.

360 Subparagraph 995(2)(b)(iii)

Repeal the subparagraph, substitute:

- (iii) the making of, or the making of an evaluation of, or of a recommendation in relation to, offers under a takeover bid;

361 Subsection 1096A(8) (definition of *company*)

Repeal the definition.

362 Paragraph 1097B(3)(b)

Omit “642A”, substitute “653A”.

363 Paragraph 1215(2)(e)

Omit “is a substantial shareholder for the purposes of Part 6.7”, substitute “has a substantial holding”.

364 Paragraph 1215(3)(f)

Omit “is a substantial shareholder for the purposes of Part 6.7”, substitute “has a substantial holding”.

365 Paragraph 1252(1)(b)

Omit “is, for the purposes of Part 6.7, a substantial shareholder”, substitute “has a substantial holding”.

366 Subparagraph 1252(1)(c)(ii)

Omit “is, for the purposes of Part 6.7, a substantial shareholder”, substitute “has a substantial holding”.

367 After paragraph 1317C(g)

Insert:

- (ga) a decision of ASIC under section 655A; or
- (gb) a decision of ASIC under section 673 in relation to securities of the target of a takeover bid during the bid period; or
- (gc) a decision by ASIC whether to make an application under section 657C, 657G, 659B, 1325A, 1325B or 1325C; or

368 Schedule 3

Repeal the items relating to Chapter 6 (other than a provision referred to in a later heading in this Schedule), sections 672, 704 and 705 and subsections 746(2) and 746(4). Insert each of the following items in their appropriate place according to the order that the provision referred to occurs in the Corporations Law:

Subsection 606(1)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 606(2)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 606(4)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Paragraphs 614(1)(a), (b), (c) and (d)

Penalty: 100 penalty units or imprisonment for 2 years, or both.

Subsection 622(1)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 623(1)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 624(2)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsections 630(2), (3) and (4)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 631(1)

Penalty: 100 penalty units or imprisonment for 2 years, or both.

Subsection 631(2)

Penalty: 200 penalty units or imprisonment for 5 years, or both.

Subsection 633(1) (items 4, 5, 7, 8, 9, 11, 12, 13, 14)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 635 (items 5, 7, 8, 10, 11, 12, 13, 14)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 636(3)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 636(4)

Penalty: 10 penalty units.

Subsection 637(1)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 638(1)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 638(3)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 638(5)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 638(6)

Penalty: 10 penalty units.

Subsection 639(1)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 640(1)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 641(1)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 643

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 644

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsections 647(1), (2) and (3)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 648A(1)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsections 648E(1) and (2)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 648G

Penalty: 50 penalty units or imprisonment for 1 year, or both.

Subsection 649C(2)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 650B(3)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsections 650E(5) and (6)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 650F(3)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 651A(4)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 651C

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 652C(3)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 654A(1)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 654C(1)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 654C(3)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 657F

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 661D

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 662A(1)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 663A

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsections 664D(1), (2) and (3)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsections 664E(2), (3) and (4)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 665A(2)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 665D(3) or (4)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 665E

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 666A(1)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsections 666B(2) and (3)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 667A(3)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsections 668A(1), (3) and (4)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 668B(1)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 670A(3)

Penalty: 50 penalty units or imprisonment for 1 year, or both.

Subsections 670C(1), (2) and (3)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 671B(1)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 672B(1)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Schedule 4—Consequential amendments of Australian Securities and Investments Commission Act 1989

Part 1—Amendments relating to new Chapter 6D (Fundraising)

1 After subsection 12DA(1)

Insert:

(1A) This section does not apply to dealings in securities.

2 At the end of section 12DB

Add:

(2) This section does not apply to dealings in securities.

3 At the end of section 12DD

Add:

(2) This section does not apply to dealings in securities.

**Part 2—Amendments relating to new Chapter 2F.1
(Oppression)**

4 Subsection 5(1) (definition of *affairs*)

Omit “246AA”, substitute “232”.

Part 3—Amendments relating to new accounting standards provisions in ASIC Act

5 Section 5

Insert:

AASB means the Australian Accounting Standards Board established by section 226.

6 Section 5 (definition of *Director*)

Repeal the definition.

7 Section 5

Insert:

FRC means the Financial Reporting Council established by section 225.

8 Section 5

Insert:

international accounting standards means accounting standards made by:

- (a) the Board of the International Accounting Standards Committee; or
- (b) another body specified by the regulations.

9 Section 5 (paragraph (c) of the definition of *meeting*)

Omit “Board; and”, substitute “Board.”.

10 Section 5 (paragraph (d) of the definition of *meeting*)

Repeal the paragraph.

11 Section 5 (paragraph (a) of the definition of *member*)

Omit “Standards Board”, substitute “FRC, the AASB”.

12 Section 5 (paragraph (e) of the definition of *member*)

Repeal the paragraph, substitute:

- (e) in relation to the FRC—a member of the FRC; and
- (ea) in relation to the AASB—a member of the AASB; and

13 Section 5 (definition of *Standards Board*)

Repeal the definition.

14 Subparagraph 135(1)(a)(iv)

Omit “Standards Board”, substitute “AASB”.

Part 4—Amendments relating to new Chapter 6 (Takeovers)

15 Subsection 5(1)

Insert:

Panel proceedings means proceedings before the Panel on:

- (a) an application made to the Panel under the Corporations Law; or
- (b) a reference of a decision to the Panel for review under the Corporations Law.

16 Subsection 5(1) (paragraph (b) of the definition of *witness*)

Repeal the paragraph, substitute:

- (b) in relation to Panel proceedings, means a person appearing in the proceedings to give evidence.

17 Subsection 13(2)

Omit “Part 6.9”, substitute “Subdivision B of Division 2 of Part 6.12”.

18 Paragraph 13(2)(a)

Omit “subsection 733(1) or 734(2)”, substitute “section 657C”.

19 Paragraph 43(1)(c)

Omit “Part 6.7 or 6.8”, substitute “Chapter 6C”.

20 Paragraph 43(1)(f)

Omit “subsection 734(5)”, substitute “section 657F”.

21 Paragraph 43(4)(c)

Omit “subsection 733(1) or 734(2), or section 736, as the case may be,”, substitute “section 657C or 657G”.

22 Subsection 51(1)

Omit “733, 734 or 736”, substitute “657C or 657G”.

23 Paragraph 184(4)(a)

Omit “an inquiry”, substitute “proceedings”.

24 Paragraph 184(4)(b)

Repeal the paragraph, substitute:

- (b) if one of those persons ceases to be a member, or ceases to be available for the purposes of proceedings in relation to a matter, during the proceedings or after the completion of the proceedings but before the matter to which the proceedings relate is determined—at any time after the person so ceases to be a member or to be available;

25 After subsection 184(4)

Insert:

- (4A) The regulations may make provision in relation to the constitution of the Panel for the purposes of conducting a review under section 657EA or 657EB of the Corporations Law.

26 Heading to Division 3 of Part 10

Repeal the heading, substitute:

Division 3—Panel proceedings

27 Subsection 187(1)

Repeal the subsection.

28 Subsection 188(1)

Omit “hold inquiries”, substitute “conduct proceedings”.

Note: The heading to section 188 is altered by omitting “**hold inquiries**” and substituting “**conduct proceedings**”.

29 Subsection 188(2)

Omit “an inquiry”, substitute “proceedings”.

30 Section 189

Repeal the section.

31 Subsection 190(1)

Omit “an inquiry”, substitute “Panel proceedings”.

32 Paragraph 190(2)(a)

Omit “inquiry”, substitute “proceedings”.

33 At the end of section 190

Add:

(3) In this section:

Panel proceedings includes a part of Panel proceedings.

34 Section 191

Repeal the section.

35 Paragraph 192(1)(a)

Omit “an inquiry”, substitute “Panel proceedings”.

36 Subsection 192(2)

Omit “At an inquiry”, substitute “In Panel proceedings”.

37 Paragraphs 192(2)(a) and (b)

Omit “at the inquiry” (wherever occurring), substitute “in the proceedings”.

38 Subsection 192(4)

Omit “an inquiry”, substitute “Panel proceedings”.

39 Paragraphs 192(4)(a) and (b)

Omit “at the inquiry” (wherever occurring), substitute “in the proceedings”.

40 Subsection 192(6)

Repeal the subsection, substitute:

- (6) If:
- (a) a person appears in Panel proceedings pursuant to a summons issued under this section; and
 - (b) the summons was issued at a person's request;
- the person appearing is entitled to be paid the prescribed allowances and expenses (if any) by the person at whose request the summons was issued.

41 Section 193

Repeal the section.

42 Section 193A

Repeal the section, substitute:

193 Quorum

In Panel proceedings, 2 members form a quorum.

43 Section 194

Repeal the section, substitute:

194 Legal representation in proceedings before the Panel

A party to Panel proceedings may be legally represented in the proceedings only with the leave of the Panel.

44 Section 195

Repeal the section, substitute:

195 Procedure

- (1) Subject to subsections (2) to (4), the Panel may determine the procedural rules to be followed in Panel proceedings.

- (2) Panel proceedings are to be conducted in accordance with (in order of priority):
 - (a) the requirements of this Division; and
 - (b) the requirements of the regulations.
- (3) Without limiting paragraph (2)(b), the regulations may deal with:
 - (a) making submissions or giving evidence in Panel proceedings; and
 - (b) the right (if any) to appear, or be represented, in Panel proceedings; and
 - (c) the matters that the Panel is to take into account when making a decision in the course of Panel proceedings.
- (4) The rules of procedural fairness, to the extent that they are not inconsistent with the provisions of this Act or the regulations made under it, apply to Panel proceedings.

45 Section 196

Repeal the section.

46 Subsection 197(1)

Omit “an inquiry”, substitute “Panel proceedings”.

47 Subsection 197(3)

Omit “at an inquiry” (wherever occurring), substitute “in Panel proceedings”.

48 Paragraph 199(1)(a)

Omit “an inquiry”, substitute “Panel proceedings”.

49 Paragraph 199(1)(b)

Omit “at an inquiry”, substitute “in Panel proceedings”.

50 Paragraph 200(1)(b)

Omit “an inquiry”, substitute “Panel proceedings”.

51 Subsection 201(1)

Omit “a particular inquiry”, substitute “particular Panel proceedings”.

52 Subsection 201(1)

Omit “at, or in relation to, that inquiry”, substitute “in, or in relation to, those proceedings”.

53 Subsection 201A(1)

Omit “During an inquiry”, substitute “In Panel proceedings”.

54 Subsection 201A(1)

Omit “the inquiry” (wherever occurring), substitute “the proceedings”.

Schedule 5—Consequential amendment of other Acts

Air Navigation Act 1920

1 Subsection 11A(3)

Repeal the subsection, substitute:

- (3) For the purposes of this section, a person has a relevant interest in a share if, and only if, the person would be taken to have a relevant interest in the share for the purposes of the Corporations Law if paragraph 608(3)(a) of that Law were disregarded.

Commonwealth Authorities and Companies Act 1997

2 Section 5

Insert:

books includes:

- (a) a register; and
- (b) any other record of information; and
- (c) financial reports or financial records, however compiled, recorded or stored; and
- (d) a document.

3 Section 5

Insert:

civil penalty provision has the meaning given by subclause 1(1) of Schedule 2.

4 Section 5

Insert:

court means any court exercising jurisdiction under this Act.

5 Section 5

Insert:

Court means:

- (a) the Federal Court of Australia; or
- (b) the Supreme Court of a State or Territory.

6 Section 5

Insert:

enabling legislation, in relation to a Commonwealth authority, means the Act, regulations or Ordinance under which the authority is incorporated.

7 Section 5

Insert:

involved: a person is involved in a contravention if, and only if, the person has:

- (a) aided, abetted, counselled or procured the contravention; or
- (b) has induced, whether by threats or promises or otherwise, the contravention; or
- (c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention; or
- (d) has conspired with others to effect the contravention.

8 Subsection 6(1)

Omit “Schedule 2”, substitute “Division 4 of Part 3”.

9 Subsection 6(2)

Omit “and criminal”.

10 At the end of section 6

Add:

- (4) A maximum penalty that is specified:
- (a) at the foot of a clause of a Schedule to this Act (other than a clause that is divided into subclauses); or
 - (b) at the foot of a subclause of a Schedule to this Act;
- indicates that a person who contravenes the clause or subclause is guilty of an offence against the clause or subclause that is punishable, on conviction, by a penalty up to that maximum.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: If the specified penalty is imprisonment only, section 4B of the *Crimes Act 1914* allows the court to impose a fine instead of imprisonment or in addition to imprisonment.

11 Division 4 of Part 3

Repeal the Division, substitute:

Division 4—Conduct of officers

21 Background to duties of directors, other officers and employees

- (1) This Part sets out some of the most significant duties of officers and employees of Commonwealth authorities. Other duties are imposed by other provisions of this Act and other laws (including the general law).
- (2) Section 5 defines both *director* and *officer*. *Officer* includes, as well as directors, other people who are concerned in, or take part in, the management of the authority.

Subdivision A—General duties**22 Care and diligence—civil obligation only***Care and diligence—officers*

- (1) An officer of a Commonwealth authority must exercise his or her powers and discharge his or her duties with the degree of care and diligence that a reasonable person would exercise if he or she:
 - (a) were an officer of a Commonwealth authority in the Commonwealth authority's circumstances; and
 - (b) occupied the office held by, and had the same responsibilities within the Commonwealth authority as, the officer.

Note: This subsection is a civil penalty provision (see Schedule 2).

Business judgment rule

- (2) An officer of a Commonwealth authority who makes a business judgment is taken to meet the requirements of subsection (1), and their equivalent duties at common law and in equity, in respect of the judgment if he or she:
 - (a) makes the judgment in good faith for a proper purpose; and
 - (b) does not have a material personal interest in the subject matter of the judgment; and
 - (c) informs himself or herself about the subject matter of the judgment to the extent he or she reasonably believes to be appropriate; and
 - (d) rationally believes that the judgment is in the best interests of the Commonwealth authority.

The officer's belief that the judgment is in the best interests of the Commonwealth authority is a rational one unless the belief is one that no reasonable person in his or her position would hold.

Note: This subsection only operates in relation to duties under this section and their equivalents at common law or in equity (including the duty of care that arises under the common law principles governing liability for negligence)—it does not operate in relation to duties under any other provision of this Act or under any other laws.

- (3) In this section:

business judgment means any decision to take or not take action in respect of a matter relevant to the operations of the Commonwealth authority.

23 Good faith—civil obligations

Good faith—officers

- (1) An officer of a Commonwealth authority must exercise his or her powers and discharge his or her duties:
- (a) in good faith in the best interests of the Commonwealth authority; and
 - (b) for a proper purpose.

Note 1: This subsection is a civil penalty provision (see Schedule 2).

Note 2: Section 187 of the Corporations Law deals with the position of directors of wholly-owned subsidiaries of Commonwealth authorities.

- (2) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Note 1: Section 5 defines *involved*.

Note 2: This subsection is a civil penalty provision (see Schedule 2).

24 Use of position—civil obligations

Use of position—officers and employees

- (1) An officer or employee of a Commonwealth authority must not improperly use his or her position to:
- (a) gain an advantage for him or her or someone else; or
 - (b) cause detriment to the Commonwealth authority or to another person.

Note 1: Section 27A makes provision for officers who are also public servants.

Note 2: This subsection is a civil penalty provision (see Schedule 2).

- (2) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Note 1: Section 5 defines *involved*.

Note 2: This subsection is a civil penalty provision (see Schedule 2).

25 Use of information—civil obligations

Use of information—officers and employees

- (1) A person who obtains information because they are, or have been, an officer or employee of a Commonwealth authority must not improperly use the information to:
- (a) gain an advantage for himself or herself or someone else; or
 - (b) cause detriment to the Commonwealth authority or to another person.

Note 1: Section 27A makes provision for officers who are also public servants.

Note 2: This duty continues after the person stops being an officer or employee of the Commonwealth authority.

Note 3: This subsection is a civil penalty provision (see Schedule 2).

- (2) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Note 1: Section 5 defines *involved*.

Note 2: This subsection is a civil penalty provision (see Schedule 2).

26 Good faith, use of position and use of information—criminal offences

Good faith—officers

- (1) An officer of a Commonwealth authority commits an offence if he or she:
- (a) is reckless; or
 - (b) is intentionally dishonest;

and fails to exercise his or her powers and discharge his or her duties:

- (c) in good faith in what he or she believes to be in the best interests of the Commonwealth authority; or
- (d) for a proper purpose.

Note: Section 187 of the Corporations Law deals with the position of directors of wholly-owned subsidiaries of Commonwealth authorities.

Penalty: Imprisonment for 5 years.

- (2) An officer or employee of a Commonwealth authority commits an offence if he or she uses his or her position dishonestly:
- (a) with the intention of directly or indirectly gaining an advantage for himself or herself, or someone else, or causing detriment to the Commonwealth authority or to another person; or
 - (b) recklessly as to whether the use may result in him or her or someone else directly or indirectly gaining an advantage, or in causing detriment to the Commonwealth authority or to another person.

Penalty: Imprisonment for 5 years.

Use of information—officers and employees

- (3) A person who obtains information because he or she is, or has been, an officer or employee of a Commonwealth authority commits an offence if he or she uses the information dishonestly:
- (a) with the intention of directly or indirectly gaining an advantage for himself or herself, or someone else, or causing detriment to the Commonwealth authority or to another person; or
 - (b) recklessly as to whether the use may result in himself or herself or someone else directly or indirectly gaining an advantage, or in causing detriment to the Commonwealth authority or to another person.

Maximum penalty: Imprisonment for 5 years.

27A Compliance with statutory duties

- (1) An officer does not contravene section 23, 24 or 25, or commit an offence against section 26, by doing an act that another provision of this Act requires the officer to do.
- (2) If an officer of a Commonwealth authority is also a public servant, the officer does not contravene section 23, 24 or 25, or commit an offence against section 26, by doing an act in the course of the performance of his or her duties as a public servant. For this purpose, *public servant* means an officer or employee within the meaning of the *Public Service Act 1922*.

27B Interaction of sections 22 to 26 with other laws etc.

Sections 22 to 26:

- (a) have effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person because of his or her office or employment in relation to a Commonwealth authority; and
- (b) do not prevent the commencement of proceedings for a breach of duty or in respect of a liability referred to in paragraph (a).

This section does not apply to subsections 22(2) and (3) to the extent to which they operate on the duties at common law and in equity that are equivalent to the requirements of subsection 22(1).

27C Disqualification order for contravention of civil penalty provision

- (1) The Court may disqualify a person from managing bodies corporate for a period that the Court considers appropriate if:
 - (a) a declaration is made under clause 1 of Schedule 2 (civil penalty provision) that the person has contravened a civil penalty provision; and
 - (b) the Court is satisfied that the disqualification is justified.

- (2) An application for a disqualification order under subsection (1) may be made by:
- (a) the Finance Minister; or
 - (b) some other person authorised in writing by the Finance Minister, under this paragraph, to make the application.
- An authorisation for the purposes of paragraph (b) may relate to applications in relation to specified contraventions, or to all contraventions, of civil penalty provisions.
- (3) In determining whether the disqualification is justified, the Court may have regard to:
- (a) the person's conduct in relation to the management, business or property of any Commonwealth authority or other body corporate; and
 - (b) any other matters that the Court considers appropriate.
- (4) If a disqualification order under subsection (1) is in force against a person, the person must not be a director of a Commonwealth authority except with the leave of the Court.
- Maximum penalty: Imprisonment for 1 year.
- (5) When granting leave under subsection (4), the Court may impose conditions or restrictions that the Court considers appropriate.
- (6) A person must not contravene a condition or restriction imposed under subsection (5).
- Maximum penalty: Imprisonment for 1 year.
- (7) A person may only apply for leave under subsection (4) if he or she has given the Finance Minister at least 21 days notice of the application.
- (8) On the application of the Finance Minister, the Court may revoke leave granted under subsection (4).

27D Reliance on information or advice provided by others

If:

-
- (a) a director relies on information, or professional or expert advice, given or prepared by:
- (i) an employee of the Commonwealth authority whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned; or
 - (ii) a professional adviser or expert in relation to matters that the director believes on reasonable grounds to be within the person's professional or expert competence; or
 - (iii) another director or officer in relation to matters within the director's or officer's authority; or
 - (iv) a committee of directors on which the director did not serve in relation to matters within the committee's authority; and
- (b) the reliance was made:
- (i) in good faith; and
 - (ii) after making proper inquiry if the circumstances indicated the need for inquiry; and
- (c) the reasonableness of the director's reliance on the information or advice arises in proceedings brought to determine whether a director has performed a duty under this Division or an equivalent general law duty;
- the director's reliance on the information or advice is taken to be reasonable unless the contrary is proved.

27E Responsibility for actions of delegate

- (1) If the directors of a Commonwealth authority delegate a power under its enabling legislation, a director is responsible for the exercise of the power by the delegate as if the power had been exercised by the directors themselves.
- (2) A director is not responsible under subsection (1) if:
- (a) the director believed on reasonable grounds at all times that the delegate would exercise the power in conformity with the duties imposed on directors of the Commonwealth authority by this Act and the authority's enabling legislation; and

- (b) the director believed:
 - (i) on reasonable grounds; and
 - (ii) in good faith; and
 - (iii) after making proper inquiry if the circumstances indicated the need for inquiry;
that the delegate was reliable and competent in relation to the power delegated.

Subdivision B—Disclosure of, and voting on matters involving, material personal interests

27F Material personal interest—director’s duty to disclose

Director’s duty to notify other directors of material personal interest when conflict arises

- (1) A director of a Commonwealth authority who has a material personal interest in a matter that relates to the affairs of the authority must give the other directors notice of the interest unless subsection (2) says otherwise.
- (2) The director does not need to give notice of an interest under subsection (1) if:
 - (a) the interest:
 - (i) arises in relation to the director’s remuneration as a director of the authority; or
 - (ii) relates to a contract that insures, or would insure, the director against liabilities the director incurs as an officer of the authority (but only if the contract does not make the authority or a subsidiary of the authority the insurer); or
 - (iii) relates to any payment by the authority or a subsidiary of the authority in respect of an indemnity permitted under section 27M or any contract relating to such an indemnity; or
 - (iv) is in a contract, or proposed contract, with, or for the benefit of, or on behalf of, a subsidiary of the authority

and arises merely because the director is a director of the subsidiary; or

- (b) all the following conditions are satisfied:
 - (i) the director has already given notice of the nature and extent of the interest and its relation to the affairs of the authority under subsection (1)
 - (ii) if a person who was not a director of the authority at the time when the notice under subsection (1) was given is appointed as a director of the authority—the notice is given to that person
 - (iii) the nature or extent of the interest has not materially increased above that disclosed in the notice; or
 - (c) the director has given a standing notice of the nature and extent of the interest under section 27G and the notice is still effective in relation to the interest.
- (3) The notice required by subsection (1) must:
- (a) give details of:
 - (i) the nature and extent of the interest; and
 - (ii) the relation of the interest to the affairs of the authority; and
 - (b) be given at a directors' meeting as soon as practicable after the director becomes aware of his or her interest in the matter.

The details must be recorded in the minutes of the meeting.

Effect of contravention by director

- (4) A contravention of this section by a director does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.

27G Director may give other directors standing notice about an interest

Power to give notice

- (1) A director of a Commonwealth authority who has an interest in a matter may give the other directors standing notice of the nature and extent of the interest in the matter in accordance with subsection (2). The notice may be given at any time and whether or not the matter relates to the affairs of the authority at the time the notice is given.

Note: The standing notice may be given to the other directors before the interest becomes a material personal interest.

- (2) The notice under subsection (1) must:
- (a) give details of the nature and extent of the interest; and
 - (b) be given:
 - (i) at a directors' meeting (either orally or in writing); or
 - (ii) to the other directors individually in writing.

The standing notice is given under subparagraph (b)(ii) when it has been given to every director.

Standing notice must be tabled at meeting if given to directors individually

- (3) If the standing notice is given to the other directors individually in writing it must be tabled at the next directors' meeting after it is given.

Nature and extent of interest must be recorded in minutes

- (4) The director must ensure that the nature and extent of the interest disclosed in the standing notice is recorded in the minutes of the meeting at which the standing notice is given or tabled.

Dates of effect and expiry of standing notice

- (5) The standing notice:
- (a) takes effect as soon as it is given; and

- (b) ceases to have effect if a person who was not a director of the authority at the time when the notice was given is appointed as a director of the authority.

A standing notice that ceases to have effect under paragraph (b) commences to have effect again if it is given to the person referred to in that paragraph.

Effect of material increase in nature or extent of interest

- (6) The standing notice ceases to have effect in relation to a particular interest if the nature or extent of the interest materially increases above that disclosed in the notice.

Effect of contravention by director

- (7) A contravention of this section by a director does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.

27H Interaction of sections 27F and 27G with other laws etc.

Sections 27F and 27G have effect in addition to, and not in derogation of:

- (a) any general law rule about conflicts of interest; and
(b) any provision in the Commonwealth authority's enabling legislation that restricts a director from:
(i) having a material personal interest in a matter; or
(ii) holding an office or possessing property;
involving duties or interests that conflict with their duties or interests as a director.

27J Restrictions on voting

Restrictions on voting and being present

- (1) A director of a Commonwealth authority who has a material personal interest in a matter that is being considered at a directors' meeting must not:

- (a) be present while the matter is being considered at the meeting; or
 - (b) vote on the matter;
- unless:
- (c) subsection (2) or (3) allows the director to be present; or
 - (d) the interest does not need to be disclosed under section 27F.

Participation with approval of other directors

- (2) The director may be present and vote if directors who do not have a material personal interest in the matter have passed a resolution that:
 - (a) identifies the director, the nature and extent of the director's interest in the matter and its relation to the affairs of the authority; and
 - (b) states that those directors are satisfied that the interest should not disqualify the director from voting or being present.

Participation with Ministerial approval

- (3) The director may be present and vote if they are so entitled under a declaration or order made by the responsible Minister under section 27K.

Effect of contravention by director

- (4) A contravention by a director of:
 - (a) this section; or
 - (b) a condition attached to a declaration or order made by the responsible Minister under section 27K;does not affect the validity of any resolution.

27K Minister's power to make declarations and class orders

Minister's power to make specific declarations

- (1) The responsible Minister may declare in writing that a director of a Commonwealth authority who has a material personal interest in a
-

matter that is being, or is to be, considered at a directors' meeting may, despite the director's interest, be present while the matter is being considered at the meeting, vote on the matter, or both be present and vote. However, the Minister may only make the declaration if:

- (a) the number of directors entitled to be present and vote on the matter would be less than the quorum for a directors' meeting if the director were not allowed to vote on the matter at the meeting; and
 - (b) the matter needs to be dealt with urgently, or if there is some other compelling reason for the matter being dealt with at the directors' meeting.
- (2) The declaration may:
- (a) apply to all or only some of the directors; or
 - (b) specify conditions that the authority or director must comply with.

Responsible Minister's power to make class orders

- (3) The responsible Minister may make an order in writing that enables directors who have a material personal interest in a matter to be present while the matter is being considered at a directors' meeting, vote on that matter, or both be present and vote. The order may be made in respect of a specified class of Commonwealth authorities, directors, resolutions or interests.
- (4) The order may be expressed to be subject to conditions.
- (5) Notice of the making, revocation or suspension of the order must be published in the *Gazette*.

27L Right of access to authority's books

Right while director

- (1) A director of a Commonwealth authority may inspect the books of the authority at all reasonable times for the purposes of a legal proceeding:
-

- (a) to which the director is a party; or
- (b) that the director proposes in good faith to bring; or
- (c) that the director has reason to believe will be brought against him or her.

Right during 7 years after ceasing to be director

- (2) A person who has ceased to be a director of a Commonwealth authority may inspect the books of the authority at all reasonable times for the purposes of a legal proceeding:
 - (a) to which the person is a party; or
 - (b) that the person proposes in good faith to bring; or
 - (c) that the person has reason to believe will be brought against him or her.

This right continues for 7 years after the person ceased to be a director of the authority.

Right to take copies

- (3) A person authorised to inspect books under this section for the purposes of a legal proceeding may make copies of the books for the purposes of those proceedings.

Commonwealth authority not to refuse access

- (4) A Commonwealth authority must allow a person to exercise his or her rights to inspect or take copies of the books under this section.

Division 4A—Restrictions on indemnities and insurance for officers

27M Indemnification and exemption of officer

Power to indemnify officers

- (1) Except as provided in this section, a Commonwealth authority may indemnify a person who is or has been an officer of the authority

from any liability incurred by the person as an officer of the authority.

Exemptions not allowed

- (2) A Commonwealth authority, or a subsidiary of a Commonwealth authority, must not exempt a person (whether directly or through an interposed entity) from a liability to the authority incurred as an officer of the authority.

When indemnity for liability (other than for legal costs) not allowed

- (3) A Commonwealth authority, or a subsidiary of a Commonwealth authority, must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against any of the following liabilities incurred as an officer of the authority:
- (a) a liability owed to the authority or a subsidiary of the authority; or
 - (b) a liability for a civil penalty order under clause 3 of Schedule 2 or a compensation order under clause 4 of Schedule 2; or
 - (c) a liability that is owed to someone other than the authority or a subsidiary of the authority and did not arise out of conduct in good faith.

This subsection does not apply to a liability for legal costs.

When indemnity for legal costs not allowed

- (4) A Commonwealth authority, or a subsidiary of a Commonwealth authority, must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against legal costs incurred in defending an action for a liability incurred as an officer of the authority if the costs are incurred:
- (a) in defending or resisting a proceedings in which the person is found to have a liability for which they could not be indemnified under subsection (3); or

- (b) in defending or resisting criminal proceedings in which the person is found guilty; or
- (c) in defending or resisting proceedings brought by the Finance Minister for a court order if the grounds for making the order are found by the court to have been established; or
- (d) in connection with proceedings for relief to the person under this Act in which the Court denies the relief.

Paragraph (c) does not apply to costs incurred in responding to actions taken by the Finance Minister as part of an investigation before commencing proceedings for the court order.

Note: Paragraph (c)—This includes proceedings by the Finance Minister for an order under section 27C (disqualification order) or clause 3 or 4 of Schedule 2 (civil penalties).

- (5) For the purposes of subsection (4), the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

27N Insurance for certain liabilities of officers

- (1) Except as provided in subsection (2), a Commonwealth authority may insure a person who is or has been an officer against liabilities incurred by the person as an officer.
- (2) A Commonwealth authority, or a subsidiary of a Commonwealth authority, must not pay, or agree to pay, a premium for a contract insuring a person who is, or has been, an officer of the authority against a liability (other than one for legal costs) arising out of:
 - (a) conduct involving a wilful breach of duty in relation to the authority; or
 - (b) a contravention of section 24 or 25.

This section applies to a premium whether it is paid directly or through an interposed entity.

27P Certain indemnities, exemptions, payments and agreements not authorised and certain documents void

- (1) Sections 27M and 27N do not authorise anything that would otherwise be unlawful.
- (2) Anything that purports to indemnify or insure a person against a liability or exempt them from a liability is void to the extent that it contravenes section 27M or 27N.

12 Schedule 2

Repeal the Schedule, substitute:

**Schedule 2—Civil consequences of
contravening civil penalty provisions**

Note: See section 6.

1 Declarations of contravention

- (1) If a Court is satisfied that a person has contravened 1 of the following provisions, it must make a declaration of contravention:
 - (a) subsections 22(1) and 23(1) and (2), 24(1) and (2), 25(1) and (2) (officers' duties)
 - (b) subsection 11(1) (annual reporting rules)

These provisions are the *civil penalty provisions*.

Note: Once a declaration has been made, the Finance Minister can then seek a pecuniary penalty order (clause 3) or a disqualification order (section 27C).

- (2) A declaration of contravention must specify the following:
 - (a) the Court that made the declaration;
 - (b) the civil penalty provision that was contravened;
 - (c) the person who contravened the provision;
 - (d) the conduct that constituted the contravention;
 - (e) the Commonwealth authority to which the conduct related.

2 Declaration of contravention is conclusive evidence

A declaration of contravention is conclusive evidence of the matters referred to in subclause 1(2).

3 Pecuniary penalty orders

- (1) A Court may order a person to pay the Commonwealth a pecuniary penalty of up to \$200,000 if:
 - (a) a declaration of contravention by the person has been made under clause 1; and
 - (b) the contravention:
 - (i) materially prejudices the interests of the Commonwealth authority; or
 - (ii) materially prejudices the Commonwealth authority's ability to pay its creditors; or
 - (iii) is serious.
- (2) The penalty is a civil debt payable to the Commonwealth. The Commonwealth may enforce the order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgment debt.

4 Compensation orders

Compensation for damage suffered

- (1) A Court may order a person to compensate a Commonwealth authority for damage suffered by the authority if:
 - (a) the person has contravened a civil penalty provision in relation to the authority; and
 - (b) the damage resulted from the contravention.

The order must specify the amount of the compensation.

Damage includes profits

- (2) In determining the damage suffered by the Commonwealth authority for the purposes of making a compensation order, include profits made by any person resulting from the contravention or the offence.

Recovery of damage

- (3) A compensation order may be enforced as if it were a judgment of the Court.

5 Effect of clause 4

Clause 4:

- (a) has effect in addition to, and not in derogation of, any rule of law about the duty or liability of a person because of the person's office or employment in relation to a Commonwealth authority; and
- (b) does not prevent proceedings from being instituted in respect of such a duty or in respect of such a liability.

6 Who may apply for a declaration or order

Application by Finance Minister

- (1) The Finance Minister, or some other person authorised in writing by the Finance Minister under this subclause to make the application, may apply for a declaration of contravention, a pecuniary penalty order or a compensation order.

Application by Commonwealth authority

- (2) The Commonwealth authority may apply for a compensation order.
- (3) The Commonwealth authority may intervene in an application for a declaration of contravention or a pecuniary penalty order in relation to the Commonwealth authority. The Commonwealth authority is entitled to be heard on all matters other than whether the declaration or order should be made.

No one else may apply

- (4) No person may apply for a declaration of contravention, a pecuniary penalty order or a compensation order unless permitted by this clause.
- (5) Subclause (4) does not exclude the operation of the *Director of Public Prosecutions Act 1983*.

7 Time limit for application for a declaration or order

Proceedings for a declaration of contravention, a pecuniary penalty order, or a compensation order, may be started no later than 6 years after the contravention.

8 Civil evidence and procedure rules for declarations of contravention and civil penalty orders

The Court must apply the rules of evidence and procedure for civil matters when hearing proceedings for:

- (a) a declaration of contravention; or
- (b) a pecuniary penalty order.

9 Civil proceedings after criminal proceedings

A court must not make a declaration of contravention or a pecuniary penalty order against a person for a contravention if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

10 Criminal proceedings during civil proceedings

- (1) Proceedings for a declaration of contravention or pecuniary penalty order against a person are stayed if:
 - (a) criminal proceedings are started or have already been started against the person for an offence; and

- (b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.
- (2) The proceedings for the declaration or order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the declaration or order are dismissed.

11 Criminal proceedings after civil proceedings

Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether:

- (a) a declaration of contravention has been made against the person; or
- (b) a pecuniary penalty order has been made against the person; or
- (c) a compensation order has been made against the person; or
- (d) the person has been disqualified from managing a Commonwealth authority under section 27C.

12 Evidence given in proceedings for penalty not admissible in criminal proceedings

Evidence of information given or evidence of production of documents by an individual is not admissible in criminal proceedings against the individual if:

- (a) the individual previously gave the evidence or produced the documents in proceedings for a pecuniary penalty order against the individual for a contravention of a civil penalty provision (whether or not the order was made); and
- (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.

However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the pecuniary penalty order.

13 Finance Minister requiring person to assist

- (1) The Finance Minister may require a person to give all reasonable assistance in connection with:
- (a) an application for a declaration of contravention or a pecuniary penalty order; or
 - (b) criminal proceedings for an offence against this Act.
- The person must comply with the request.

Maximum penalty: 5 penalty units.

- (2) The Finance Minister can require the person to assist in connection with an application for a declaration or order if, and only if:
- (a) it appears to the Finance Minister that someone other than the person required to assist may have contravened a civil penalty provision; and
 - (b) the Finance Minister suspects or believes that the person required to assist can give information relevant to the application.
- (3) The Finance Minister can require the person to assist in connection with criminal proceedings if, and only if:
- (a) it appears to the Finance Minister that the person required to assist is unlikely to be a defendant in the proceedings; and
 - (b) the person required to assist is, in relation to a person who is or should be a defendant in the proceedings:
 - (i) an employee or agent (including a banker or auditor) of the other person; or
 - (ii) if the other person is a Commonwealth authority—an officer of the other person; or
 - (iii) if the other person is an individual—a partner of the other person.
- (4) The Finance Minister can require the person to assist regardless of whether:
- (a) an application for the declaration or penalty order has actually been made; or
 - (b) criminal proceedings for the offence have actually begun.
-

- (5) The person cannot be required to assist if they are or have been a lawyer for:
 - (a) in an application for a declaration or penalty order—the person suspected of the contravention; or
 - (b) in criminal proceedings—a defendant or likely defendant in the proceedings.
- (6) The requirement to assist must be given in writing.
- (7) The Court may order the person to comply with the requirement in a specified way. Only the Finance Minister may apply to the Court for an order under this subsection.

14 Relief from liability for contravention of civil penalty provision

- (1) In this section:
 - eligible proceedings:*
 - (a) means proceedings for a contravention of a civil penalty provision (including proceedings under clause 4); and
 - (b) does not include proceedings for an offence (except so far as the proceedings relate to the question whether the court should make an order under clause 4).
- (2) If:
 - (a) eligible proceedings are brought against a person; and
 - (b) in the proceedings it appears to the court that the person has, or may have, contravened a civil penalty provision but that:
 - (i) the person has acted honestly; and
 - (ii) having regard to all the circumstances of the case, the person ought fairly to be excused for the contravention;the court may relieve the person either wholly or partly from a liability to which the person would otherwise be subject, or that might otherwise be imposed on the person, because of the contravention.
- (3) If a person thinks that eligible proceedings will or may be begun against them, they may apply to the Court for relief.

- (4) On an application under subclause (3), the Court may grant relief under subclause (2) as if the eligible proceedings had been begun in the Court.
- (5) For the purposes of subclause (2) as applying for the purposes of a case tried by a judge with a jury:
 - (a) a reference in that subclause to the court is a reference to the judge; and
 - (b) the relief that may be granted includes withdrawing the case in whole or in part from the jury and directing judgment to be entered for the defendant on such terms as to costs as the judge thinks appropriate.

15 Power to grant relief

- (1) If:
 - (a) civil proceedings are brought against an officer of a Commonwealth authority for negligence, default, breach of trust or breach of duty in a capacity as such an officer; and
 - (b) in the proceedings it appears to the court before which the proceedings are taken that:
 - (i) the officer is or may be liable in respect of the negligence, default or breach; and
 - (ii) the officer has acted honestly; and
 - (iii) having regard to all the circumstances of the case (including those connected with the officer's appointment), the officer ought fairly to be excused for the negligence, default or breach;the court may relieve the officer either wholly or partly from liability on the terms that the court thinks appropriate.
- (2) An officer of a Commonwealth authority who has reason to apprehend that a claim will or might be made against him or her for negligence, default, breach of trust or breach of duty in a capacity as such an officer may apply to the Court for relief. On the application, the Court has the same power to relieve the officer as it would have had under subclause (1) if it had been a court before

which proceedings against the officer for negligence, default, breach of trust or breach of duty had been brought.

(3) If:

- (a) a case to which subclause (1) applies is being tried by a judge with a jury; and
- (b) the judge after hearing the evidence is satisfied that the defendant ought pursuant to that subclause to be relieved either wholly or partly from the liability sought to be enforced against the officer;

the judge may withdraw the case in whole or in part from the jury and forthwith direct judgment to be entered for the defendant on the terms as to costs or otherwise that the judge thinks proper.

Schedule 3—Application, transitional and savings provisions

1 Meaning of *commencement*, *new Law* and *old Law*

In this Schedule:

commencement means the commencement of the *Corporate Law Economic Reform Program Act 1999*.

new Law means this Act as in force after commencement.

old Law means this Act as in force immediately before commencement.

2 References to provisions of old Law in laws and other documents

- (1) A reference in any law of the Commonwealth or of a State or Territory, or in any document, to a provision of the old Law is to be read after commencement as a reference to the corresponding provision of the new Law except so far as the contrary intention appears in the law or document.

- (2) Without limiting subclause (1), sections 27F to 27K of the new Law correspond to section 21 of the old Law.

3 Conduct of officers

Column 2 of the table sets out things that have been done, or situations that have arisen, on or before commencement. Column 3 sets out how the things and situations will be dealt with after commencement—either under the old Law or the new Law.

Transitional arrangements		
	If...	then, after commencement...
1	before commencement, a director of a Commonwealth authority who had an interest in a matter declared the nature of the interest in accordance with subsection 21(1) of the old Law	the director is taken to have disclosed the interest as a material personal interest in accordance with section 27F of the new Law and to have made the disclosure on commencement.
2	before commencement, the Board of a Commonwealth authority made a determination under subsection 21(3) of the old Law	the determination is taken to be a resolution passed in accordance with subsection 27J(2) of the new Law.
3	before commencement, the responsible Minister for a Commonwealth authority made a determination under subsection 21(3) of the old Law	the determination has effect as if it were a determination under section 27K of the new Law.
4	before commencement, an officer of a Commonwealth authority incurred a liability	sections 27M and 27N of the new Law apply if an indemnity was given, or a premium paid, in respect of the liability after commencement; in all other cases, sections 26 and 27 of the old Law continue to apply.
5	before commencement, an application for a civil penalty order was made and not dealt with under Schedule 2 to the old Law	Schedule 2 to the old Law continues to apply in relation to the application

Transitional arrangements

	If...	then, after commencement...
6	before commencement, a person was granted leave under subclause 8(2) of Schedule 2 to the old Law	the leave has effect as if it were granted under subsection 27C(4) of the new Law

4 Contraventions of, and offences against, civil penalty provisions

- (1) Schedule 2 to the old Law continues to apply in relation to:
 - (a) a contravention of a civil penalty provision listed in clause 2 of Schedule 2 to the old Law; or
 - (b) an offence committed against one of those civil penalty provisions;
 despite its repeal.
- (2) Schedule 2 to the new Law applies in relation to a contravention of a civil penalty provision listed in subclause 1(1) of Schedule 2 to the new law.

5 Civil penalty orders made under old Law

- (1) An order in force under paragraph 4(a) of Schedule 2 to the old Law immediately before commencement continues to have effect after commencement as if it were made under section 27C of the new Law.
- (2) An order in force under paragraph 4(b) of Schedule 2 to the old Law immediately before commencement continues to have effect after commencement as if it were made under clause 3 of Schedule 2 to the new Law.

Commonwealth Serum Laboratories Act 1961**13 Subsection 19B(3)**

Repeal the subsection, substitute:

- (3) For the purposes of this Part, a person has a relevant interest in a share if, and only if, the person would be taken to have a relevant interest in the share for the purposes of the Corporations Law if paragraph 608(3)(a) of that Law were disregarded.

Corporations Act 1989

14 After subsection 17(1)

Insert:

- (1A) Chapters 6, 6A, 6B, 6C and 6D of the Corporations Law of the Capital Territory:
- (a) bind the Crown in right of the Commonwealth; and
 - (b) do not bind the Crown in right of any State, of the Capital Territory, of the Northern Territory or of Norfolk Island.

15 At the end of section 18

Add:

- (2) Chapters 6, 6A, 6B, 6C and 6D of the Corporations Law of each jurisdiction other than the Capital Territory bind the Crown in right of the Commonwealth.

16 Section 30

After “Chapter” (wherever occurring), insert “6D,”.

Note: The heading to section 30 is altered by inserting “6D,” after “Chapter”.

Income Tax Assessment Act 1997

17 Paragraph 166-245(1)(a)

Omit “709”, substitute “671B”.

18 Paragraph 166-245(1)(b)

Omit “710”, substitute “671B”.

19 Paragraph 166-245(2)(a)

Omit “710”, substitute “671B”.

20 Paragraph 166-245(2)(b)

Omit “711”, substitute “671B”.

21 Section 995-1 (definition of *relevant interest*)

Repeal the definition, substitute:

relevant interest has the same meaning as in the Corporations Law.

Life Insurance Act 1995

22 Section 238

Omit “Part 7.12”, substitute “Chapter 6D”.

23 Section 238

Omit “prospectus”, substitute “disclosure document”.

Note: The heading to section 238 is altered by omitting “**Prospectus**” and substituting “**Disclosure document**”.

24 Subsection 239(1)

Repeal the subsection, substitute:

- (1) This section applies if:
 - (a) a life company or the holding company of a life company:
 - (i) lodges a document, or a copy of a document, with ASIC; or
 - (ii) is given a document, or a copy of a document; for the purposes of a provision in Parts 6.4 to 6.8 of the Corporations Law of a State or an internal Territory; and
 - (b) the document:
 - (i) relates to an off-market bid; and
 - (ii) is not given under section 641 of that Law.

Note: The heading to section 239 is altered by omitting “**takeover schemes**” and substituting “**off-market takeover bids**”.

25 Subsection 239(2)

Omit “paragraph (1)(a) or (b)”, substitute “subsection (1)”.

Qantas Sale Act 1992

26 Subsection 7(2)

Repeal the subsection, substitute:

- (2) For the purposes of this section, a person has a relevant interest in a share if, and only if, the person would be taken to have a relevant interest in the share for the purposes of the Corporations Law if paragraph 608(3)(a) of that Law were disregarded.

27 Subsection 9(3)

Repeal the subsection, substitute:

- (3) For the purposes of this section, a person has a relevant interest in a share if, and only if, the person would be taken to have a relevant interest in the share for the purposes of the Corporations Law if paragraph 608(3)(a) of that Law were disregarded.

Schedule 6—Miscellaneous amendments of the Corporations Law

1 Section 9 (at the end of the definition of *contributory*)

Add:

- (c) in relation to a no liability company—subject to section 385, a member of the company.

2 Section 9 (both definitions of *financial statements*)

Repeal the definitions, substitute:

financial statements means annual financial statements under section 295 or half-year financial statements under section 303.

3 Before paragraph 66A(6)(c)

Insert:

- (a) the Cullen Bay Marina Management Corporation;

4 Subsection 227(3)

Repeal the subsection.

5 After subsection 249D(1)

Insert:

- (1A) The regulations may prescribe a different number of members for the purposes of the application of paragraph (1)(b) to:

- (a) a particular company; or
- (b) a particular class of company.

Without limiting this, the regulations may specify the number as a percentage of the total number of members of the company.

6 After subsection 249N(1)

Insert:

(1A) The regulations may prescribe a different number of members for the purposes of the application of paragraph (1)(b) to:

- (a) a particular company; or
- (b) a particular class of company.

Without limiting this, the regulations may specify the number as a percentage of the total number of members of the company.

7 After subsection 249P(2)

Insert:

(2A) The regulations may prescribe a different number of members for the purposes of the application of paragraph (2)(b) to:

- (a) a particular company; or
- (b) a particular class of company.

Without limiting this, the regulations may specify the number as a percentage of the total number of members of the company.

8 After subsection 252B(1)

Insert:

(1A) The regulations may prescribe a different number of members for the purposes of the application of paragraph (1)(b) to:

- (a) a particular scheme; or
- (b) a particular class of scheme.

Without limiting this, the regulations may specify the number as a percentage of the total number of members of the scheme.

9 After subsection 252L(1)

Insert:

(1A) The regulations may prescribe a different number of members for the purposes of the application of paragraph (1)(b) to:

- (a) a particular scheme; or
- (b) a particular class of scheme.

Without limiting this, the regulations may specify the number as a percentage of the total number of members of the scheme.

10 After subsection 252N(2)

Insert:

(2A) The regulations may prescribe a different number of members for the purposes of the application of paragraph (2)(b) to:

- (a) a particular scheme; or
- (b) a particular class of scheme.

Without limiting this, the regulations may specify the number as a percentage of the total number of members of the scheme.

11 Subsection 329(1)

Omit “special notice”, substitute “notice under subsection (1A)”.

12 Subsection 329(2)

Omit “special notice”, substitute “notice under subsection (1A)”.

13 Subsection 340(1)

Omit “and 2M.3”, substitute “, 2M.3 and 2M.4”.

14 Subsection 341(1)

Omit “and 2M.3”, substitute “, 2M.3 and 2M.4”.

15 Subsection 342(1)

Omit “and 2M.3”, substitute “, 2M.3 and 2M.4”.

16 Subsection 1209(6)

Repeal the subsection, substitute:

- (6) A futures broker must not deal with property deposited by the broker in safe custody under subsection (3) except:
 - (a) in accordance with the terms and conditions on which it was deposited with, or received by, the broker; or
 - (b) for the purpose of meeting obligations incurred by the broker in connection with margining, guaranteeing, securing, transferring, adjusting or settling dealings in futures contracts effected by the broker on behalf of clients only.
-

Schedule 7—Miscellaneous amendments of other Acts

Australian Securities and Investments Commission Act 1989

1 Subsection 12GB(1)

Omit “Subdivision D or E (sections 12DA to 12ED)”, substitute “Subdivision D (sections 12DA to 12DN)”.

Note: The heading to section 12GB is altered by omitting “or E”.

2 Paragraph 12GB(2)(a)

Omit “Subdivision D or E (sections 12DA to 12ED)”, substitute “Subdivision D (sections 12DA to 12DN)”.

3 Paragraph 12GB(3)(a)

Omit “Subdivision D or E (sections 12DA to 12ED)”, substitute “Subdivision D (sections 12DA to 12DN)”.

4 Subsection 12GB(4)

Omit “Subdivision D or E (sections 12DA to 12ED)”, substitute “Subdivision D (sections 12DA to 12DN)”.

5 Section 12GE

Omit “Subdivision D or E (sections 12DA to 12ED)”, substitute “Subdivision D (sections 12DA to 12DN)”.

6 Subsection 12GF(1)

Omit “Subdivision D or E (sections 12DA to 12ED)”, substitute “Subdivision D (sections 12DA to 12DN)”.

7 Subsection 12GI(1)

Omit “Subdivision D or E (sections 12DA to 12ED)”, substitute “Subdivision D (sections 12DA to 12DN)”.

8 Subsection 12GI(4)

Omit “Subdivision D or E (sections 12DA to 12ED)”, substitute “Subdivision D (sections 12DA to 12DN)”.

9 Subsection 12GI(4)

Omit “or E” (second occurring).

10 Paragraph 12GM(5)(b)

Omit “Subdivision D or E (sections 12DA to 12ED)”, substitute “Subdivision D (sections 12DA to 12DN)”.

11 Paragraph 12GN(1)(c)

Omit “Subdivision D or E (sections 12DA to 12ED)”, substitute “Subdivision D (sections 12DA to 12DN)”.

12 Section 123

Repeal the section, substitute:

123 Members to disclose certain interests to Minister

- (1) A member must, in accordance with this section, disclose to the Minister:
 - (a) any direct or indirect pecuniary interest that the member has or acquires in:
 - (i) a body corporate carrying on business in Australia; or
 - (ii) a business in Australia; and
 - (b) any direct or indirect pecuniary interest that the member has or acquires in interests (including securities, futures contracts or other financial products) regulated by the Commission; and
 - (c) any agreement, understanding or expectation that the member will:

- (i) resume a previous business relationship (whether or not that relationship existed immediately before the member's appointment); or
 - (ii) enter into a new business relationship;
when the member ceases to be a member; and
- (d) any severance arrangement or ongoing financial arrangement that takes account of an agreement, understanding or expectation that must be disclosed under paragraph (c).
- (2) For the purpose of paragraph (1)(b), interests are regulated by the Commission if the Commission has a function or power in relation to any aspect of the acquisition, holding, disposal or provision of the interests, or of interests of that kind.
- (3) In disclosing an indirect pecuniary interest in securities, futures contracts or other financial products, the member must identify the particular securities, futures contracts or products.
- (4) Paragraphs (1)(c) and (d) apply to agreements or understandings entered into, or expectations arising, before or after the member's appointment.
- (5) Paragraph (1)(c) does not require a member to disclose an expectation to enter into a new business relationship unless the member can identify the other party, or one or more other parties, to the relationship. Disclosure is required whether or not the field of business or legal nature of the relationship has been determined.
- (6) A disclosure under this section must be made in writing.

13 Paragraph 124(1)(b)

Omit "or other interest", substitute "interest, or a direct or indirect interest of any other kind,".

14 Paragraph 127(1D)(c)

Repeal the paragraph.

15 Subsection 135(4)

Repeal the subsection, substitute:

- (4) This section and subsection 18(3) of the *Commonwealth Authorities and Companies Act 1997* have effect subject to a provision that a national scheme law of this or any other jurisdiction makes about money or property that vests in the Commission under such a law.

16 At the end of subsection 138(1)

Add:

- ; and (d) describe the performance indicators used by the Commission and the Commission's performance against those indicators.

17 After subsection 243D(5)

Insert:

- (5A) If a cash dealer communicates to the Director, under subsection (1), information about the cash dealer's suspicion in relation to a transaction to which the cash dealer is a party, the cash dealer must not, unless required to do so under the ASC Law, the Corporations Law or an Act of the Commonwealth, disclose to anyone else:
- (a) that the cash dealer has formed the suspicion; or
 - (b) that information has been communicated to the Director; or
 - (c) any other information from which the person to whom the information is disclosed could reasonably be expected to infer that:
 - (i) the suspicion had been formed; or
 - (ii) the first-mentioned information had been communicated.
- (5B) If a cash dealer gives further information pursuant to a request under subsection (4), the cash dealer must not, unless required to do so under the ASC Law or an Act of the Commonwealth, disclose to anyone else:
- (a) that the information has been given; or

- (b) any other information from which the person to whom the information is disclosed could reasonably be expected to infer that the first-mentioned information had been given.
- (5C) A cash dealer who contravenes subsection (5A) or (5B) is guilty of an offence punishable, upon conviction, by:
- (a) a fine of not more than 120 penalty units or imprisonment for not more than 2 years, or both, if the cash dealer is a natural person; or
 - (b) a fine of not more than 600 penalty units if the cash dealer is a body corporate.
- (5D) Neither subsection (5A) nor subsection (5B) prohibits a cash dealer from communicating or disclosing a fact or information referred to in either of those subsections:
- (a) to the Australian Stock Exchange Limited; or
 - (b) to the Commission; or
 - (c) to a body corporate approved under section 769 of the Corporations Law as a stock exchange; or
 - (d) to a body corporate approved under section 770 of the Corporations Law as an approved securities organisation; or
 - (e) in accordance with conditions imposed by the Minister when approving under section 770A of the Corporations Law a stock market for electronic trading of interests in a registered scheme; or
 - (f) in accordance with conditions imposed by the Minister when declaring a specified stock market to be an exempt stock market under section 771 of the Corporations Law; or
 - (g) to a body corporate approved under section 779B of the Corporations Law as a securities clearing house; or
 - (h) to a body corporate approved under section 1126 of the Corporations Law as a futures exchange; or
 - (i) in accordance with conditions imposed by the Minister when declaring a specified futures market to be an exempt futures market under section 1127 of the Corporations Law; or

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- (j) to a body corporate approved under section 1131 of the Corporations Law as a clearing house for a futures exchange;
or
- (k) to a body corporate approved under section 1132 of the Corporations Law as a futures association.
- (5E) Neither subsection (5A) nor subsection (5B) prohibits a cash dealer from communicating or disclosing to any court any information, or matter, referred to in that subsection, but this subsection does not affect the operation of subsection (5F).
- (5F) In any legal proceeding (other than a prosecution for an offence against subsection 29(1) or 30(1) of the *Financial Transaction Reports Act 1988* (which relate to false and misleading information or incomplete information) as applied by subsection (7) of this section):
- (a) none of the following is admissible in evidence:
 - (i) a report prepared (whether before or after the commencement of this subsection) under subsection (1);
 - (ii) a copy of such a report;
 - (iii) a document purporting to set out information contained in such a report;
 - (iv) a document given under subsection (4); and
 - (b) evidence is not admissible as to:
 - (i) whether or not a report was prepared under subsection (1); or
 - (ii) whether or not a copy of a report prepared under that subsection, or a document purporting to set out information contained in such a report, was given to, or received by, the Director; or
 - (iii) whether or not particular information was contained in a report prepared under that subsection; or
 - (iv) whether or not particular information was given under subsection (4).
- (5G) In subsection (5F):

information includes the formation or existence of a suspicion referred to in subsection (1).

***Financial Sector Reform (Consequential Amendments) Act
1998***

18 Schedule 3 (heading)

Repeal the heading, substitute:

**Schedule 3—Amendment of the Corporations
Law set out in section 82 of the
Corporations Act 1989**

Note: The heading to section 12DL of the *Australian Securities and Investments Commission Act 1989* is altered by omitting “**credit and**”.

Schedule 8—Further amendment of the Corporations Law

1 Subsection 172(1)

After “this Chapter”, insert “that relates to a company”.

2 Subsection 172(1A)

Omit “Part”, substitute “Chapter”.

3 Subsection 243V(2)

Omit “(1)(d)”, substitute “(1)(e)”.

4 Paragraph 309(3)(b)

Omit “(d), (e) or (f)”, substitute “(b), (c) or (d)”.

5 At the end of section 314

Add:

- (3) If the accounting standards made for the purposes of paragraph (2)(a) require a discussion and analysis to be included in a concise financial report:
 - (a) the auditor must report on whether the discussion and analysis complies with the requirements that the accounting standards lay down for the discussion and analysis; and
 - (b) the auditor does not otherwise need to audit the statements made in the discussion and analysis.

6 Paragraph 334(4)(b)

After “ending”, insert “, or starting”.

7 Heading to Part 2M.4

Repeal the heading, substitute:

Part 2M.4—Appointment and removal of auditors

8 After the Heading to Part 2M.4

Insert:

Division 1—Companies

9 Heading to Division 1A of Part 2M.4

Repeal the heading, substitute:

Division 2—Registered schemes

10 Paragraph 601CE(c)

Omit “242(3)”, substitute “242(2)”.

11 Paragraph 1085(1)(c)

Omit “constitution”, substitute “constitution (if any) and any replaceable rules that apply to the company”.

12 Section 601LA

Omit “Part 3.2A”, substitute “Chapter 2E”.

Note: The heading to section 601LA is altered by omitting “**Part 3.2A**” and substituting “**Chapter 2E**”.

13 Section 601LB

Omit “Part 3.2A”, substitute “Chapter 2E”.

14 Section 601LC

Omit “Part 3.2A”, substitute “Chapter 2E”.

15 Section 601LD

Omit “Part 3.2A”, substitute “Chapter 2E”.

16 Section 601LE

Omit “Part 3.2A”, substitute “Chapter 2E”.

17 Subsection 601QA(2)

Repeal the subsection, substitute:

- (2) The exemption or declaration may:
- (a) apply to all or specified provisions of this Chapter; and
 - (b) apply to all persons, specified persons, or a specified class of persons; and
 - (c) relate to all securities, specified securities or a specified class of securities; and
 - (d) relate to any other matter generally or as specified.

18 Section 1465 (table item 1)

Omit “managed investment”, substitute “interest in a managed investment scheme”.

19 Division 11 of Part 11.2 (first occurring) (heading)

Repeal the heading, substitute:

**Division 10A—Changes resulting from Schedule 5 to the
Company Law Review Act 1998**

20 Section 1451 (definition of *old Law*)

Omit “this law”, substitute “this Law”.

21 Schedule 3

Repeal the items relating to sections 1064, 1065, 1072 and 1074.

Schedule 9—Further amendment of other legislation

Company Law Review Act 1998

1 Schedule 4

Omit “*Australian Securities Commission Act 1989*”, substitute “*Australian Securities and Investments Commission Act 1989*”.

Managed Investments Act 1998

2 Part 2 of Schedule 2 (heading)

Repeal the heading, substitute:

Part 2—Amendment of the Australian Securities and Investments Commission Act 1989

Schedule 10—Amendments consequential on amendment of the Commonwealth Authorities and Companies Act 1997

Aboriginal and Torres Strait Islander Commission Act 1989

1 Paragraph 40(7)(e)

Omit “21”, substitute “27F or 27J”.

2 Paragraph 44(5)(a)

Omit “21”, substitute “27J”.

3 Subsection 44(13)

Omit “21”, substitute “27J”.

4 Paragraph 143S(6)(e)

Omit “21”, substitute “27F or 27J”.

5 Paragraph 144E(5)(a)

Omit “21”, substitute “27J”.

6 Subsection 144E(14)

Omit “21”, substitute “27J”.

7 Paragraph 165(2)(c)

Omit “21”, substitute “27F or 27J”.

8 Paragraph 167(3)(a)

Omit “21”, substitute “27J”.

9 Subsection 167(11)

Omit “21”, substitute “27J”.

10 Paragraph 192H(2)(e)

Omit “21”, substitute “27F or 27J”.

11 Paragraph 192J(3)(a)

Omit “21”, substitute “27J”.

Note: The heading to subsection 192J(3) is altered by omitting “21” and substituting “27J”.

***Agricultural and Veterinary Chemicals (Administration) Act
1992***

12 Paragraph 24(2)(b)

Omit “21”, substitute “27F or 27J”.

Australia Council Act 1975

13 Subparagraph 14(2)(a)(ii)

Omit “21”, substitute “27F or 27J”.

14 Subsection 15(6)

Omit “section 21”, substitute “sections 27F to 27L”.

15 Paragraph 19F(2)(e)

Omit “21”, substitute “27F or 27J”.

16 Subsection 27(2)

Omit “21”, substitute “27F or 27J”.

Australia New Zealand Food Authority Act 1991

17 Paragraph 52(2)(b)

Omit “21”, substitute “27F or 27J”.

Australian Broadcasting Corporation Act 1983

18 Subsection 17(1A)

Omit “21”, substitute “27F”.

19 Subparagraph 18(2)(a)(ii)

Omit “21”, substitute “27F or 27J”.

Australian Communications Authority Act 1997

20 Section 30

Omit “section 21”, substitute “sections 27F to 27L”.

21 Section 30

Omit “which deals with disclosure of interests”, substitute “which deal with disclosure of interests, restrictions on voting and access to records”.

22 Paragraph 37(4)(d)

Omit “21”, substitute “27F or 27J”.

Australian Film Commission Act 1975

23 Subparagraph 23(2)(a)(ii)

Omit “21”, substitute “27F or 27J”.

Australian Film, Television and Radio School Act 1973

24 Paragraph 18(c)

Omit “21”, substitute “27F or 27J”.

25 Paragraph 29(1)(c)

Omit “21”, substitute “27F or 27J”.

Australian Heritage Commission Act 1975

26 Paragraph 18(2)(c)

Omit “21”, substitute “27F or 27J”.

27 Section 19

Omit “section 21”, substitute “sections 27F to 27L”.

Note: The heading to section 19 is altered by omitting “**section 21**” and substituting “**sections 27F to 27L**”.

28 Paragraph 21(3)(a)

Omit “section 21”, substitute “sections 27F to 27L”.

Australian Horticultural Corporation Act 1987

29 Paragraph 24(2)(b)

Omit “21”, substitute “27F or 27J”.

30 Subsection 73(5)

Omit “Section 21”, substitute “Sections 27F to 27L”.

31 Subsection 73(5)

Omit “applies”, substitute “apply”.

32 Subsection 115ZB(5)

Omit “Section 21”, substitute “Sections 27F to 27L”.

33 Subsection 115ZB(5)

Omit “applies”, substitute “apply”.

Australian Institute of Aboriginal and Torres Strait Islander Studies Act 1989

34 Paragraph 21(2)(b)

Omit “21”, substitute “27F or 27J”.

Australian Institute of Health and Welfare Act 1987

35 Paragraph 13(2)(b)

Omit “21”, substitute “27F or 27J”.

36 Subsection 14(3)

Omit “Section 21”, substitute “Sections 27F and 27J”.

37 Subsection 14(3)

Omit “does”, substitute “do”.

Australian Institute of Marine Science Act 1972

38 Paragraph 16(c)

Omit “21”, substitute “27F or 27J”.

39 Paragraph 28(d)

Omit “21”, substitute “27F or 27J”.

Australian Law Reform Commission Act 1996

40 Paragraph 17(2)(b)

Omit “21”, substitute “27F or 27J”.

Australian Maritime Safety Authority Act 1990

41 Paragraph 21(2)(d)

Omit “21”, substitute “27F or 27J”.

Australian National Maritime Museum Act 1990

42 Paragraph 21(2)(c)

Omit “21”, substitute “27F or 27J”.

43 Subsection 23(6)

Omit “subsection 21(3)”, substitute “section 27J”.

44 Paragraph 36(2)(e)

Omit “21”, substitute “27F or 27J”.

Australian National University Act 1991

45 Paragraph 15(1)(e)

Omit “21”, substitute “27F or 27J”.

***Australian Nuclear Science and Technology Organisation
Act 1987***

46 Paragraph 14(2)(c)

Omit “21”, substitute “27F or 27J”.

47 Subsection 16(6)

Omit “subsection 21(3)”, substitute “section 27J”.

48 Paragraph 21C(2)(d)

Omit “21”, substitute “27F or 27J”.

Australian Postal Corporation Act 1989

49 Subsection 67(2)

Omit “21”, substitute “27J”.

50 Section 71

Omit “Section 21”, substitute “Sections 27F and 27J”.

51 Section 71

Omit “does”, substitute “do”.

52 Paragraph 79(2)(b)

Omit “21”, substitute “27F or 27J”.

Australian Prudential Regulation Authority Act 1998

53 Paragraph 31(2)(e)

Omit “21”, substitute “27F or 27J”.

54 Paragraph 40(1)(e)

Omit “21”, substitute “27F or 27J”.

Australian Securities and Investments Commission Act 1989

55 Subsection 124(7)

Omit “Section 21”, substitute “Sections 27F to 27L”.

Australian Sports Commission Act 1989

56 Paragraph 19(2)(b)

Omit “21”, substitute “27F or 27J”.

57 Subsection 22(7)

Omit “Section 21”, substitute “Sections 27F to 27L”.

58 Subsection 22(7)

Omit “applies”, substitute “apply”.

Australian Tourist Commission Act 1987

59 Paragraph 21(2)(b)

Omit “21”, substitute “27F or 27J”.

60 Subsection 23(8)

Omit “21”, substitute “27J”.

Australian Trade Commission Act 1985

61 Paragraph 20(2)(d)

Omit “21”, substitute “27F or 27J”.

Australian War Memorial Act 1980

62 Paragraph 14(2)(c)

Omit “21”, substitute “27F or 27J”.

Australian Wine and Brandy Corporation Act 1980

63 Paragraph 20(4)(b)

Omit “21”, substitute “27F or 27J”.

64 Subsection 21(4)

Omit “section 21”, substitute “sections 27F and 27J”.

***Australian Wool Research and Promotion Organisation Act
1993***

65 Subsection 30(3)

Omit “section 21”, substitute “sections 27F and 27J”.

66 Paragraph 33(2)(c)

Omit “21”, substitute “27F or 27J”.

67 Paragraph 42(4)(c)

Omit “21”, substitute “27F or 27J”.

Broadcasting Services Act 1992

68 Paragraph 9(3)(e) of Schedule 3

Omit “21”, substitute “27F or 27J”.

Civil Aviation Act 1988

69 Paragraph 42(2)(d)

Omit “21”, substitute “27F or 27J”.

***Coal Mining Industry (Long Service Leave Funding) Act
1992***

70 Paragraph 28(2)(c)

Omit “21”, substitute “27F or 27J”.

Dairy Produce Act 1986

71 Section 35

Omit “section 21”, substitute “sections 27F and 27J”.

72 Paragraph 38(3)(c)

Omit “21”, substitute “27F or 27J”.

73 Subsection 46(2)

Omit “Section 21”, substitute “Sections 27F to 27L”.

74 Subsection 46(2)

Omit “applies”, substitute “apply”.

75 Paragraph 47(4)(d)

Omit “21”, substitute “27F or 27J”.

Defence Housing Authority Act 1987

76 Subsection 20(4)

Omit “section 21”, substitute “sections 27F and 27J”.

77 Paragraph 21(2)(b)

Omit “21”, substitute “27F or 27J”.

78 Subsection 26(6)

Omit “Section 21”, substitute “Sections 27F to 27L”.

79 Subsection 26(6)

Omit “applies”, substitute “apply”.

Employment Services Act 1994

80 Paragraph 87(2)(e)

Omit “21”, substitute “27F or 27J”.

81 Paragraph 89(3)(a)

Omit “21”, substitute “27F or 27J”.

Export Finance and Insurance Corporation Act 1991

82 Paragraph 42(3)(c)

Omit “21”, substitute “27F or 27J”.

Family Law Act 1975

83 Paragraph 114J(2)(d)

Omit “21”, substitute “27F or 27J”.

Fisheries Administration Act 1991

84 Paragraph 21(2)(b)

Omit “21”, substitute “27F or 27J”.

Great Barrier Reef Marine Park Act 1975

85 Paragraph 16(2)(e)

Omit “21”, substitute “27F or 27J”.

Health Insurance Commission Act 1973

86 Paragraph 17(2)(b)

Omit “21”, substitute “27F or 27J”.

87 Paragraph 26(2)(b)

Omit “21”, substitute “27F or 27J”.

Hearing Services Act 1991

88 Paragraph 31(2)(b)

Omit “21”, substitute “27F or 27J”.

89 Paragraph 46(2)(b)

Omit “21”, substitute “27F or 27J”.

***Horticultural Research and Development Corporation Act
1987***

90 Paragraph 23(2)(b)

Omit “21”, substitute “27F or 27J”.

91 Subsection 54(5)

Omit “Section 21”, substitute “Sections 27F to 27L”.

92 Subsection 54(5)

Omit “applies”, substitute “apply”.

Maritime College Act 1978

93 Paragraph 17(2)(b)

Omit “21”, substitute “27F or 27J”.

National Gallery Act 1975

94 Paragraph 17(2)(c)

Omit “21”, substitute “27F or 27J”.

95 Paragraph 29(2)(aa)

Omit “21”, substitute “27F or 27J”.

National Health Act 1953

96 Section 82BA

Omit “21”, substitute “27F to 27L”.

97 Subsection 82ZRAA(2)

Omit “Section 21”, substitute “Sections 27F to 27L”.

98 Subsection 82ZRAA(2)

Omit “does”, substitute “do”.

National Library Act 1960

99 Paragraph 15(1)(e)

Omit “21”, substitute “27F or 27J”.

100 Paragraph 17E(1)(aa)

Omit “21”, substitute “27F or 27J”.

National Measurement Act 1960

101 Paragraph 18AC(2)(c)

Omit “21”, substitute “27F or 27J”.

National Museum of Australia Act 1980

102 Paragraph 17(2)(c)

Omit “21”, substitute “27F or 27J”.

103 Paragraph 27(2)(e)

Omit “21”, substitute “27F or 27J”.

***National Occupational Health and Safety Commission Act
1985***

104 Paragraph 14(3)(b)

Omit “21”, substitute “27F or 27J”.

105 Subsection 14(6)

Omit “21”, substitute “27F or 27J”.

National Parks and Wildlife Conservation Act 1975

106 Subsection 15A(2)

Omit “Section 21”, substitute “Sections 27F to 27L”.

107 Subsection 15A(2)

Omit “does”, substitute “do”.

Pig Industry Act 1986

108 Paragraph 14(2)(b)

Omit “21”, substitute “27F or 27J”.

109 Subsection 15(1)

Omit “section 21”, substitute “sections 27F and 27J”.

***Primary Industries and Energy Research and Development
Act 1989***

110 Paragraph 73(1)(c)

Omit “21”, substitute “27F or 27J”.

111 Subsection 100(2)

Omit “Section 21”, substitute “Sections 27F to 27L”.

112 Subsection 100(2)

Omit “applies”, substitute “apply”.

113 Paragraph 138(1)(g)

Omit “21”, substitute “27F or 27J”.

Reserve Bank Act 1959

114 Paragraph 18(1)(e)

Omit “21”, substitute “27F or 27J”.

Safety, Rehabilitation and Compensation Act 1988

115 Subsection 90(1)

Omit “section 21”, substitute “sections 27F to 27L”.

Science and Industry Research Act 1949

116 Paragraph 10E(2)(b)

Omit “21”, substitute “27F or 27J”.

117 Paragraph 22(2)(c)

Omit “21”, substitute “27F or 27J”.

Snowy Mountains Hydro-electric Power Act 1949

118 Subsection 26(1)

Omit “section 21”, substitute “sections 27F to 27L”.

Special Broadcasting Service Act 1991

119 Subparagraph 27(2)(c)(ii)

Omit “21”, substitute “27F or 27J”.

120 Paragraph 37(2)(d)

Omit “21”, substitute “27F or 27J”.

121 Subsection 40(2)

Omit “subsection 21(3)”, substitute “section 27J”.

Wheat Marketing Act 1989

122 Paragraph 8(2)(b)

Omit “21”, substitute “27F or 27J”.

Schedule 11—Amendment of the Corporations Law to deal with ASC Law and ASC Regulations references

Part 1—ASC Law references

1 Amendment of the Corporations Law

The specified provisions of the Corporations Law listed in this Part of this Schedule are amended by omitting “ASC Law” (wherever occurring) and substituting “ASIC Law”.

2 Section 2

3 Section 9 (definition of *Commission delegate*)

4 Section 9 (paragraph (b) of the definition of *law*)

5 Section 9 (paragraph (b) of the definition of *scheme property*)

6 Section 9 (definition of *scheme property*) (note 2)

7 Subparagraphs 88A(1)(a)(i) and (ii)

8 Paragraph 246AA(1)(b)

9 Paragraph 461(1)(h)

10 Subsection 464(1)

11 Subsection 553(2)

12 Subparagraph 583(c)(iii)

13 Paragraph 589(2)(a)

14 Paragraph 601(b)

15 Subsection 1271(2)

16 Subsection 1317R(8)

17 Paragraph 1323(1)(a)

18 Paragraph 1438(2)(a)

Part 2—ASC Regulations references

19 Amendment of the Corporations Law

The specified provisions of the Corporations Law listed in this Part of this Schedule are amended by omitting “ASC Regulations” (wherever occurring) and substituting “ASIC Regulations”.

20 Section 9 (paragraph (b) of the definition of *law*)

Schedule 12—Amendment of other Acts to deal with ASC Law and ASC Regulation references

Part 1—ASC Law references

1 Amendment of Acts

The specified provisions of the Acts listed in this Part of this Schedule are amended by omitting “ASC Law” (wherever occurring) and substituting “ASIC Law”.

Note: The heading to section 40A of the *Acts Interpretation Act 1901* is altered by omitting “ASC Law” and substituting “ASIC Law”.

Acts Interpretation Act 1901

2 Section 40A

Administrative Appeals Tribunal Act 1975

3 Paragraph 27A(2)(e)

Australian Securities and Investments Commission Act 1989

4 Subsection 1B(1)

5 Subsections 1C(2) and (3)

6 Subsections 1D(1), (2) and (4)

7 Paragraphs 1E(a) and (b)

8 Subsection 5(1) (paragraph (b) of the definition of *examination*)

9 Section 6A

10 Subsections 6E(1), (2) and (3)

11 Paragraph 88(1A)(b)

12 Paragraph 243A(a)

13 Subsections 243D(5A) and (5B)

14 Subsection 251(3)

Corporations Act 1989

15 Subsection 4(1) (paragraph (b) of the definition of *applicable provision*)

16 Subsection 4(1) (definition of *ASC Law* and *ASC Regulations*)

17 Subsection 4(1) (definition of *Commonwealth law*)

18 Paragraph 9(1A)(c)

19 Paragraph 37(b)

20 Section 38 (paragraph (c) of the definition of *corresponding law*)

21 Subparagraph 50(2)(a)(ii)

22 Subparagraph 63(2)(a)(ii)

23 Paragraph 75(c)

Evidence Act 1995

24 Subsection 8(3)

Financial Transaction Reports Act 1988

25 Subsection 3(1) (paragraph (b) of the definition of *FTR information*)

Part 2—ASC Regulations references

26 Amendment of Acts

The specified provisions of the Acts listed in this Part of this Schedule are amended by omitting “ASC Regulations” (wherever occurring) and substituting “ASIC Regulations”.

Note: The heading to section 251 of the *Australian Securities and Investments Commission Act 1989* is amended by omitting “ASC” and substituting “ASIC”.

Acts Interpretation Act 1901

27 Section 40A

Australian Securities and Investments Commission Act 1989

28 Subsection 1B(2)

29 Subsection 1C(3)

30 Subsections 1D(2) and (4)

31 Paragraphs 1E(a) and (b)

32 Subsection 5(1) (definition of *regulations*)

Corporations Act 1989

33 Section 4 (paragraph (b) of the definition of *applicable provisions*)

34 Section 4 (definition of *ASC Law* and *ASC Regulations*)

-
- 35 Paragraph 9(1A)(c)**
- 36 Section 38 (paragraph (c) of the definition of
corresponding law)**
- 37 Subparagraph 50(2)(a)(iii)**
- 38 Subparagraph 63(2)(a)(iii)**
- 39 Subsection 80(1) (definition of *national scheme
regulations of the Capital Territory*)**
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[*Minister's second reading speech made in—
House of Representatives on 3 December 1998
Senate on 21 June 1999*]

(190/98)