



# **Treasury Legislation Amendment (Application of Criminal Code) Act (No. 1) 2001**

**No. 31, 2001**



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(Application of Criminal Code) Act  
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**An Act relating to the application of the *Criminal Code* to certain offences, and for other purposes**

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# Treasury Legislation Amendment (Application of Criminal Code) Act (No. 1) 2001

No. 31, 2001

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## An Act relating to the application of the *Criminal Code* to certain offences, and for other purposes

[Assented to 28 April 2001]

The Parliament of Australia enacts:

### 1 Short title

This Act may be cited as the *Treasury Legislation Amendment (Application of Criminal Code) Act (No. 1) 2001*.

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## 2 Commencement

- (1) Sections 1, 2 and 3 and items 1 to 4 (inclusive) of Schedule 1, and Schedule 2, to this Act commence on the day on which this Act receives the Royal Assent.
- (2) If section 9A of the *Superannuation Industry (Supervision) Act 1993* commences before the day on which this Act receives the Royal Assent, items 171 and 172 of Schedule 1 to this Act commence on that day.
- (3) If subsection (2) does not apply, items 171 and 172 of Schedule 1 to this Act commence immediately after section 9A of the *Superannuation Industry (Supervision) Act 1993* commences.
- (4) The remaining items of Schedule 1 to this Act commence on the day specified in subsection 2.2(2) of the *Criminal Code*.

## 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 Schedule 2 to this Act, and any other item in that Schedule 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- (2) Subject to section 2, each Act that is specified in another Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in that Schedule has effect according to its terms.

## **Schedule 1—Amendment of Acts**

### ***Financial Sector Shareholdings Act 1998***

#### **1 Paragraph 24(3)(b)**

After “the person”, insert “intentionally or”.

#### **2 At the end of section 24**

Add:

- (4) For the purposes of subsection (3), a person is taken to be reckless if:
  - (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of a requirement under this section; and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (5) The question whether taking a risk is unjustifiable is one of fact.

#### **3 Paragraph 26(4)(b)**

After “the person”, insert “intentionally or”.

#### **4 After subsection 26(4)**

Insert:

- (4A) For the purposes of subsection (4), a person is taken to be reckless if:
  - (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of a requirement covered by paragraph (1)(a), (b) or (c); and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (4B) The question whether taking a risk is unjustifiable is one of fact.

### ***Foreign Acquisitions and Takeovers Act 1975***

#### **5 Subsection 25(1C)**

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Repeal the subsection, substitute:

(1C) If the person or corporation:

- (a) is given an advice under subsection (1B) of a decision; and
- (b) carries out the proposal to which the decision relates; and
- (c) does or fails to do an act, resulting in a contravention of a condition set out in the advice;

the person or corporation is guilty of an offence punishable on conviction, by:

- (d) in the case of a natural person—a fine not exceeding 500 penalty units, or imprisonment for a period not exceeding 2 years, or both; or
- (e) in the case of a corporation—a fine not exceeding 2,500 penalty units.

(1D) If the person or corporation:

- (a) is given advice under subsection (1B) of a decision; and
- (b) carries out the proposal to which the decision relates:

the Treasurer may only make an order under subsection 18(4), 19(4), 20(3), 21(3) or 21A(4) in relation to the acquisition, agreement, arrangement, issue or alteration specified in the notice if:

- (c) the person or corporation is convicted of an offence against subsection (1C) in relation to a condition; or
- (d) an order is made under section 19B of the *Crimes Act 1914* in relation to the person or corporation in respect of such an offence.

## **6 Subsection 26(2)**

Omit all the words from and including “by:”, substitute “by a fine not exceeding 500 penalty units or imprisonment for a period not exceeding 2 years, or both”.

## **7 Subsection 26A(2)**

Omit all the words from and including “by:”, substitute “by a fine not exceeding 500 penalty units or imprisonment for a period not exceeding 2 years, or both”.

## **8 Subsection 30(4)**

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Omit all the words from and including “by:”, substitute “by a fine not exceeding 500 penalty units or imprisonment for a period not exceeding 2 years, or both”.

**9 Section 32**

Repeal the section.

**10 Subsection 36(2)**

Repeal the subsection, substitute:

- (2) A person who does not comply with a notice under subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding 20 penalty units or imprisonment for 12 months, or both.
- (2A) Subsection (2) does not apply if the person complies with the notice to the extent to which the person is capable of complying with it.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A), (see subsection 13.3(3) of the *Criminal Code*).

***Insurance Act 1973***

**11 At the end of section 21**

Add:

- (4) Subsections (1), (2) and (3) are offences of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

**12 After subsection 31(3F)**

Insert:

- (3G) Subsection (3F) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

**13 At the end of subsection 34A(10)**

Add:

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

#### 14 After subsection 34A(10)

Insert:

(10A) For the purposes of subsection (10), a body corporate is taken to be reckless if:

- (a) the body corporate is aware of a substantial risk that anything done or not done by it will constitute a contravention of this section; and
- (b) having regard to the circumstances known to the body corporate, it is unjustifiable to take the risk.

(10B) The question whether taking a risk is unjustifiable is one of fact.

#### 15 At the end of section 37

Add:

(7) Subsection (6) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 3: A defendant bears an evidential burden in relation to the matters in paragraphs (6)(a) and (b) (see subsection 13.3(3) of the *Criminal Code*).

#### 16 At the end of section 40

Add:

(6) Subsection (5) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 3: A defendant bears an evidential burden in relation to the matters in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

#### 17 At the end of section 44

Add:

(10) Subsection (9) is an offence of strict liability.

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Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

## **18 At the end of section 48**

Add:

(2) Subsection (1) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

## **19 After subsection 48A(9)**

Insert:

(9A) Subsection (9) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

## **20 After subsection 49F(11)**

Insert:

(11A) Subsection (11) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

## **21 At the end of section 49J**

Add:

(10) Subsection (9) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

## **22 At the end of section 49N**

Add:

(2) Subsection (1) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **23 At the end of section 51**

Add:

(8) Subsection (7) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **24 After subsection 62(10)**

Insert:

(10A) Subsections (9) and (10) are offences of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 3: A defendant bears an evidential burden in relation to the matter in paragraph (10)(a) (see subsection 13.3(3) of the *Criminal Code*).

### **25 After subsection 113(1)**

Insert:

(1A) Subsection (1) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **26 After subsection 117A(4)**

Insert:

(4A) Subsections (3) and (4) are offences of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **27 At the end of subsection 117A(5)**

Add:

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Note: A defendant bears a legal burden in relation to the matters in subsection (5) (see section 13.4 of the *Criminal Code*).

**28 Subsection 128(1)**

Omit “knowingly”.

***Insurance Acquisitions and Takeovers Act 1991***

**29 At the end of section 76**

Add:

- (10) Part 2.5 of the *Criminal Code* does not apply in relation to an offence against this Act.

***Life Insurance Act 1995***

**30 After subsection 16E(1)**

Insert:

- (1A) Subsection (1) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

**31 After subsection 16E(7)**

Insert:

- (7A) Subsection (7) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

**32 At the end of section 16L**

Add:

- (5) Subsection (4) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

**33 At the end of section 16M**

Add:

(4) Subsection (3) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

**34 At the end of section 16Q**

Add:

(5) Subsection (4) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

**35 At the end of section 16R**

Add:

(7) Subsection (6) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

**36 At the end of section 16S**

Add:

(4) Subsection (3) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

**37 At the end of section 16U**

Add:

(5) Subsection (4) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

**38 At the end of section 16V**

Add:

(8) Subsection (7) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

**39 At the end of section 16W**

Add:

(4) Subsection (3) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

**40 At the end of section 28**

Add:

(2) Subsection (1) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

**41 At the end of subsection 147(1)**

Add:

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

**42 After subsection 147(1)**

Insert:

(1A) For the purposes of subsection (1), a person is taken to be reckless if:

- (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of subsection (1); and
- (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

(1B) The question whether taking a risk is unjustifiable is one of fact.

**43 Subsection 147(3) (note)**

Omit “Note:”, substitute “Note 1:”.

**44 At the end of subsection 147(3)**

Add:

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

**45 At the end of subsection 150(10)**

Add:

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

**46 After subsection 150(10)**

Insert:

(10A) For the purposes of subsection (10), a person is taken to be reckless if:

- (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of subsection (10); and
- (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

(10B) The question whether taking a risk is unjustifiable is one of fact.

**47 At the end of section 151**

Add:

(6) Subsection (5) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

**48 At the end of section 180**

Add:

(5) Subsection (4) is an offence of strict liability.



Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

**49 At the end of subsection 216(2)**

Add:

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

**50 At the end of subsection 216(5)**

Add:

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

**51 At the end of subsection 216(9)**

Add:

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

**52 After subsection 216(9)**

Insert:

- (9A) For the purposes of this section, a person is taken to be reckless if:
- (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of subsection (2), (5) or (9); and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

(9B) The question whether taking a risk is unjustifiable is one of fact.

**53 After subsection 230F(1)**

Insert:

(1A) Subsection (1) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

**54 After subsection 230F(3)**

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Insert:

(3A) Subsection (3) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

## 55 Subsections 245(2) and (3)

Repeal the subsections, substitute:

(2) A disqualified person must not be a director, or the principal executive officer or the appointed actuary, of a company registered under this Act.

Penalty: Imprisonment for 2 years.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.

(3) A person is guilty of an offence punishable by imprisonment for a term not longer than 2 years if the person:

- (a) acts as a director, or the principal executive officer or the appointed actuary, of a company registered under this Act; and
- (b) is a disqualified person when he or she so acts.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.

(3A) For the purposes of the application of the *Criminal Code* in relation to subsection (3), paragraph (3)(b) is taken to be the circumstance in which the conduct described in paragraph (3)(a) occurs.

## 56 At the end of subsection 245(4)

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Add:

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

**57 After subsection 245(4)**

Insert:

- (4A) For the purposes of subsection (4), a company is taken to be reckless if:
- (a) the company is aware of a substantial risk that anything done or not done by it will constitute a contravention of subsection (4); and
  - (b) having regard to the circumstances known to the company, it is unjustifiable to take the risk.
- (4B) The question whether taking a risk is unjustifiable is one of fact.

**58 At the end of subsection 245(5)**

Add:

Note: A defendant bears a legal burden in relation to the matter in subsection (5) (see section 13.4 of the *Criminal Code*).

**59 Subsection 250(8)**

Omit “5, 6, 7 or 7A or subsection 86(1)”, substitute “6”.

**60 At the end of section 250**

Add:

- (9) Part 2.5 of the *Criminal Code* does not apply in relation to an offence against this Act.

***Prices Surveillance Act 1983***

**61 Subsection 22(1)**

Omit “\$10,000”, substitute “100 penalty units”.

**62 At the end of subsection 22(1)**

Add:

Note 1: The penalty is a maximum penalty (see section 4D of the *Crimes Act 1914*). If a body corporate is convicted of the offence, a court may

impose a fine not more than 5 times the maximum fine that the court could impose (see subsection 4B(3) of the *Crimes Act 1914*). Penalty units are defined in section 4AA of the *Crimes Act 1914*.

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

**63 At the end of subsection 22(2)**

Add:

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

**64 At the end of subsection 22(3)**

Add:

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

**65 Subsection 24(1)**

Omit “\$10,000”, substitute “100 penalty units”.

**66 At the end of subsection 24(1)**

Add:

Note 1: The penalty is a maximum penalty (see section 4D of the *Crimes Act 1914*). If a body corporate is convicted of the offence, a court may impose a fine not more than 5 times the maximum fine that the court could impose (see subsection 4B(3) of the *Crimes Act 1914*). Penalty units are defined in section 4AA of the *Crimes Act 1914*.

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

**67 At the end of subsection 32(2)**

Add:

Note 1: The penalty is a maximum penalty (see section 4D of the *Crimes Act 1914*). If a body corporate is convicted of the offence, a court may impose a fine not more than 5 times the maximum fine that the court could impose (see subsection 4B(3) of the *Crimes Act 1914*). Penalty units are defined in section 4AA of the *Crimes Act 1914*.

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

**68 At the end of subsection 32(2A)**

Add:

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Note: A defendant bears an evidential burden in relation to the matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).

**69 Paragraph 35(b)**

Omit “unless excused, or released from further attendance, by a member”.

**70 Section 35**

Omit “\$1,000”, substitute “10 penalty units”.

**71 At the end of section 35**

Add:

Note 1: The penalty is a maximum penalty (see section 4D of the *Crimes Act 1914*). If a body corporate is convicted of the offence, a court may impose a fine not more than 5 times the maximum fine that the court could impose (see subsection 4B(3) of the *Crimes Act 1914*). Penalty units are defined in section 4AA of the *Crimes Act 1914*.

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

(2) Subsection (1) does not apply if the person is excused, or released from further attendance, by a member.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

**72 Subsection 36(1)**

Omit “\$1,000”, substitute “10 penalty units”.

**73 At the end of subsection 36(1)**

Add:

Note 1: The penalty is a maximum penalty (see section 4D of the *Crimes Act 1914*). If a body corporate is convicted of the offence, a court may impose a fine not more than 5 times the maximum fine that the court could impose (see subsection 4B(3) of the *Crimes Act 1914*). Penalty units are defined in section 4AA of the *Crimes Act 1914*.

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

**74 At the end of section 36**

Add:

Note: A defendant bears an evidential burden in relation to the matters in subsections (2) and (3) (see subsection 13.3(3) of the *Criminal Code*).

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**75 Subsection 43(1)**

Omit “, except in or in connection with the performance of a duty or function under or in connection with this Act or the *Trade Practices Act 1974*”.

**76 Subsection 43(1)**

Omit “\$1,000”, substitute “10 penalty units”.

**77 At the end of subsection 43(1)**

Add:

Note 1: The penalty is a maximum penalty (see section 4D of the *Crimes Act 1914*). If a body corporate is convicted of the offence, a court may impose a fine not more than 5 times the maximum fine that the court could impose (see subsection 4B(3) of the *Crimes Act 1914*). Penalty units are defined in section 4AA of the *Crimes Act 1914*.

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

**78 After subsection 43(1)**

Insert:

(1A) Subsection (1) does not apply in relation to anything done by a person in or in connection with the performance of a duty or function under or in connection with this Act or the *Trade Practices Act 1974*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

***Productivity Commission Act 1998***

**79 Sections 46, 47 and 48 (note)**

Omit “Note:”, substitute “Note 1:”.

**80 At the end of sections 46, 47 and 48**

Add:

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

**81 Paragraph 49(2)(b)**

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Omit “unless excused, or released from further attendance, by the Chair”.

**82 Section 49 (note)**

Omit “Note:”, substitute “Note 1:”.

**83 At the end of section 49**

Add:

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

(3) Paragraph (1)(b) does not apply if the person is excused, or released from further attendance, by the Chair.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*)

**84 Sections 50, 52 and 53 (note)**

Omit “Note:”, substitute “Note 1:”.

**85 At the end of sections 50, 52 and 53**

Add:

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

**86 At the end of section 59**

Add:

(8) Part 2.5 of the *Criminal Code* does not apply in relation to an offence against this Act.

***Retirement Savings Accounts Act 1997***

**87 After subsection 34(3)**

Insert:

(3A) Subsection (3) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 3: A defendant bears an evidential burden in relation to the matter in paragraph (1)(b) (see subsection 13.3(3) of the *Criminal Code*).

**88 After subsection 34(5)**

Insert:

(5A) Subsection (5) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

**89 At the end of section 35**

Add:

(3) Subsection (2) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

**90 At the end of subsection 39(2)**

Add:

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

**91 After subsection 39(2)**

Insert:

(2A) For the purposes of subsection (2), a person is taken to be reckless if:

- (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of subsection (1); and
- (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

(2B) The question whether taking a risk is unjustifiable is one of fact.

**92 After subsection 40(1)**

Insert:

(1A) Subsection (1) is an offence of strict liability.

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Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **93 Subsection 41(4)**

Repeal the subsection, substitute:

(4) If:

- (a) a person does an act; and
- (b) the doing of the act results in a contravention of subsection (3);

the person is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units.

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

### **94 At the end of section 42**

Add:

(2) Subsection (1) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **95 At the end of subsection 44(2)**

Add:

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

### **96 After subsection 44(2)**

Insert:

(2A) For the purposes of subsection (2), a person is taken to be reckless if:

- (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of subsection (1); and
- (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

(2B) The question whether taking a risk is unjustifiable is one of fact.

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**97 At the end of subsection 47(3)**

Add:

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

**98 At the end of section 47**

Add:

- (4) For the purposes of subsection (3), a person is taken to be reckless if:
- (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of subsection (1); and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (5) The question whether taking a risk is unjustifiable is one of fact.

**99 At the end of subsection 48(2)**

Add:

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

**100 At the end of section 48**

Add:

- (3) For the purposes of subsection (2), a person is taken to be reckless if:
- (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of subsection (1); and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (4) The question whether taking a risk is unjustifiable is one of fact.

**101 At the end of subsection 49(2)**

Add:

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

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**102 At the end of section 49**

Add:

- (3) For the purposes of subsection (2), a person is taken to be reckless if:
  - (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of subsection (1); and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (4) The question whether taking a risk is unjustifiable is one of fact.

**103 At the end of subsection 50(4)**

Add:

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

**104 At the end of section 50**

Add:

- (5) For the purposes of subsection (4), a person is taken to be reckless if:
  - (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of subsection (1); and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (6) The question whether taking a risk is unjustifiable is one of fact.

**105 At the end of subsection 51(1)**

Add:

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

**106 After subsection 51(1)**

Insert:

- (1A) For the purposes of subsection (1), a person is taken to be reckless if:

- (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of subsection (1); and
- (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

(1B) The question whether taking a risk is unjustifiable is one of fact.

**107 At the end of subsection 52(3)**

Add:

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

**108 At the end of subsection 52(6)**

Add:

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

**109 After subsection 52(6)**

Insert:

- (6A) For the purposes of subsection (6), a person is taken to be reckless if:
  - (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of subsection (2) or (3); and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

**110 At the end of subsection 52(8)**

Add:

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

**111 At the end of section 52**

Add:

- (9) For the purposes of subsection (8), a person is taken to be reckless if:

- (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of subsection (7); and
- (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

(10) The question whether taking a risk is unjustifiable is one of fact.

**112 At the end of subsection 53(1)**

Add:

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

**113 After subsection 53(1)**

Insert:

- (1A) For the purposes of subsection (1), a person is taken to be reckless if:
- (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of subsection (1); and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

(1B) The question whether taking a risk is unjustifiable is one of fact.

**114 Subsection 54(1)**

Repeal the subsection, substitute:

- (1) An RSA institution must ensure that an employer who makes an application on behalf of an employee for an RSA for the employee has received documents issued, or authorised to be issued, by the RSA institution that:
- (a) contain all the information that the regulations referred to in section 56 require to be given to the employer; and
  - (b) comply with the formal requirements specified in those regulations.

**115 After subsection 54(1)**

Insert:

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- (1A) Subsection (1) does not apply if the employer received such documents from the RSA institution in respect of another application made to the RSA institution.

**116 At the end of subsection 54(4)**

Add:

- Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.
- Note 2: A defendant bears an evidential burden in relation to the matter in subsections (1A), (2) and (3) (see subsection 13.3(3) of the *Criminal Code*).

**117 At the end of section 54**

Add:

- (5) For the purposes of subsection (4), a person is taken to be reckless if:
- (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of a requirement of this section; and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (6) The question whether taking a risk is unjustifiable is one of fact.

**118 At the end of subsection 55(2)**

Add:

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

**119 At the end of section 55**

Add:

- (3) For the purposes of subsection (2), a person is taken to be reckless if:
- (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of a requirement of this section; and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

(4) The question whether taking a risk is unjustifiable is one of fact.

**120 Section 60**

Repeal the section, substitute:

**60 Effect of stop order**

While a stop order is in force in relation to an RSA provider, the RSA provider must not enter into a contract or agreement for provision of an RSA by the RSA provider, being reckless as to whether a stop order is so in force.

Penalty: Imprisonment for 2 years.

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

**121 At the end of subsection 61(4)**

Add:

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

**122 At the end of section 61**

Add:

(5) For the purposes of subsection (4), a person is taken to be reckless if:

- (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of subsection (3); and
- (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

(6) The question whether taking a risk is unjustifiable is one of fact.

**123 At the end of subsection 62(5)**

Add:

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

**124 At the end of section 62**

Add:

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- (6) For the purposes of subsection (5), a person is taken to be reckless if:
- (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of subsection (3); and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (7) The question whether taking a risk is unjustifiable is one of fact.

**125 At the end of subsection 64(3)**

Add:

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

**126 At the end of section 64**

Add:

- (4) For the purposes of subsection (3), a person is taken to be reckless if:
- (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of subsection (1); and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (5) The question whether taking a risk is unjustifiable is one of fact.

**127 At the end of subsection 65(2)**

Add:

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

**128 After subsection 65(2)**

Insert:

- (2A) For the purposes of subsection (2), a person is taken to be reckless if:
- (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of subsection (1); and
-



- (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

**129 At the end of subsection 65(5)**

Add:

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

**130 At the end of section 65**

Add:

- (6) For the purposes of subsection (5), a person is taken to be reckless if:
  - (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of subsection (4); and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

- (7) The question whether taking a risk is unjustifiable is one of fact.

**131 Paragraph 66(5)(c)**

Omit “knowingly”.

**132 At the end of subsection 66(5)**

Add:

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

**133 At the end of subsection 66(9)**

Add:

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

**134 At the end of section 66**

Add:

- (10) For the purposes of subsection (9), a person is taken to be reckless if:

- (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of subsection (3), (7) or (8); and
- (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

(11) The question whether taking a risk is unjustifiable is one of fact.

**135 Section 75**

Omit “, intentionally or recklessly,”.

**136 At the end of section 75**

Add:

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

**137 Subsection 77(1)**

Omit “, intentionally or recklessly,”.

**138 At the end of subsection 77(1)**

Add:

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

**139 At the end of section 77**

Add:

(3) Subsection (2) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

**140 At the end of section 96**

Add:

(4) Subsection (3) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

**141 Subsection 108(3)**

Omit “knowingly”.

**142 At the end of subsection 108(3)**

Add:

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

**143 At the end of subsection 112(2)**

Add:

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

**144 At the end of section 112**

Add:

- (3) For the purposes of subsection (2), a person is taken to be reckless if:
  - (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of this section; and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (4) The question whether taking a risk is unjustifiable is one of fact.

**145 Section 115**

Repeal the section, substitute:

**115 Compliance with requirements made under this Act**

- (1) A person must not intentionally or recklessly refuse or fail to comply with a requirement of the Regulator, an authorised person or an inspector under this Act.

Penalty: 30 penalty units.

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

- (2) For the purposes of subsection (1), a person is taken to be reckless if:
- (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of subsection (1); and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (3) The question whether taking a risk is unjustifiable is one of fact.

**146 At the end of subsection 118(4)**

Add:

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

**147 At the end of section 118**

Add:

- (5) For the purposes of subsection (4), a person is taken to be reckless if:
- (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of this section; and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (6) The question whether taking a risk is unjustifiable is one of fact.

**148 At the end of subsection 133(3)**

Add:

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

**149 At the end of section 133**

Add:

- (4) For the purposes of subsection (3), a person is taken to be reckless if:
- (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of subsection (1); and
-

(b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

(5) The question whether taking a risk is unjustifiable is one of fact.

**150 At the end of subsection 136(4)**

Add:

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

**151 After subsection 136(4)**

Insert:

(4A) For the purposes of subsection (4), a person is taken to be reckless if:

- (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of the requirement to make the request; and
- (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

(4B) The question whether taking a risk is unjustifiable is one of fact.

**152 At the end of subsection 137(6)**

Add:

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

**153 At the end of section 137**

Add:

(7) For the purposes of subsection (6), a person is taken to be reckless if:

- (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of a requirement of this section; and
- (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

(8) The question whether taking a risk is unjustifiable is one of fact.

**154 At the end of subsection 138(4)**

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Add:

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

### **155 At the end of section 138**

Add:

- (5) For the purposes of subsection (4), a person is taken to be reckless if:
- (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of subsection (2); and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (6) The question whether taking a risk is unjustifiable is one of fact.

### **156 After subsection 151(1)**

Insert:

- (1A) Subsection (1) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **157 Section 154**

Repeal the section, substitute:

### **154 Incorrectly keeping or making records**

- (1) If:
- (a) a person is required under this Act or the regulations to keep any records; and
  - (b) the person keeps those records in such a way that they do not correctly record and explain the matters, transactions, acts or operations to which they relate;
- the person is guilty of an offence punishable on conviction by imprisonment for not longer than 12 months.

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

(2) If:

- (a) a person is required under this Act or the regulations to make a record of any matter, transaction, act or operation; and
  - (b) the person makes such a record in such a way that it does not correctly record the matter, transaction, act or operation;
- the person is guilty of an offence punishable on conviction by imprisonment for not longer than 12 months.

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

**158 At the end of subsection 161(14)**

Add:

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

**159 At the end of section 161**

Add:

- (15) For the purposes of subsection (14), a person is taken to be reckless if:
- (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of an order by the Court under this section that is applicable to the person; and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (16) The question whether taking a risk is unjustifiable is one of fact.

**160 At the end of subsection 162(4)**

Add:

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

**161 At the end of section 162**

Add:

- (5) For the purposes of subsection (4), a person is taken to be reckless if:

- (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of subsection (2) or (3); and
- (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

(6) The question whether taking a risk is unjustifiable is one of fact.

**162 After subsection 176(1)**

Insert:

(1A) Subsection (1) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

**163 After subsection 182(5)**

Insert:

(5A) Subsection (5) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

**164 After subsection 182(8)**

Insert:

(8A) Subsection (8) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

**165 At the end of subsection 183(3)**

Add:

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

**166 After subsection 183(3)**

Insert:



- (3A) For the purposes of subsection (3), a person is taken to be reckless if:
- (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of subsection (2); and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

(3B) The question whether taking a risk is unjustifiable is one of fact.

**167 Paragraph 185(11)(b)**

Omit “5, 6, 7 or 7A, or subsection 86(1),”, substitute “6”.

**168 At the end of section 185**

Add:

*Part 2.5 of the Criminal Code not to apply*

- (12) Part 2.5 of the *Criminal Code* does not apply in relation to an offence against this Act.

**169 At the end of subsection 193(6)**

Add:

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

**170 After subsection 193(6)**

Insert:

- (6A) For the purposes of subsection (6), a person is taken to be reckless if:
- (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of subsection (5); and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

(6B) The question whether taking a risk is unjustifiable is one of fact.

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**171 Section 9A**

Repeal the section, substitute:

**9A Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* (except Part 2.5) applies to all offences against this Act.

**172 Section 17**

Repeal the section.

**173 At the end of subsection 34(2)**

Add:

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

**174 After subsection 34(2)**

Insert:

(2A) For the purposes of subsection (2), a person is taken to be reckless if:

- (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of subsection (1); and
- (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

(2B) The question whether taking a risk is unjustifiable is one of fact.

**175 Subsection 68(1)**

Omit “intentionally or recklessly”.

**176 At the end of subsection 68(1)**

Add:

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

**177 At the end of subsection 101(2)**

Add:

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

**178 After subsection 101(2)**

Insert:

- (2A) For the purposes of subsection (2), a person is taken to be reckless if:
- (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of subsection (1); and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (2B) The question whether taking a risk is unjustifiable is one of fact.

**179 At the end of subsection 102(4)**

Add:

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

**180 At the end of section 102**

Add:

- (5) For the purposes of subsection (4), a person is taken to be reckless if:
- (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of subsection (1) or (2); and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (6) The question whether taking a risk is unjustifiable is one of fact.

**181 Paragraph 129(3B)(c)**

Omit “knowingly”.

**182 At the end of subsection 129(7)**

Add:

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

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**183 At the end of section 129**

Add:

- (8) For the purposes of subsection (7), a person is taken to be reckless if:
  - (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of subsection (3), (5) or (6); and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (9) The question whether taking a risk is unjustifiable is one of fact.

**184 Paragraph 130(2B)(c)**

Omit “knowingly”.

**185 At the end of subsection 130(6)**

Add:

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

**186 After subsection 130(6)**

Insert:

- (6A) For the purposes of subsection (6), a person is taken to be reckless if:
  - (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of subsection (2), (4) or (5); and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (6B) The question whether taking a risk is unjustifiable is one of fact.

**187 At the end of subsection 141(2)**

Add:

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

**188 After subsection 141(2)**

---

Insert:

- (2A) For the purposes of subsection (2), a person is taken to be reckless if:
- (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of a direction under subsection (1); and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (2B) The question whether taking a risk is unjustifiable is one of fact.

**189 At the end of subsection 142(3)**

Add:

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

**190 After subsection 142(3)**

Insert:

- (3A) For the purposes of subsection (3), a person is taken to be reckless if:
- (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of the provisions of a scheme formulated under this section; and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (3B) The question whether taking a risk is unjustifiable is one of fact.

**191 Subsection 152(2)**

Repeal the subsection, substitute:

- (2) The trustee of a public offer entity must not engage in conduct to which this section applies.

Penalty: Imprisonment for 5 years.

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

- (2A) Subsection (2) does not apply if:
-

(a) the trustee is an approved trustee and is the only trustee of the entity; and

(b) the entity is constituted by a deed as a trust.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).

**192 Subsection 152(3)**

Omit “, intentionally or recklessly,”.

**193 At the end of subsection 152(3)**

Add:

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

**194 Subsection 153(1)**

Omit “, intentionally or recklessly,”.

**195 At the end of subsection 153(1)**

Add:

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: A defendant bears an evidential burden in relation to the matter in paragraphs (1)(a) to (d) inclusive (see subsection 13.3(3) of the *Criminal Code*).

**196 At the end of subsection 153(2)**

Add:

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: A defendant bears an evidential burden in relation to the matter in paragraphs (2)(a) and (b) (see subsection 13.3(3) of the *Criminal Code*).

**197 After subsection 153(2)**

Insert:

(2A) For the purposes of subsection (2), a trustee is taken to be reckless if:

- (a) the trustee is aware of a substantial risk that anything done or not done by the trustee will constitute a contravention of subsection (2); and
- (b) having regard to the circumstances known to the trustee, it is unjustifiable to take the risk.

(2B) The question whether taking a risk is unjustifiable is one of fact.

**198 Subsection 157(1)**

Omit “, intentionally or recklessly,”.

**199 At the end of subsection 157(1)**

Add:

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

**200 At the end of subsection 157(5)**

Add:

Note: A defendant bears an evidential burden in relation to the matter in subsections (1) to (5), inclusive (see subsection 13.3(3) of the *Criminal Code*).

**201 Subsection 157A(2)**

Omit “, intentionally or recklessly,”.

**202 At the end of subsection 157A(2)**

Add:

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

**203 At the end of subsection 158(1)**

Add:

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

**204 After subsection 158(1)**

Insert:

- (1A) For the purposes of subsection (1), a trustee is taken to be reckless if:

- (a) the trustee is aware of a substantial risk that anything done or not done by the trustee will constitute a contravention of subsection (1); and
- (b) having regard to the circumstances known to the trustee, it is unjustifiable to take the risk.

(1B) The question whether taking a risk is unjustifiable is one of fact.

**205 At the end of subsection 158(3)**

Add:

Note: A defendant bears an evidential burden in relation to the matter in subsections (1) to (3), inclusive (see subsection 13.3(3) of the *Criminal Code*).

**206 Section 161**

Omit “intentionally or recklessly”.

**207 At the end of section 161**

Add:

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

**208 Subsection 163(1)**

Omit “, intentionally or recklessly,”.

**209 At the end of subsection 163(1)**

Add:

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: A defendant bears an evidential burden in relation to the matter in paragraphs (1)(a) and (b) (see subsection 13.3(3) of the *Criminal Code*).

**210 Section 167**

Repeal the section, substitute:

**167 Effect of stop order**

While a stop order is in force in relation to a public offer entity, the trustee of the entity must not enter into a contract or agreement for



the issue of a superannuation interest in the entity, being reckless as to whether the stop order is so in force.

Penalty: Imprisonment for 2 years.

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

**211 Subsection 184(1)**

Omit “, intentionally or recklessly,”.

**212 At the end of subsection 184(1)**

Add:

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

**213 Subsection 202(1)**

Repeal the subsection, substitute:

- (1) If a person contravenes a civil penalty provision, either:
- (a) dishonestly, and intending to gain, whether directly or indirectly, an advantage for that, or any other person; or
  - (b) intending to deceive or defraud someone;
- the person is guilty of an offence punishable on conviction by imprisonment for not longer than 5 years.

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

**214 Subsection 278(3)**

Omit “knowingly”.

**215 At the end of subsection 278(3)**

Add:

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: A defendant bears an evidential burden in relation to the matter in paragraphs (2)(a), (b) and (c) (see subsection 13.3(3) of the *Criminal Code*).

**216 At the end of subsection 282(2)**

Add:

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

**217 At the end of section 282**

Add:

- (3) For the purposes of subsection (2), a person is taken to be reckless if:
  - (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of this section; and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (4) The question whether taking a risk is unjustifiable is one of fact.

**218 Section 285**

Repeal the section, substitute:

**285 Compliance with requirements made under this Act**

- (1) A person must not intentionally or recklessly refuse or fail to comply with a requirement of the Regulator, an authorised person or an inspector under this Act.

Penalty:

- (a) in respect of a requirement under subsection 264(3) or (4)—imprisonment for 2 years; or
- (b) otherwise—30 penalty units.

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

- (2) For the purposes of subsection (1), a person is taken to be reckless if:
  - (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of subsection (1); and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (3) The question whether taking a risk is unjustifiable is one of fact.

**219 At the end of subsection 288(4)**

Add:

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

**220 At the end of section 288**

Add:

- (5) For the purposes of subsection (4), a person is taken to be reckless if:
- (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of this section; and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (6) The question whether taking a risk is unjustifiable is one of fact.

**221 Section 306**

Repeal the section, substitute:

**306 Incorrectly keeping or making records etc.**

- (1) If:
- (a) a person is required under this Act or the regulations to keep any accounts, accounting records or other records; and
  - (b) the person keeps those accounts or records in such a way that they do not correctly record and explain the matters, transactions, acts or operations to which they relate;
- the person is guilty of an offence punishable on conviction by imprisonment for not longer than 12 months.

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

- (2) If:
- (a) a person is required under this Act or the regulations to make a record of any matter, transaction, act or operation; and
  - (b) the person makes such a record in such a way that it does not correctly record the matter, transaction, act or operation;

the person is guilty of an offence punishable on conviction by imprisonment for not longer than 12 months.

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

**222 At the end of subsection 313(12)**

Add:

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

**223 At the end of section 313**

Add:

- (13) For the purposes of subsection (12), a person is taken to be reckless if:
- (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of an order by the Court under this section that is applicable to the person; and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (14) The question whether taking a risk is unjustifiable is one of fact.

**224 At the end of subsection 314(4)**

Add:

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

**225 At the end of section 314**

Add:

- (5) For the purposes of subsection (4), a person is taken to be reckless if:
- (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of an order under subsection (2) or (3); and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (6) The question whether taking a risk is unjustifiable is one of fact.
-

**226 Paragraph 338(11)(b)**

Omit “5, 6, 7 or 7A, or subsection 86(1),”, substitute “6”.

**227 At the end of section 338**

Add:

*Part 2.5 of the Criminal Code not to apply*

- (12) Part 2.5 of the *Criminal Code* does not apply in relation to an offence against this Act.

**228 At the end of subsection 357(5)**

Add:

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

**229 After subsection 357(5)**

Insert:

- (5A) For the purposes of subsection (5), an existing management company is taken to be reckless if:
- (a) the company is aware of a substantial risk that anything done or not done by the company will constitute a contravention of subsection (4); and
  - (b) having regard to the circumstances known to the company, it is unjustifiable to take the risk.
- (5B) The question whether taking a risk is unjustifiable is one of fact.

**230 At the end of subsection 359(5)**

Add:

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

**231 At the end of section 359**

Add:

- (6) For the purposes of subsection (5), an existing trustee is taken to be reckless if:

- (a) the trustee is aware of a substantial risk that anything done or not done by the trustee will constitute a contravention of subsection (1) or (4); and
- (b) having regard to the circumstances known to the trustee, it is unjustifiable to take the risk.

(7) The question whether taking a risk is unjustifiable is one of fact.

**232 At the end of subsection 361(7)**

Add:

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

**233 After subsection 361(7)**

Insert:

- (7A) For the purposes of subsection (7), a former trustee is taken to be reckless if:
- (a) the former trustee is aware of a substantial risk that anything done or not done by the former trustee will constitute a contravention of subsection (6); and
  - (b) having regard to the circumstances known to the former trustee, it is unjustifiable to take the risk.

(7B) The question whether taking a risk is unjustifiable is one of fact.

**234 At the end of subsection 363(6)**

Add:

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

**235 After subsection 363(6)**

Insert:

- (6A) For the purposes of subsection (6), an existing trustee is taken to be reckless if:
- (a) the trustee is aware of a substantial risk that anything done or not done by the trustee will constitute a contravention of subsection (5); and
  - (b) having regard to the circumstances known to the trustee, it is unjustifiable to take the risk.

(6B) The question whether taking a risk is unjustifiable is one of fact.

**236 At the end of subsection 364(4)**

Add:

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

**237 At the end of section 364**

Add:

(5) For the purposes of subsection (4), an existing management company is taken to be reckless if:

- (a) the company is aware of a substantial risk that anything done or not done by the company will constitute a contravention of subsection (1); and
- (b) having regard to the circumstances known to the company, it is unjustifiable to take the risk.

(6) The question whether taking a risk is unjustifiable is one of fact.

**238 At the end of subsection 366(8)**

Add:

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

**239 At the end of section 366**

Add:

(9) For the purposes of subsection (8), a former trustee is taken to be reckless if:

- (a) the former trustee is aware of a substantial risk that anything done or not done by the former trustee will constitute a contravention of subsection (7); and
- (b) having regard to the circumstances known to the former trustee, it is unjustifiable to take the risk.

(10) The question whether taking a risk is unjustifiable is one of fact.

***Trade Practices Act 1974***

**240 Subsection 5(1)**

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Omit “and Part VB”, substitute “, Part VB and Part VC”.

Note: The heading to section 5 is altered by omitting “and VB” and substituting “, VB and VC”.

**241 Paragraph 6(2)(a)**

Omit “or section 55”, substitute “, 55 or 75AZH”.

Note: The heading to section 6 is altered by omitting “V and VB” and substituting “IVB, V, VA, VB and VC”.

**242 Paragraph 6(2)(b)**

Omit “and 75AY”, substitute “, 75AY, 75AZE, 75AZN, 75AZO, subsections 75AZQ(4) to (7) (inclusive)”.

**243 Subsection 6(3)**

Omit “and of Divisions 1, 1A and 1AA of Part V”, substitute “, of Divisions 1, 1A and 1AA of Part V and of Divisions 2 and 3 of Part VC”.

**244 Paragraph 6(3)(a)**

Omit “section 55”, substitute “sections 55 and 75AZH”.

**245 Subsection 6(4)**

After “Division 1AA of Part V”, insert “and of Division 2 of Part VC (other than sections 75AZD, 75AZH and 75AZO)”.

**246 At the end of section 6**

Add:

- (6) Despite anything in Part VC, if a person other than a corporation is convicted of an offence against a provision of that Part, being a provision that applies in relation to the person as provided by this section, the offence is taken to be punishable on conviction by a fine not exceeding 400 penalty units.

**247 Subsection 26(1)**

After “V”, insert “, VC”.

**248 Subsection 56(3)**

Repeal the subsection.

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**249 Section 65AA**

Omit all the words from and including “or paragraph 53(eb)”, substitute “, paragraph 53(eb) or paragraph 75AZC(1)(i) (which both deal with false or misleading representations as to place of origin)”.

**250 Section 65AB**

Omit “or paragraph 53(eb)”, substitute “, paragraph 53(eb) or paragraph 75AZC(1)(i)”.

**251 Section 65AC**

Omit “or paragraph 53(eb)”, substitute “, paragraph 53(eb) or paragraph 75AZC(1)(i)”.

**252 Subsection 65AD(1)**

Omit “or paragraph 53(eb)”, substitute “, paragraph 53(eb) or paragraph 75AZC(1)(i)”.

**253 Paragraph 65AN(1)(a)**

Omit “or paragraph 53(eb)”, substitute “, paragraph 53(eb) or paragraph 75AZC(1)(i)”.

Note: The heading to section 65AN is altered by omitting “**paragraph 53(eb)**” and substituting “**paragraphs 53(eb) and 75AZC(1)(i)**”.

**254 At the end of section 65F**

Add:

(10) Subsection (9) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

**255 Subsections 65Q(9) and (9A)**

Repeal the subsections, substitute:

(9) A person who refuses or fails to comply with a notice under this section is guilty of an offence punishable on conviction by a fine not exceeding 40 penalty points.

(9A) Subsection (9) does not apply if the person complies with the notice to the extent to which the person is capable of complying with it.

Note: A defendant bears an evidential burden in relation to the matter in subsection (9A) (see subsection 13.3(3) of the *Criminal Code*).

(9B) Subsection (9) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

(9C) If:

(a) a person, in purported compliance with a notice under this section, furnishes information or gives evidence; and

(b) the person does so knowing that the information or evidence is false or misleading in a material particular;

the person is guilty of an offence punishable on conviction by imprisonment for not longer than 12 months.

## **256 At the end of section 65R**

Add:

(3) Subsection (2) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

## **257 After Part VB**

Insert:

# **Part VC—Offences**

## **Division 1—Application of Part**

### **75AZA Part does not apply to financial services**

(1) This Part does not apply to the supply, or possible supply, of services that are financial services.

(2) Without limiting subsection (1):

- (a) section 75AZI does not apply to conduct engaged in relation to financial services; and
  - (b) if a security (within the meaning of the Corporations Law) consists of or includes an interest in land, section 75AZD does not apply to that interest; and
  - (c) section 75AZP does not apply to a debit card that allows access to an account that is a financial product.
- (3) In subsection (2):

*debit card* has the same meaning as in section 75AZP.

Note: A defendant bears an evidential burden in relation to the matters in this section (see subsection 13.3(3) of the *Criminal Code*).

## **Division 2—Offences relating to unfair practices**

### **75AZB Interpretation**

- (1) For the purposes of this Division, if:
  - (a) a corporation makes a representation about a future matter (including the doing of, or the refusing to do, an act); and
  - (b) the corporation does not have reasonable grounds for making the representation;the representation is taken to be misleading.
- (2) For the purposes of the application of subsection (1) in proceedings relating to a representation made by a corporation about a future matter, the corporation is taken not to have had reasonable grounds for making the representation, unless it adduces evidence to the contrary.
- (3) Subsection (1) does not limit by implication the meaning of a reference in this Division to a misleading representation, a representation that is misleading in a material particular or conduct that is misleading or is likely or liable to mislead.

### **75AZC False or misleading representations**

- (1) A corporation must not, in trade or commerce, in connection with the supply or possible supply of goods or services, or in connection with the promotion by any means of the supply or use of goods or services, do any of the following:

- (a) falsely represent that goods are of a particular standard, quality, value, grade, composition, style or model, or have had a particular history or particular previous use;
- (b) falsely represent that services are of a particular standard, quality, value or grade;
- (c) falsely represent that goods are new;
- (d) falsely represent that a particular person has agreed to acquire goods or services;
- (e) represent that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits they do not have;
- (f) represent that the corporation has a sponsorship, approval or affiliation it does not have;
- (g) make a false or misleading representation about the price of goods or services;
- (h) make a false or misleading representation about the availability of facilities for the repair of goods or of spare parts for goods;
- (i) make a false or misleading representation about the place of origin of goods;
- (j) make a false or misleading representation about the need for any goods or services;
- (k) make a false or misleading representation about the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy.

Penalty: 2,000 penalty units.

- (2) Subsection (1) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 3: For rules relating to representations as to the country of origin of goods, see Division 1AA of Part V (sections 65AA to 65AN).

### **75AZD False representations and other misleading or offensive conduct in relation to land**

- (1) A corporation must not, in trade or commerce, in connection with the sale or grant, or the possible sale or grant, of an interest in land,
-

or in connection with the promotion by any means of the sale or grant of an interest in land:

- (a) represent that the corporation has a sponsorship, approval or affiliation it does not have; or
- (b) make a false or misleading representation about the nature of the interest in the land, the price payable for the land, the location of the land, the characteristics of the land, the use to which the land is capable of being put, or may lawfully be put, or the existence or availability of facilities associated with the land.

Penalty: 2,000 penalty units.

(2) If:

- (a) a corporation offers gifts, prizes or other free items; and
- (b) the corporation offers the gifts, prizes or other items, in trade or commerce, in connection with the sale or grant, or the possible sale or grant, of an interest in land, or in connection with the promotion by any means of the sale or grant of an interest in land; and
- (c) when the corporation so offers the gifts, prizes or other free items it intends not to provide them, or not to provide them as offered;

the corporation is guilty of an offence punishable on conviction by a fine not exceeding 2,000 penalty units.

(3) If:

- (a) a corporation uses physical force or undue harassment or coercion; and
- (b) the corporation uses such force, harassment or coercion in connection with the sale or grant, or the possible sale or grant, of an interest in land, or the payment for an interest in land;

the corporation is guilty of an offence punishable on conviction by a fine not exceeding 2,000 penalty units.

(4) For the purposes of the application of the *Criminal Code* in relation to subsection (2), paragraphs (2)(b) and (c) are taken to be circumstances in which the conduct described in paragraph (2)(a) occurs.

(5) Subsection (1) is an offence of strict liability.

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- (6) Strict liability applies to paragraphs (2)(b) and (3)(b).

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (7) Nothing in this section is to be taken as implying that other provisions in this Part do not apply in relation to the supply or acquisition, or the possible supply or acquisition, of an interest in land.

- (8) In this section:

*interest*, in relation to land, has the same meaning as in section 53A.

### **75AZE Misleading conduct in relation to employment**

- (1) A corporation must not, in relation to employment that is to be, or may be, offered by the corporation or by another person, engage in conduct that is liable to mislead persons seeking the employment about the availability, nature, terms or conditions of, or any other matter relating to, the employment.

Penalty: 2,000 penalty units.

- (2) Subsection (1) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **75AZF Cash price to be stated in certain circumstances**

- (1) A corporation must not, in trade or commerce, in connection with the supply or possible supply of goods or services, or in connection with the promotion by any means of the supply or use of goods or services, make a representation with respect to an amount that, if paid, would constitute a part of the consideration for the supply of the goods or services.

Penalty: 2,000 penalty units.

- (2) Subsection (1) does not apply if the corporation also specifies the cash price for the goods or services.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

(3) Subsection (1) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **75AZG Offering gifts and prizes**

(1) If:

- (a) a corporation offers gifts, prizes or other free items; and
- (b) the corporation offers the gifts, prizes or other free items in trade or commerce, in connection with the supply or possible supply of goods or services, or in connection with the promotion by any means of the supply or use of goods or services; and
- (c) when the corporation so offers them, it intends not to provide them, or not to provide them as offered;

the corporation is guilty of an offence punishable on conviction by a fine not exceeding 2,000 penalty units.

(2) For the purposes of the application of the *Criminal Code* in relation to subsection (1), paragraphs (1)(b) and (c) are taken to be circumstances in which the conduct described in paragraph (1)(a) occurs.

(3) Strict liability applies in relation to paragraph (1)(b).

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **75AZH Misleading conduct to which Industrial Property Convention applies**

(1) A person must not, in trade or commerce, engage in conduct that is liable to mislead the public about the nature, the manufacturing process, the characteristics, the suitability for their purpose, or quantity, of any goods.

Penalty: 400 penalty units.

(2) Subsection (1) is an offence of strict liability.

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Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **75AZI Certain misleading conduct in relation to services**

- (1) A corporation must not, in trade or commerce, engage in conduct that is liable to mislead the public about the nature, the characteristics, the suitability for their purpose, or the quantity, of any services.

Penalty: 2,000 penalty units.

- (2) Subsection (1) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **75AZJ Bait advertising**

- (1) A corporation must not, in trade or commerce, advertise for supply at a specified price, goods or services if there are reasonable grounds for believing that the corporation will not be able to offer those goods or services for supply at that price for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the corporation carries on business, and the nature of the advertisement.

Penalty: 2,000 penalty units.

- (2) A corporation that has, in trade or commerce, advertised goods or services for supply at a specified price must not fail to offer such goods or services for supply at that price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the corporation carries on business, and the nature of the advertisement.

Penalty: 2,000 penalty units.

- (3) Subsections (1) and (2) are offences of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

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- (4) In a prosecution of a corporation under subsection (2), for failing to offer goods or services to a person (the *customer*), it is a defence if the corporation proves that:
- (a) it offered to supply, or to procure another person to supply goods or services of the kind advertised to the customer within a reasonable time, in a reasonable quantity and at the advertised price; or
  - (b) it offered to supply immediately, or to procure another person to supply within a reasonable time, equivalent goods or services to the customer in a reasonable quantity and at the price at which the first-mentioned goods or services were advertised;

and, in either case, if the offer was accepted by the customer, the corporation has so supplied, or procured another person to supply, goods or services.

Note: A defendant bears a legal burden in relation to the matters in subsection (4) (see section 13.4 of the *Criminal Code*).

### **75AZK Referral selling**

- (1) A corporation must not, in trade or commerce, induce a consumer to acquire goods or services by representing that the consumer will, after the contract for the acquisition of the goods or services is made, receive a rebate, commission or other benefit in return for giving the corporation the names of prospective customers or otherwise assisting the corporation to supply goods or services to other consumers, if receipt of the rebate, commission or other benefit is contingent on an event occurring after that contract is made.

Penalty: 2,000 penalty units.

- (2) Subsection (1) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **75AZL Accepting payment without intending or being able to supply as ordered**

- (1) If:
-

- (a) a corporation, in trade or commerce, accepts payment or other consideration for goods or services; and
  - (b) at the time of acceptance, the corporation intends:
    - (i) not to supply the goods or services; or
    - (ii) to supply goods or services materially different from the goods or services in respect of which the payment or other consideration is accepted;
- the corporation is guilty of an offence punishable on conviction of a fine not exceeding 2,000 penalty units.
- (2) Strict liability applies to paragraph (1)(a).
- Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.
- Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.
- (3) If:
- (a) a corporation, in trade or commerce, accepts payment or other consideration for goods or services; and
  - (b) at the time of acceptance, there are reasonable grounds for believing that the corporation will not be able to supply the goods or services within the period specified by the corporation or, if no period is specified, within a reasonable time;
- the corporation is guilty of an offence punishable on conviction by a fine not exceeding 2,000 penalty units.
- (4) Subsection (3) is an offence of strict liability.
- Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.
- Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **75AZM Misleading representations about certain business activities**

- (1) A corporation must not, in trade or commerce, make a representation that is false or misleading in a material particular about the profitability or risk or any other material aspect of any business activity that the corporation has represented as one that can be, or can be to a considerable extent, carried on at or from a person's place of residence.
- Penalty: 2,000 penalty units.

- (2) If a corporation, in trade or commerce, invites (whether by advertisement or otherwise) persons to engage or participate, or to offer or apply to engage or participate, in a business activity requiring the performance by the persons concerned of work, or the investment of money by the persons concerned and the performance by them of work associated with the investment, the corporation must not make a representation that is false or misleading in a material particular about the profitability or risk or any other material aspect of the business activity.

Penalty: 2,000 penalty units.

- (3) Subsections (1) and (2) are offences of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **75AZN Harassment and coercion**

- (1) If:

- (a) a corporation uses physical force or undue harassment or coercion; and
- (b) the corporation uses such force, harassment or coercion in connection with the supply or possible supply of goods or services to a consumer, or the payment for goods or services by a consumer;

the corporation is guilty of an offence punishable on conviction by a fine not exceeding 2,000 penalty units.

- (2) Strict liability applies to paragraph (1)(b).

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **75AZO Pyramid selling**

- (1) A corporation is guilty of an offence punishable on conviction by a fine not exceeding 2,000 penalty units if:

- (a) the corporation is the promoter of, or (if there are more than one) one of the promoters of, or is a participant in, a trading scheme to which this section applies; and

- (b) a person who is a participant in that trading scheme, or has applied or been invited to become a participant in that trading scheme, makes any payment to or for the benefit of the corporation, being a payment that the person is induced to make by reason that the prospect is held out to the person of receiving payments or other benefits in respect of the introduction (whether by the person or by another person) of other persons who become participants in that trading scheme.
- (2) A corporation is guilty of an offence punishable on conviction by a fine not exceeding 2,000 penalty units if:
- (a) the corporation is the promoter of, or (if there are more than one) one of the promoters of, is a participant in, or is otherwise acting in accordance with, a trading scheme to which this section applies; and
  - (b) the corporation, by holding out to any person the prospect of receiving payments or other benefits in respect of the introduction (whether by the person or by another person) of other persons who become participants in that trading scheme, attempts to induce that person:
    - (i) if he or she is already a participant in that trading scheme, to make any payment to or for the benefit of the promoter or any of the promoters or to or for the benefit of a participant in that trading scheme; or
    - (ii) if he or she is not already a participant in that trading scheme, to become such a participant and to make a payment of a kind mentioned in subparagraph (i).
- (3) A corporation is guilty of an offence punishable on conviction by a fine not exceeding 2,000 penalty units if the corporation promotes, or takes part in the promotion of, a scheme under which:
- (a) a payment is to be made by a person who participates, or who has applied or been invited to participate, in the scheme to or for the benefit of the corporation or another person who takes part in the promotion of the scheme or to or for the benefit of another person who participates in the scheme; and
  - (b) the inducement for making the payment is the holding out to the person who makes or is to make the payment the prospect of receiving payments from other persons who may participate in the scheme.
-

(4) Subsections (1), (2) and (3) are offences of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

(5) For the purposes of subsection (1), (2) or (3):

- (a) a prospect of a kind mentioned in that subsection is taken to be held out to a person whether it is held out so as to confer on the person a legally enforceable right or not; and
- (b) in determining whether an inducement or attempt to induce is made by holding out a prospect of a kind mentioned in that subsection, it is sufficient if a prospect of that kind constitutes or would constitute a substantial part of the inducement; and
- (c) any reference to the making of a payment to or for the benefit of a person must be construed as including the making of a payment partly to or for the benefit of that person and partly to or for the benefit of one or more other persons.

(6) For the purposes of this section, a scheme is a trading scheme to which this section applies if the scheme includes the following elements:

- (a) goods or services, or both, are to be provided by the person promoting the scheme (the ***promoter***) or, in the case of a scheme promoted by 2 or more persons acting in concert (the ***promoters***), are to be provided by one or more of those persons; and
- (b) the goods or services so provided are to be supplied to or for other persons under transactions arranged or effected by persons who participate in the scheme (each of whom is a ***participant***), being persons not all of whom are promoters.

(7) For the purposes of subsection (6):

- (a) a scheme is taken to include the element referred to in paragraph (6)(b) whether a participant who is not a promoter acts in relation to a transaction referred to in that paragraph in the capacity of a servant or agent of the promoter or of one of the promoters or in any other capacity; and
- (b) a scheme includes any arrangements made in connection with the carrying on of a business, whether those arrangements are made or recorded wholly or partly in writing or not; and

- (c) any reference to the provision of goods or services by a person must be construed as including a reference to the provision of goods or services under arrangements to which that person is a party.

**75AZP Unsolicited credit and debit cards**

- (1) A corporation must not send a prescribed card to a person.

Penalty: 2,000 penalty units.

- (2) Subsection (1) applies only in relation to the sending of a prescribed card by or on behalf of the person who issued the card.
- (3) Subsection (1) does not apply if a corporation sends a prescribed card to a person:
  - (a) in pursuance of a request in writing by the person who will be under a liability to the person who issued the card in respect of the use of the card; or
  - (b) in renewal or replacement of, or in substitution for:
    - (i) a prescribed card of the same kind previously sent to the first-mentioned person in pursuance of a request in writing by the person who was under a liability to the person who issued the card previously so sent in respect of the use of that card; or
    - (ii) a prescribed card of the same kind previously sent to the first-mentioned person and used for a purpose for which it was intended to be used.

Note: A defendant bears an evidential burden in relation to the matters in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- (4) Subsection (1) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (5) A corporation must not take any action that enables a person who has a credit card or a debit card to use the card as a debit card or a credit card, as the case may be.

Penalty: 2,000 penalty units.

- (6) Subsection (5) does not apply in relation to action taken by a corporation in accordance with a written request by the person.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

- (7) Subsection (5) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (8) In this section:

*article, credit card, debit card* and *prescribed card* have the same respective meanings as in section 63A.

**75AZQ Assertion of right to payment for unsolicited goods or services or for making an entry in a directory**

- (1) A corporation must not, in trade or commerce, assert a right to payment from a person for unsolicited goods or unsolicited services.

Penalty: 2,000 penalty units.

- (2) Subsection (1) does not apply if the corporation proves that it had reasonable cause to believe that there was a right to payment.

Note: A defendant bears a legal burden in relation to the matter in subsection (2) (see section 13.4 of the *Criminal Code*).

- (3) Subsection (1) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) A corporation must not assert a right to payment from a person of a charge for making in a directory an entry relating to the person, or to the person's profession, business, trade or occupation.

Penalty: 2,000 penalty units.

- (5) Subsection (4) does not apply if the corporation proves that it believed, or had reasonable cause to believe, that the person had authorised the making of the entry.

Note: A defendant bears a legal burden in relation to the matter in subsection (5) (see section 13.4 of the *Criminal Code*).

(6) Subsection (4) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

(7) A person is not liable to make any payment to a corporation, and is entitled to recover by action in a court of competent jurisdiction against a corporation any payment made by the person to the corporation, in full or part satisfaction of a charge for the making of an entry in a directory, unless the person has authorised the making of the entry.

(8) For the purposes of this section, a corporation is taken to assert a right to a payment from a person for unsolicited goods or services, or of a charge for the making of an entry in a directory, if the corporation:

- (a) makes a demand for the payment or asserts a present or prospective right to the payment; or
- (b) threatens to bring any legal proceedings with a view to obtaining the payment; or
- (c) places or causes to be placed the name of the person on a list of defaulters or debtors, or threatens to do so, with a view to obtaining the payment; or
- (d) invokes or causes to be invoked any other collection procedure, or threatens to do so, with a view to obtaining the payment; or
- (e) sends any invoice or other document stating the amount of the payment or setting out the price of the goods or services or the charge for the making of the entry and not stating as prominently (or more prominently) that no claim is made to the payment, or to payment of the price or charge, as the case may be.

(9) A person is not taken for the purposes of this section to have authorised the making of an entry in a directory, unless:

- (a) a document authorising the making of the entry has been signed by the person or by another person authorised by him or her; and



- (b) a copy of the document has been given to the person before the right to payment of a charge for the making of the entry is asserted; and
- (c) the document specifies:
  - (i) the name of the directory; and
  - (ii) the name and address of the person publishing the directory; and
  - (iii) particulars of the entry; and
  - (iv) the amount of the charge for the making of the entry or the basis on which the charge is, or is to be, calculated.
- (10) For the purposes of this section, an invoice or other document purporting to have been sent by or on behalf of a corporation is taken to have been sent by that corporation unless the contrary is established.
- (11) In this section:

*directory* and *making* have the same respective meanings as in section 64.

**75AZR Application of provisions of Division to prescribed information providers**

- (1) Nothing in section 75AZC, 75AZD, 75AZH, 75AZI or 75AZM applies to a prescribed publication of matter by a prescribed information provider, other than:
  - (a) a publication of matter in connection with:
    - (i) the supply or possible supply of goods or services; or
    - (ii) the sale or grant, or possible sale or grant, of interests in land; or
    - (iii) the promotion by any means of the supply or use of goods or services; or
    - (iv) the promotion by any means of the sale or grant of interests in land;where:
  - (v) the goods or services were relevant goods or services, or the interests in land were relevant interests in land, as the case may be, in relation to the prescribed information provider; or

- (vi) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with:
  - (A) a person who supplies goods or services of that kind, or who sells or grants interests in land, being interests of that kind; or
  - (B) a body corporate that is related to a body corporate that supplies goods or services of that kind, or that sells or grants interests in land, being interests of that kind; or
- (b) a publication of an advertisement.
- (2) For the purposes of this section, a publication by a prescribed information provider is a prescribed publication if:
  - (a) in any case—the publication was made by the prescribed information provider in the course of carrying on a business of providing information; or
  - (b) in the case of a person who is a prescribed information provider by virtue of paragraph (a), (b) or (c) of the definition of *prescribed information provider* in subsection 65A(3) (whether or not the person is also a prescribed information provider by virtue of another operation of that definition)—the publication was by way of a radio or television broadcast by the prescribed information provider.

- (3) In this section:

*prescribed information provider, relevant goods or services and relevant interests in land* have the same respective meanings as in section 65A.

Note: A defendant bears an evidential burden in relation to the matters in this section (see subsection 13.3(3) of the *Criminal Code*).

### **Division 3—Offences relating to product safety and product information**

#### **75AZS Product safety standards and unsafe goods**

- (1) If:
    - (a) a corporation, in trade or commerce, supplies goods; and
    - (b) the goods are intended to be used, or are of a kind likely to be used, by a consumer; and
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- (c) the goods are of a kind:
  - (i) in respect of which there is a consumer product safety standard prescribed by regulations made for the purposes of section 65C and which do not comply with that standard; or
  - (ii) in respect of which there is in force a notice under section 65C declaring the goods to be unsafe goods; or
  - (iii) in respect of which there is in force a notice under section 65C imposing a permanent ban on the goods;the corporation is guilty of an offence punishable on conviction by a fine not exceeding 2,000 penalty units.
- (2) Subsection (1) is an offence of strict liability.
  - Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.
  - Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.
- (3) A corporation must not export goods whose supply in Australia would constitute an offence against subsection (1).  
  
Penalty: 2,000 penalty units.
- (4) Subsection (3) does not apply if the Minister has, by written notice given to the corporation, approved the export of the goods under subsection 65C(3).
  - Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).
- (5) Subsection (3) is an offence of strict liability.
  - Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.
  - Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

## **75AZT Product information standards**

- (1) If:
    - (a) a corporation, in trade or commerce, supplies goods; and
    - (b) the goods are intended to be used, or are of a kind likely to be used, by a consumer; and
    - (c) the goods are of a kind in respect of which a consumer product information standard has been prescribed by regulations made for the purpose of subsection 65D(2);
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the corporation is guilty of an offence punishable on conviction by a fine not exceeding 2,000 penalty units.

- (2) Subsection (1) does not apply if the corporation has complied with the standard in relation to the goods.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Subsection (1) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) Subsection (1) does not apply to goods that are intended to be used outside Australia.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

- (5) If there is applied to goods:

- (a) a statement that the goods are for export only; or
- (b) a statement indicating by the use of words authorised by the regulations to be used for the purposes of this subsection that the goods are intended to be used outside Australia;

it must be presumed for the purposes of this section, unless the contrary is established, that the goods are intended to be so used.

- (6) For the purposes of subsection (4), a statement is taken to be applied to goods if:

- (a) the statement is woven in, impressed on, worked into or annexed or affixed to the goods; or
- (b) the statement is applied to a covering, label, reel or thing in or with which the goods are supplied.

- (7) A reference in subsection (6) to a covering includes a reference to a stopper, glass, bottle, vessel, box, capsule, case, frame or wrapper and a reference in that subsection to a label includes a reference to a band or ticket.

**75AZU Compliance with product recall notice**

- (1) If a notice under subsection 65F(1) is in force in relation to a corporation, the corporation must not contravene a requirement or direction in the notice.

Penalty: 2,000 penalty units.

- (2) If a notice under subsection 65F(1) is in force in relation to a corporation, the corporation must not, in trade or commerce:
- (a) if the notice identifies a defect in, or a dangerous characteristic of, the goods—supply goods of the kind to which the notice relates which contain the defect or have that characteristic; or
  - (b) in any other case—supply goods of the kind to which the notice relates.

Penalty: 2,000 penalty units.

- (3) Subsections (1) and (2) are offences of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

**258 Subsection 75B(1)**

Omit “or V”, substitute “, V or VC”.

**259 Paragraph 78(a)**

After “Part IV”, insert “or V (other than section 65Q or 65R or subsection 65F(9))”.

Note: The heading to section 78 is altered by omitting “Part IV” and substituting “Part IV or V”.

**260 Subsection 79(1)**

Repeal the subsection, substitute:

- (1) A person who:
- (a) aids, abets, counsels or procures a person to contravene; or
  - (b) induces, or attempts to induce, a person (whether by threats or promises or otherwise) to contravene; or
  - (c) is in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of; or
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(d) conspires with others to contravene;  
a provision of Part VC is taken to have contravened that provision  
and is punishable accordingly.

(1A) Subsections 11.2(2) to (5) (inclusive) of the *Criminal Code* apply  
in relation to paragraph (1)(a) in the same way that they apply in  
relation to subsection 11.2(1) of the *Criminal Code*.

(1B) Subsections 11.5(2) to (5) (inclusive) of the *Criminal Code* apply  
in relation to paragraph (1)(d) in the same way that they apply in  
relation to the offence of conspiracy under subsection 11.5(1) of  
the *Criminal Code*.

Note: The heading to section 79 is altered by omitting “**Part V**” and substituting “**Part VC**  
etc.”.

**261 Subsection 79(2)**

Omit “Part V”, substitute “Part VC”.

**262 Paragraph 79(3)(a)**

Omit “Part V”, substitute “Part VC”.

**263 Subsection 79(3)**

Omit “under subsection (1)”.

**264 Subsection 79(4)**

Omit “under this section against a person for contravening a provision  
of Part V”, substitute “against a person for contravening a provision of  
Part VC”.

**265 Subsection 79(5)**

Repeal the subsection, substitute:

(5) Sections 5, 7 and 7A of the *Crimes Act 1914*, and section 11.1 of  
the *Criminal Code*, do not apply in relation to an offence against a  
provision of Part VC.

**266 Subsection 79(6)**

Omit “subsection (1)”, substitute “a provision of Part VC”.

**267 Subsection 79A(1)**

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Omit “section 65Q, 65R, 79”, substitute “a provision of Part VC or section 65Q, 65R”.

**268 Paragraph 80(1)(a)**

Omit “or V”, substitute “, V or VC”.

**269 Subsection 80A(1)**

Omit “or V”, substitute “, V or VC”.

**270 Section 83**

Omit “section 79”, substitute “a provision of Part VC”.

**271 Section 83**

Omit “or V”, substitute “, V or VC”.

**272 Subsection 84(1)**

Omit “or VB”, substitute “, VB or VC”.

**273 Subsection 84(3)**

Omit “or VB”, substitute “, VB or VC”.

**274 At the end of section 84**

Add:

- (6) Part 2.5 of the *Criminal Code* does not apply in relation to an offence against a provision of Part VC.

**275 Subsection 85(1)**

Omit “under this Part in relation to a contravention of a provision of Part V”, substitute “for a contravention of a provision of Part VC”.

**276 At the end of subsection 85(1)**

Add:

Note: A defendant bears a legal burden in relation to the matters in subsection (1) (see section 13.4 of the *Criminal Code*).

**277 After subsection 85(1)**

Insert:

(1AA) Paragraph (1)(a) is to be interpreted as having the same effect in relation to a contravention of a provision of Part VC as section 9.2 of the *Criminal Code* has in relation to offences of strict liability.

**278 Subsection 85(3)**

Omit “under this Part in relation to a contravention of a provision of Part V”, substitute “in relation to a contravention of a provision of Part V or VC”.

**279 At the end of subsection 85(3)**

Add:

Note: In a prosecution for an offence against Part VC, a defendant bears a legal burden in relation to the matter in subsection (3) (see section 13.4 of the *Criminal Code*).

**280 Subsection 85(4)**

Omit “under this Part in relation to a contravention of Part V”, substitute “in relation to a contravention of a provision of Part V or VC”.

**281 At the end of subsection 85(4)**

Add:

Note: In a prosecution for an offence against Part VC, a defendant bears a legal burden in relation to the matter in subsection (4) (see section 13.4 of the *Criminal Code*).

**282 Subsection 87(1)**

Omit “, or for an offence against, this Part”, substitute “this Part, or for an offence against Part VC”.

**283 Subsection 87(1)**

Omit “or V”, substitute “, V or VC”.

**284 Subsection 87(1A)**

Omit “or V” (wherever occurring), substitute “, V or VC”.

**285 Subsection 87(1B)**

Omit “section 79”, substitute “Part VC”.

**286 Subsection 87(1B)**

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Omit “or V”, substitute “, V or VC”.

**287 Subsection 87(1C)**

Repeal the subsection, substitute:

(1C) An application may be made under subsection (1A) in relation to a contravention of Part IVA, IVB, V or VC even if a proceeding has not been instituted under another provision in relation to that contravention.

**288 Paragraph 87A(1)(a)**

Omit “section 79;”, substitute “a provision of Part VC; or”.

**289 Paragraph 87A(1)(b)**

Omit “or V;”, substitute “, V or VC; or”.

**290 Paragraph 87A(1)(d)**

Omit “or V”, substitute “, V or VC”.

## Schedule 2—Amendment of the Corporations Law

### 1A Paragraph 300A(1)(a)

Repeal the paragraph, substitute:

- (a) discussion of board policy for determining the nature and amount of emoluments of board members and senior executives of the company; and

### 1 Subsection 601ED(2)

Repeal the subsection, substitute:

- (2) A managed investment scheme does not have to be registered if all the issues of interests in the scheme that have been made would not have needed disclosure to investors under Part 6D.2 (see sections 706 and 708) if the scheme had been registered when the issues were made.

### 2 Subsection 601FC(1) (note)

Repeal the note.

### 3 Subsection 601FC(3)

Omit “section 232”, substitute “section 180, 181, 182, 183 or 184”.

### 4 At the end of section 601FC

Add:

- (5) A responsible entity who contravenes subsection (1), and any person who is involved in a responsible entity’s contravention of that subsection, contravenes this subsection.

Note 1: Section 79 defines *involved*.

Note 2: Subsection (5) is a civil penalty provision (see section 1317E).

- (6) A person must not intentionally or recklessly be involved in a responsible entity’s contravention of subsection (1).
- (7) For the purposes of subsection (6), a person is taken to be reckless if:

- (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of subsection (6); and
- (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

(8) The question whether taking a risk is unjustifiable is one of fact.

#### **5 Subsection 601FD(1) (note)**

Repeal the note.

#### **6 Subsection 601FD(2)**

Omit “section 232”, substitute “section 180, 181, 182, 183 or 184”.

#### **7 At the end of section 601FD**

Add:

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

Note 1: Section 79 defines *involved*.

Note 2: Subsection (3) is a civil penalty provision (see section 1317E).

- (4) A person must not intentionally or recklessly contravene, or be involved in a contravention of, subsection (1).
- (5) For the purposes of subsection (4), a person is taken to be reckless if:
  - (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of subsection (4); and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (6) The question whether taking a risk is unjustifiable is one of fact.

#### **8 Subsection 601FE(1) (note)**

Repeal the note.

#### **9 Subsection 601FE(2)**

Omit “section 232”, substitute “section 180, 181, 182, 183 or 184”.

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**10 At the end of section 601FE**

Add:

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

Note 1: Section 79 defines *involved*.

Note 2: Subsection (3) is a civil penalty provision (see section 1317E).

- (4) A person must not intentionally contravene, or be involved in a contravention of, subsection (1).

**11 Section 601FG (note 1)**

Omit “Note 1:”, substitute “Note:”.

**12 Section 601FG (note 2)**

Repeal the note.

**13 At the end of section 601FG**

Add:

- (2) A responsible entity who contravenes subsection (1), and any person who is involved in a responsible entity’s contravention of that subsection, contravenes this subsection.

Note 1: Section 79 defines *involved*.

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

- (3) A person must not intentionally be involved in a responsible entity’s contravention of subsection (1).

**14 Subsection 601JD(1) (note)**

Repeal the note.

**15 At the end of section 601JD**

Add:

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

Note 1: Section 79 defines *involved*.

Note 2: Subsection (3) is a civil penalty provision (see section 1317E).

- (4) A person must not intentionally or recklessly contravene, or be involved in a contravention of, subsection (1).
- (5) For the purposes of subsection (4), a person is taken to be reckless if:
  - (a) the person is aware of a substantial risk that anything done or not done by the person will constitute a contravention of subsection (4); and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (6) The question whether taking a risk is unjustifiable is one of fact.

### **16 Paragraphs 1317E(1)(f) to (j) (inclusive)**

Repeal the paragraphs, substitute:

- (f) subsection 601FC(5) (duties of responsible entity)
- (g) subsection 601FD(3) (duties of officers of responsible entity)
- (h) subsection 601FE(3) (duties of employees of responsible entity)
- (i) subsection 601FG(2) (acquisition of interest in scheme by responsible entity)
- (j) subsection 601JD(3) (duties of members)

### **17 Schedule 3 (entry relating to section 184)**

Repeal the entry, substitute:

#### **Section 184**

Penalty: 2,000 penalty units or imprisonment for 5 years, or both.

### **18 Schedule 3 (after entry relating to subsection 601ED(5))**

Insert:

#### **Subsection 601FC(6)**

Penalty: 2,000 penalty units or imprisonment for 5 years, or both.

#### **Subsection 601FD(4)**

Penalty: 2,000 penalty units or imprisonment for 5 years, or both.

#### **Subsection 601FE(4)**

Penalty: 2,000 penalty units or imprisonment for 5 years, or both.

### **19 Schedule 3 (after entry relating to subsection 601FF(2))**

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Insert:

**Subsection 601FG(3)**

Penalty: 2,000 penalty units or imprisonment for 5 years, or both.

**Subsection 601JD(4)**

Penalty: 2,000 penalty units or imprisonment for 5 years, or both.

**20 Schedule 3 (entry relating to subsection 1317FA(1))**

Repeal the entry.

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*[Minister's second reading speech made in—  
House of Representatives on 29 June 2000  
Senate on 7 March 2001]*

(104/00)

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