



# Corporations Act 2001

No. 50, 2001

## Compilation No. 121

<b>Compilation date:</b>	1 March 2023
<b>Includes amendments up to:</b>	Act No. 35, 2022
<b>Registered:</b>	7 March 2023

This compilation is in 7 volumes

Volume 1:	sections 1–260E
Volume 2:	sections 283AA–600K
Volume 3:	sections 601–742
Volume 4:	sections 760A–994Q
Volume 5:	sections 1010A–1243A
<b>Volume 6:</b>	<b>sections 1272–1697</b> <b>Schedules</b>
Volume 7:	Endnotes

Each volume has its own contents

**This compilation includes a commenced amendment made by Act No. 13, 2021**

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### **This compilation**

This is a compilation of the *Corporations Act 2001* that shows the text of the law as amended and in force on 1 March 2023 (the *compilation date*).

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

### **Uncommenced amendments**

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

### **Application, saving and transitional provisions for provisions and amendments**

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

### **Editorial changes**

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

### **Modifications**

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

### **Self-repealing provisions**

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## **Chapter 9—Miscellaneous**

### **Part 9.1A—Director identification numbers**

#### **1272 Giving and cancelling director identification numbers**

- (1) The Registrar must, by notifying a person who has applied under section 1272A, give the person a director identification number if the Registrar is satisfied that the person's identity has been established.
- (1A) The Registrar may make a request of the person under subsection (5) for the purposes of satisfying the Registrar that the person's identity has been established.
- (2) The Registrar must make a record of the person's director identification number.
- (3) The Registrar may, by notifying a person, cancel the person's director identification number if:
  - (a) the Registrar is no longer satisfied that the person's identity has been established; or
  - (b) the Registrar has given the person another director identification number.
- (4) If:
  - (a) at the time the person is given a director identification number under this section, the person is not an eligible officer; and
  - (b) the person does not, within 12 months after that time, become an eligible officer;the person's director identification number is taken to have been cancelled at the end of the 12 month period.
- (5) The Registrar may request, but not compel, the person:
  - (a) if the person has a tax file number—to give the Registrar a written statement of the person's tax file number; or

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- (b) if the person does not have a tax file number:
  - (i) to apply to the Commissioner of Taxation for a tax file number; and
  - (ii) to give the Registrar a written statement of the person's tax file number after the Commissioner of Taxation has issued it.

### 1272A Applying for a director identification number

- (1) An eligible officer may apply to the Registrar for a director identification number if the officer does not already have a director identification number.
- (2) The Registrar may direct an eligible officer to apply to the Registrar for a director identification number (whether or not the officer already has a director identification number).
- (3) A person who is not an eligible officer may apply to the Registrar for a director identification number if:
  - (a) the person intends to become an eligible officer within 12 months after applying; and
  - (b) the person does not already have a director identification number.
- (4) An application for a director identification number must meet any requirements of the data standards.

Note: A person may commit an offence if the person knowingly gives false or misleading information (see section 1308 of this Act and section 137.1 of the *Criminal Code*).

### 1272B Eligible officers

- (1) An *eligible officer* is:
  - (a) a director of a company, or of a body corporate that is a registered Australian body or registered foreign company, who:
    - (i) is appointed to the position of a director; or

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- (ii) is appointed to the position of an alternate director and is acting in that capacity;  
regardless of the name that is given to that position; or
- (b) any other officer of a company, or of a body corporate that is a registered Australian body or registered foreign company, who is an officer of a kind prescribed by the regulations; but does not include a person covered by a determination under subsection (2) or (3).

Note: This subsection has a modified operation in relation to CCIVs: see section 1242.

- (2) The Registrar may determine that a particular person is not an *eligible officer*. The Registrar must notify the person of the determination.
- (3) The Registrar may, by legislative instrument, determine that a class of persons are not *eligible officers*.

**1272C Requirement to have a director identification number**

- (1) An eligible officer must have a director identification number.
- (2) Subsection (1) does not apply if:
  - (a) the officer applied to the Registrar under section 1272A for a director identification number:
    - (i) before the day the officer first became an eligible officer (or an eligible officer within the meaning of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*); or
    - (ii) if the regulations specify an application period—within that period, starting at the start of that day; or
    - (iii) within the longer period (if any) the Registrar allows under section 1272E, starting at the start of that day; and
  - (b) the application, and any reviews arising out of it, have not been finally determined or otherwise disposed of.

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

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- (3) Subsection (1) does not apply if the officer became an eligible officer without the officer's knowledge.

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

- (4) An offence based on subsection (1) is an offence of strict liability.

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

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

Note 1: Subsection (5) is a civil penalty provision (see section 1317E).

Note 2: Section 79 defines *involved*.

### 1272D Requirement to apply for a director identification number

- (1) An eligible officer whom the Registrar has directed under subsection 1272A(2) to apply for a director identification number must apply to the Registrar under section 1272A for a director identification number:

- (a) within the application period under subsection (2) of this section; or
- (b) within such longer period as the Registrar allows under section 1272E.

- (2) The application period is the period of:

- (a) the number of days specified in the direction; or
- (b) if the number of days is not specified in the direction—28 days;

after the day the Registrar gives the direction.

- (3) An offence based on subsection (1) is an offence of strict liability.

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

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

Note 1: Subsection (3) is a civil penalty provision (see section 1317E).

Note 2: Section 79 defines *involved*.

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**1272E Registrar may extend application periods**

- (1) The Registrar may, on the application of an eligible officer, allow, as a longer period for applying to the Registrar under section 1272A for a director identification number:
  - (a) the period specified in the application; or
  - (b) such other period as the Registrar considers reasonable.

Note: An application for an extension of the period for applying can be made, and the period can be extended, after the period has ended: see section 70.

- (2) The Registrar may, by legislative instrument, allow, for persons included in a specified class of persons, a longer period for applying to the Registrar under section 1272A for a director identification number.

**1272F Infringement notices**

- (1) Subsections 1272C(1) and 1272D(1) are subject to an infringement notice under Part 5 of the Regulatory Powers Act.

Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

*Infringement officer*

- (2) For the purposes of Part 5 of the Regulatory Powers Act, each member of the staff of the Registrar who holds, or is acting in, an office or position that is equivalent to an SES employee is an infringement officer in relation to subsections 1272C(1) and 1272D(1) of this Act.

*Relevant chief executive*

- (3) For the purposes of Part 5 of the Regulatory Powers Act, the relevant chief executive in relation to subsections 1272C(1) and 1272D(1) of this Act is:
  - (a) the person specified as the relevant chief executive in the Registrar's instrument of appointment under section 1270; or
  - (b) if there is no person specified—the Registrar.

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### *Matters to be included in an infringement notice*

- (4) Subparagraph 104(1)(e)(iii) of the Regulatory Powers Act applies to an infringement notice relating to a contravention of subsection 1272C(1) or 1272D(1) of this Act as if that subparagraph did not require the notice to give details of the place of the contravention.

### **1272G Applying for additional director identification numbers**

- (1) A person must not apply for a director identification number if the person knows that the person already has a director identification number.

Note: Failure to comply with this subsection is an offence: see subsection 1311(1).

- (2) Subsection (1) does not apply if the Registrar directed the person under subsection 1272A(2) to make the application.

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) does not apply if the person purports to make the application only in relation to Part 6-7A of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

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

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

Note 1: Subsection (4) is a civil penalty provision (see section 1317E).

Note 2: Section 79 defines *involved*.

### **1272H Misrepresenting director identification numbers**

- (1) A person must not intentionally represent to a Commonwealth body, company or registered body, as the director identification number of the person or another person, a number that is not that director identification number.



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Note: Failure to comply with this subsection is an offence: see subsection 1311(1).

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

Note 1: Subsection (2) is a civil penalty provision (see section 1317E).

Note 2: Section 79 defines *involved*.

## **Part 9.1—Matters relating to handling records and information**

### **Division 1—The Registrar**

#### **Subdivision A—Appointment etc. of the Registrar**

##### **1270 Appointment of the Registrar**

- (1) The Minister may, by notifiable instrument, appoint a Commonwealth body to be the Registrar.
- (2) The Minister may, by notifiable instrument, appoint a Commonwealth body to be the Registrar in relation to one or more functions or powers of the Registrar.

##### **1270A Functions**

The Registrar's functions are:

- (a) such functions as are conferred on the Registrar by or under this Act; and
- (b) such functions as are prescribed by rules made for the purposes of this paragraph under section 1270T; and
- (c) such functions as are incidental to the functions mentioned in paragraph (a) or (b).

##### **1270B Powers**

The Registrar's powers include:

- (a) such powers as are conferred:
  - (i) on the Registrar in relation to the functions mentioned in section 1270A; and
  - (ii) by or under this Act; and
- (b) the power to do all things necessary or convenient to be done for or in connection with the performance of those functions.

### **1270C Directions by Minister**

- (1) The Minister may, by legislative instrument, give written directions to the Registrar about the performance of its functions and the exercise of its powers.

Note: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* do not apply to the directions (see regulations made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that Act).

- (2) Without limiting subsection (1), a direction under that subsection may relate to any of the following:
- (a) matters to be dealt with in the data standards or disclosure framework;
  - (b) consultation processes to be followed prior to making data standards or the disclosure framework.
- (3) A direction under subsection (1) must be of a general nature only.
- (4) Subsection (3) does not prevent a direction under subsection (1) from relating to a particular matter to be dealt with in the data standards or disclosure framework. However, the direction must not direct the Registrar how to apply the data standards or disclosure framework in a particular case.
- (5) The Registrar must comply with a direction under subsection (1).

### **1270D Delegation**

- (1) The Registrar may, in writing, delegate all or any of the Registrar's functions or powers under this Act (other than the power to make data standards or the disclosure framework) to:
- (a) any person to whom it may delegate any of its other functions, as a Commonwealth body, under a law of the Commonwealth; or
  - (b) any person of a kind specified in rules made under section 1270T.

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

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- (2) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the Registrar.

**1270E Assisted decision making**

- (1) The Registrar may arrange for the use, under the Registrar's control, of processes to assist decision making (such as computer applications and systems) for any purposes for which the Registrar may make decisions in the performance or exercise of the Registrar's functions or powers under this Act, other than decisions reviewing other decisions.
- (2) A decision the making of which is assisted by the operation of such a process under an arrangement made under subsection (1) is taken to be a decision made by the Registrar.
- (3) The Registrar may substitute a decision for a decision (the *initial decision*) the making of which is assisted by the operation of such a process under an arrangement under subsection (1) if the Registrar is satisfied that the initial decision is incorrect.

**1270F Liability for damages**

None of the following:

- (a) the Minister;
- (b) the Registrar;
- (c) if the Registrar is a Commonwealth body that has members—a member of the Registrar;
- (d) a member of the staff of the Registrar;
- (e) a person who is, or is a member of or a member of the staff of, a delegate of the Registrar;
- (f) a person who is authorised to perform or exercise a function or power of, or on behalf of, the Registrar;
- (g) an APS employee, or an officer or employee of a Commonwealth body, whose services are made available to the Registrar in connection with the performance or exercise of any of the Registrar's functions or powers;

is liable to an action or other proceeding for damages for or in relation to an act done, or omitted to be done, in good faith in performance or purported performance of any function, or in exercise or purported exercise of any power, conferred or expressed to be conferred by or under this Division.

### **Subdivision B—How the Registrar is to perform and exercise functions and powers**

#### **1270G Data standards**

- (1) The Registrar may, by legislative instrument, make data standards on matters relating to the performance of the Registrar's functions and the exercise of the Registrar's powers under this Act.
- (2) Without limiting subsection (1), the data standards may provide for any of the following:
  - (a) what information may be collected for the purposes of the performance of the Registrar's functions and the exercise of the Registrar's powers under this Act;
  - (b) how such information may be collected;
  - (c) the manner and form in which such information is given to the Registrar;
  - (d) when information is to be given to the Registrar;
  - (e) how information held by the Registrar is to be authenticated, verified or validated;
  - (f) how information held by the Registrar is to be stored;
  - (g) correction of information held by the Registrar;
  - (h) the manner and form of communication between the Registrar and persons who give information to the Registrar or seek to access information held by the Registrar;
  - (i) integrating or linking information held by the Registrar.
- (3) Without limiting subsection (1), the data standards may provide differently in relation to different functions or powers of the Registrar.

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- (4) If:
- (a) a Commonwealth body (the *new Registrar*) is appointed as the Registrar with particular functions or powers under this Act; and
  - (b) immediately before that appointment, another Commonwealth body was the Registrar with those functions or powers; and
  - (c) the new Registrar does not have data standards that would apply to those functions or powers;
- any data standards applying to those functions or powers immediately before that appointment continue to apply until the new Registrar makes data standards that apply to those functions or powers, or amends its existing data standards to apply to those functions or powers.

**1270H Giving information to the Registrar**

- (1) Without limiting section 1270G, the data standards may provide that information is to be given to the Registrar in electronic form, or any other specified form.
- (2) A requirement under this Act that information is to be provided to the Registrar in a particular form or manner (however described), including a requirement:
  - (a) that the information is to be “lodged” or “furnished”; and
  - (b) that the information is to be “written” or “in writing”; and
  - (c) that a “copy” of a document containing the information is to be provided;is not taken to restrict by implication what the data standards may provide under subsection (1) in relation to that information.

**1270J How the Registrar is to perform and exercise functions and powers**

- (1) The Registrar must perform its functions and exercise its powers under this Act in accordance with:
  - (a) the data standards; or

- (b) if there are no data standards that apply to particular functions or powers—any requirement relating to those functions or powers as in force immediately before those functions or powers became functions or powers of the Registrar.
- (2) This section does not affect the application to the Registrar of any other law of the Commonwealth.

### **Subdivision C—Disclosure of information**

#### **1270K Disclosure framework**

- (1) The Registrar may, by legislative instrument, make a disclosure framework relating to disclosing protected information.
- (2) Without limiting subsection (1), the disclosure framework may provide for any of the following:
  - (a) circumstances in which information must not be disclosed without the consent of the person to whom it relates;
  - (b) circumstances in which de-identified information may be disclosed;
  - (c) circumstances in which information may be disclosed to the general public;
  - (d) circumstances in which confidentiality agreements are required for the disclosure of information;
  - (e) imposing conditions on disclosure of information.
- (3) Without limiting subsection (1), the disclosure framework may provide differently in relation to different functions or powers of the Registrar under this Act.
- (4) A person commits an offence if:
  - (a) the person is a party to a confidentiality agreement of a kind mentioned in paragraph (2)(d); and
  - (b) the person fails to comply with the confidentiality agreement.

Penalty: 100 penalty units or imprisonment for 2 years, or both.

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- (5) The disclosure framework must not provide for disclosure of protected information unless the Registrar is satisfied that the benefits of the disclosure would outweigh the risks of the disclosure (taking into account any mitigation of those risks in accordance with the disclosure framework).
- (6) However, subsection (5) does not apply to the extent that the disclosure framework deals with a matter in accordance with a direction under section 1270C.
- (7) If:
  - (a) a Commonwealth body (the *new Registrar*) is appointed as the Registrar with particular functions or powers under this Act; and
  - (b) immediately before that appointment, another Commonwealth body was the Registrar with those functions or powers; and
  - (c) the new Registrar does not have a disclosure framework that would apply to those functions or powers;the disclosure framework applying to those functions or powers immediately before that appointment continues to apply until the new Registrar makes a disclosure framework that applies to those functions or powers, or amends its existing disclosure framework to apply to those functions or powers.

**1270L Protection of confidentiality of protected information**

- (1) A person (the *first person*) commits an offence if:
  - (a) the first person is, or has been, in official employment; and
  - (b) the first person makes a record of information, or discloses information to another person; and
  - (c) the information is protected information that was obtained by the first person in the course of the first person's official employment.

Penalty: Imprisonment for 2 years.



- (2) However, subsection (1) does not apply if the recording or disclosure is authorised by subsection (3).
- (3) The recording or disclosure is authorised by this subsection if:
- (a) the recording or disclosure is for the purposes of this Division; or
  - (b) the recording or disclosure happens in the course of the performance of the duties of the first person's official employment; or
  - (c) in the case of a disclosure—the disclosure is to another person for use, in the course of the performance of the duties of the other person's official employment, in relation to the performance or exercise of the functions or powers of a government entity; or
  - (d) in the case of a disclosure to another person who is an employee of a State, a Territory or an authority of a State or Territory—the disclosure:
    - (i) is to the other person for use, in the course of the performance of the duties of that employment, in relation to the performance or exercise of the functions or powers of a government entity; and
    - (ii) is in accordance with an agreement, about corporate regulation, between the Commonwealth, the States, the Northern Territory and the Australian Capital Territory; or
  - (e) in the case of a disclosure—each person to whom the information relates consents to the disclosure; or
  - (f) in the case of a disclosure—the disclosure is in accordance with the disclosure framework.

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

### **1270M Authorisation of recording or disclosure**

- (1) A person is not liable to any proceedings for contravening a secrecy provision in respect of a recording or disclosure authorised

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under subsection 1270L(3), unless the secrecy provision is a designated secrecy provision.

- (2) A **secrecy provision** is a provision that:
- (a) is a provision of a law of the Commonwealth (other than this Act); and
  - (b) prohibits or regulates the use or disclosure of information.
- (3) A **designated secrecy provision** is any of the following:
- (a) sections 18 to 18B and 92 of the *Australian Security Intelligence Organisation Act 1979*;
  - (b) section 34 of the *Inspector-General of Intelligence and Security Act 1986*;
  - (c) sections 39 to 41 of the *Intelligence Services Act 2001*;
  - (d) section 8WB of the *Taxation Administration Act 1953*;
  - (e) a provision of a law of the Commonwealth prescribed by rules made for the purposes of this paragraph under section 1270T;
  - (f) a provision of a law of the Commonwealth of a kind prescribed by rules made for the purposes of this paragraph under section 1270T.

**1270N Preventing disclosure of particular protected information**

- (1) If:
- (a) a person applies to the Registrar for particular protected information relating to the person not to be disclosed; and
  - (b) the Registrar is satisfied that it is not appropriate to disclose that information;
- a disclosure of that information is taken, for the purposes of this Act, not to be in accordance with the disclosure framework.
- (2) Without limiting section 1270K, the disclosure framework may provide for:
- (a) how applications referred to in paragraph (1)(a) are to be made; and
  - (b) how those applications are to be decided.

### **1270P Authorisation for purposes of Privacy Act**

A disclosure of personal information (within the meaning of the *Privacy Act 1988*) is taken to be authorised by law for the purposes of paragraph 6.2(b) of Schedule 1 to that Act if:

- (a) the information is protected information; and
- (b) the disclosure is authorised by subsection 1270L(3) of this Act.

### **1270Q Disclosure to a court**

A person is not to be required:

- (a) to produce to a court any document that:
  - (i) contains protected information; and
  - (ii) was made or given under, or for the purposes of, this Act; and
  - (iii) was obtained by the person in the course of the person's official employment; or
- (b) to disclose to a court any protected information that the person obtained in the course of the person's official employment;

unless the production or disclosure is necessary for the purpose of giving effect to a taxation law or an Australian business law.

## **Subdivision D—Miscellaneous**

### **1270R Extracts of information to be admissible in evidence**

- (1) In any proceedings, a document, or a copy of a document, that purports (irrespective of the form of wording used) to be an extract of information held by the Registrar under, or for the purposes of, this Act:
  - (a) is proof, in the absence of evidence to the contrary, of information that is stated in it and that purports to be held by the Registrar; and
  - (b) is admissible without any further proof of, or the production of, the original;

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if it does not appear to the Court to have been revised or tampered with in a way that affects, or is likely to affect, the information.

- (2) The Registrar may give a person a certified copy of, or extract from, the information held by the Registrar under, or for the purposes of, this Act on payment of the fee (if any) prescribed by rules made under section 1270T.
- (3) In any proceedings, the certified copy:
  - (a) is prima facie evidence of information that is stated in it and that purports to be held by the Registrar under, or for the purposes of, this Act; and
  - (b) is admissible without any further proof of, or the production of, the original.
- (4) This section does not limit the manner in which evidence may be adduced, or the admissibility of evidence, under the *Evidence Act 1995*.

**1270S Annual report**

Each annual report by the Registrar for a period must include information about the performance of the Registrar's functions and exercise of the Registrar's powers under, or for the purposes of, this Act during that period.

**1270T Rules**

- (1) The Minister may, by legislative instrument, make rules under this section prescribing matters:
  - (a) required or permitted by this Division to be prescribed by rules made under this section; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Division.
- (2) To avoid doubt, rules made under this section may not do the following:
  - (a) create an offence or civil penalty;

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- (b) provide powers of:
  - (i) arrest or detention; or
  - (ii) entry, search or seizure;
- (c) impose a tax;
- (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
- (e) directly amend the text of this Act.

## Division 2—Registers kept by ASIC

### 1274 Registers

- (1) ASIC must, subject to this Act, keep such registers as it considers necessary in such form as it thinks fit.
- (2) A person may:
  - (a) inspect any document lodged with ASIC, not being:
    - (iaa) a notice lodged under subsection 205D(3); or
    - (iab) information of the kind specified under subsection 1212(4) or 1213(4) (information included in, or accompanying, applications in relation to passport funds); or
    - (i) an application under section 1279 (application for registration as an auditor), or section 20-5 of Schedule 2 (application for registration as a liquidator); or
    - (ia) a document lodged under a provision of Chapter 7 (other than subsection 792C(1), section 1015B or section 1015D); or
    - (ii) a document lodged under section 1287 (notification of matters by registered auditors), 1287A (annual statements by registered auditors), 30-1 of Schedule 2 (annual liquidator returns) or 35-1 of Schedule 2 (notice of significant events); or
    - (iii) a document lodged under paragraph 1296(2)(b); or
    - (iv) a report made or lodged under section 422, 438D or 533, or regulation 5.5.05 of the *Corporations Regulations 2001*; or
    - (iva) an ESS offer document, an application form or any supporting information required under section 1100X lodged with ASIC in relation to an offer of ESS interests in a body corporate (the **issuing body corporate**), if the conditions set out in subsection (2AA) are satisfied; or
    - (ivb) an industry notice lodged under subsection 40-100(1) of Schedule 2; or

- (v) a document that has been destroyed or otherwise disposed of; or
- (b) require a certificate of the registration of a company or any other certificate authorised by this Act to be given by ASIC; or
- (c) require a copy of or extract from any document that the person is entitled to inspect pursuant to paragraph (a) or any certificate referred to in paragraph (b) to be given, or given and certified, by ASIC.

Note: This subsection applies in relation to CCIVs with modifications: see section 1242A.

(2AA) For the purposes of subparagraph (2)(a)(iva), the conditions are the following:

- (a) no equity interests in any of the following companies are listed for quotation in the official list of any approved stock exchange at the end of the issuing body corporate's most recent income year (the *pre-lodgement year*) before the income year in which the relevant document mentioned in subparagraph (2)(a)(iva) is lodged with ASIC:
  - (i) the issuing body corporate;
  - (ii) any subsidiary of the issuing body corporate at the end of the pre-lodgement year;
  - (iii) any holding company of the issuing body corporate at the end of the pre-lodgement year;
  - (iv) any subsidiary of a holding company of the issuing body corporate at the end of the pre-lodgement year;and
- (b) the issuing body corporate had an aggregated turnover not exceeding \$50 million for the pre-lodgement year.

(2AB) Subsection 83A-33(7) of the *Income Tax Assessment Act 1997* also applies for the purposes of subsection (2AA) of this section.

(2A) For the purposes of subsections (2) and (5), a document given to ASIC by a market operator (whether or not pursuant to a provision of this Act) that contains information that the market operator has

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made available to participants in the market is taken to be a document lodged with ASIC.

Note: For example, a document given to ASIC for the purposes of subsection 792C(1) will be covered by this subsection.

- (2B) For the purposes of subsections (2) and (5), information or a copy of a document that is not required to be lodged with ASIC because of section 601CDA or 601CTA is taken to be a document lodged with ASIC if an authority mentioned in the section has given the information or document to ASIC.
- (2C) For the purposes of subsections (2) and (5), information or a copy of a document that is taken to be lodged with ASIC because of paragraph 1200D(2)(b) or 1200G(10)(b) is taken to be a document lodged with ASIC if an authority mentioned in section 601CDA or 601CTA has given the information or document to ASIC.
- (2D) For the purposes of subsections (2) and (5), each of the following is taken to be a document lodged with ASIC if a copy has been given to ASIC by APRA:
- (a) benefit fund rules that have been approved by APRA under section 16L of the *Life Insurance Act 1995*;
  - (b) an amendment of benefit fund rules that has been approved by APRA under section 16Q of the *Life Insurance Act 1995*;
  - (c) consequential amendments of a company's constitution that have been approved by APRA under section 16U or 16V of the *Life Insurance Act 1995*.
- (3) If a reproduction or transparency of a document or certificate is produced for inspection, a person is not entitled pursuant to paragraph (2)(a) to require the production of the original of that document or certificate.
- (4) The reference in paragraph (2)(c) to a document or certificate includes, where a reproduction or transparency of that document or certificate has been incorporated with a register kept by ASIC, a reference to that reproduction or transparency and, where such a reproduction or transparency has been so incorporated, a person is



not entitled pursuant to that paragraph to a copy of or extract from the original of that document or certificate.

- (4A) A person is not entitled under paragraph (2)(a) to require the production of the original of a document or certificate if ASIC keeps by means of a mechanical, electronic or other device a record of information set out in the document or certificate and:
- (a) ASIC produces to the person for inspection a writing that sets out what purports to be the contents of the document or certificate; or
  - (b) ASIC causes to be displayed for the person what purports to be the contents of the document or certificate and, as at the time of the displaying, the person has not asked for the production of a writing of the kind referred to in paragraph (a).
- (4B) Where:
- (a) a person makes under paragraph (2)(c) a requirement that relates to a document or certificate; and
  - (b) ASIC keeps by means of a mechanical, electronic or other device a record of information set out in the document or certificate; and
  - (c) pursuant to that requirement, ASIC gives a writing or document that sets out what purports to be the contents of:
    - (i) the whole of the document or certificate; or
    - (ii) a part of the document or certificate;
- then, for the purposes of that paragraph, ASIC is taken to have given, pursuant to that requirement:
- (d) if subparagraph (c)(i) applies—a copy of the document or certificate; or
  - (e) if subparagraph (c)(ii) applies—an extract from the document or certificate setting out that part of it.
- (4C) Where:
- (a) the requirement referred to in paragraph (4B)(a) includes a requirement that the copy or extract be certified; and

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- (b) pursuant to that requirement, ASIC gives a writing or document as mentioned in paragraph (4B)(c);
- then:
- (c) ASIC may certify that the writing or document sets out the contents of the whole or part of the document or certificate, as the case requires; and
  - (d) the writing or document is, in a proceeding in a court, admissible as prima facie evidence of the information contained in it.
- (4D) ASIC may edit from a statement of affairs any information that ASIC is satisfied is commercial-in-confidence, before allowing a person to inspect the statement, or giving a copy or extract of the statement to a person, under subsection (2).
- (4E) A **statement of affairs** is a statement or report required to be prepared under one of the following provisions:
- (a) subsection 421A(1);
  - (b) paragraph 429(2)(b);
  - (c) subsection 438B(2);
  - (d) subsection 475(1) or (2);
  - (e) subsection 494(2);
  - (f) subsection 497(4).
- (4F) Information is **commercial-in confidence** if:
- (a) the disclosure of the information could unreasonably affect a person, or a business or action related to a person, in an adverse manner; and
  - (b) the information is not in the public domain; and
  - (c) the information is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and
  - (d) the information is not readily discoverable.
- (4G) Despite subsection (2), a person is not entitled to inspect, or to require a copy or an extract of, any information in a statement of affairs that has been edited from the statement under subsection (4D).

- (5) A copy of or extract from any document lodged with ASIC, and certified by ASIC, is, in any proceeding, admissible in evidence as of equal validity with the original document.

Note: See also subsection (2A) for when certain documents are taken to have been lodged with ASIC.

- (6) The reference in subsection (5) to a document includes, where a reproduction or transparency of that document has been incorporated with a register kept by ASIC, a reference to that reproduction or transparency.
- (7) In any proceeding:
- (a) a certificate by ASIC that, at a date or during a period specified in the certificate, no company was registered under this Act by a name specified in the certificate is to be received as prima facie evidence that at that date or during that period, as the case may be, no company was registered by that name under this Act; and
  - (b) a certificate by ASIC that a requirement of this Act specified in the certificate:
    - (i) had or had not been complied with at a date or within a period specified in the certificate; or
    - (ii) had been complied with at a date specified in the certificate but not before that date;is to be received as prima facie evidence of matters specified in the certificate; and
  - (c) a certificate by ASIC that, during a period specified in the certificate, a particular company was registered, or taken to be registered, under this Act is to be received as prima facie evidence that, during that period, that company was registered under this Act.
- (7A) A certificate issued by ASIC stating that a company has been registered under this Act is conclusive evidence that:
- (a) all requirements of this Act for its registration have been complied with; and

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- (b) the company was duly registered as a company under this Act on the date specified in the certificate.
- (8) If ASIC is of opinion that a document submitted for lodgment:
  - (a) contains matter contrary to law; or
  - (b) contains matter that, in a material particular, is false or misleading in the form or context in which it is included; or
  - (c) because of an omission or misdescription has not been duly completed; or
  - (d) contravenes this Act; or
  - (e) contains an error, alteration or erasure;ASIC may refuse to register or receive the document and may request:
  - (f) that the document be appropriately amended or completed and resubmitted; or
  - (g) that a fresh document be submitted in its place; or
  - (h) where the document has not been duly completed, that a supplementary document in the prescribed form be lodged.
- (9) ASIC may require a person who submits a document for lodgment to produce to ASIC such other document, or to give to ASIC such information, as ASIC thinks necessary in order to form an opinion whether it may refuse to receive or register the first-mentioned document.
- (10) ASIC may, if in the opinion of ASIC it is no longer necessary or desirable to retain them, destroy or dispose of:
  - (a) in relation to a body corporate:
    - (i) any return of allotment of shares for cash that has been lodged for not less than 2 years; or
    - (ii) any balance-sheet that has been lodged for not less than 7 years or any document creating or evidencing a charge, or the complete or partial satisfaction of a charge, where a memorandum of satisfaction of the charge has been registered for not less than 7 years; or

- (iii) any other document (other than the constitution or any other document affecting it) that has been lodged or registered for not less than 15 years; or
  - (c) any document a transparency of which has been incorporated with a register kept by ASIC.
- (11) If a body corporate or other person, having made default in complying with:
  - (a) any provision of this Act or of any other law that requires the lodging in any manner of any return, account or other document or the giving of notice to ASIC of any matter; or
  - (b) any request of ASIC to amend or complete and resubmit any document or to submit a fresh document;fails to make good the default within 14 days after the service on the body or person of a notice requiring it to be done, a court may, on an application by any member or creditor of the body or by ASIC, make an order directing the body or any officer of the body or the person to make good the default within such time as is specified in the order.
- (12) Any such order may provide that all costs of and incidental to the application are to be borne by the body or by any officers of the body responsible for the default or by the person.
- (13) A person must not contravene an order made under subsection (11).
- (14) Nothing in this section prejudices the operation of any law imposing penalties on a body corporate or its officers or on another person in respect of a default mentioned in subsection (11).
- (15) Where information about a person is included on a register kept by ASIC, ASIC may at any time, in writing, require that person to give ASIC specified information about the person, being information of the kind included on that register.
- (16) The person must provide the information within such reasonable period, and in such form, as are specified by ASIC.

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**Part 9.1** Matters relating to handling records and information

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- (17) An offence based on subsection (9), (13) or (16) is an offence of strict liability.

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

## **Division 3—Miscellaneous**

### **1274AA Register of disqualified company directors and other officers**

- (1) ASIC must keep a register of persons who have been disqualified from managing corporations under:
  - (a) section 206C, 206D, 206E, 206EAA, 206EAB, 206EA, 206EB, 206F or 206GAA of this Act; or
  - (b) a provision of a law of a State or Territory that:
    - (i) was in force at any time before the commencement of this Act; and
    - (ii) corresponds, in whole or in part, to one of the provisions referred to in paragraph (a).
- (2) The register must contain a copy of:
  - (a) every order made by the Court under section 206C, 206D or 206E; and
    - (aa) every court order referred to in section 206EA; and
    - (ab) every court order referred to in section 206EAA; and
  - (aba) every court order referred to in section 206EAB; and
  - (ac) every court order referred to in section 206EB; and
    - (b) every notice that was served under subsection 206F(3); and
    - (c) every notice that was served under subsection 206GAA(6); and
  - (ca) each permission given under section 206GAB; and
  - (d) every order lodged under subsection 206G(4); and
  - (e) every order, notice or permission that was made, served, given or lodged under a provision of a law of a State or Territory that:
    - (i) was in force at any time before the commencement of this Act; and
    - (ii) corresponds, in whole or in part, to one of the provisions referred to in paragraph (a), (b), (c) or (d).

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- (3) Subsections 1274(2) and (5) apply to a copy of an order, notice or permission referred to in subsection (2) as if that copy were a document lodged with ASIC.
- (4) A reference in this section to a provision of a law of a State or Territory includes a provision as applied as a law of that State or Territory.

**1274A Obtaining information from certain registers**

- (1) In this section:

*data processor* means a mechanical, electronic or other device for the processing of data.

*register* means a register kept by ASIC under this Act.

*search* includes inspect.

- (2) ASIC may permit a person to search, otherwise than by using a data processor, a prescribed register other than the Register of Relevant Providers.
- (3) ASIC may permit a person to search a prescribed register by using a data processor in order to obtain prescribed information from the register.
- (4) ASIC may make available to a person prescribed information (in the form of a document or otherwise) that ASIC has obtained from a prescribed register by using a data processor.
- (5) Nothing in this section limits:
  - (a) a power or function that ASIC has apart from this section; or
  - (b) a right that a person has apart from this section.

**1274B Use, in court proceedings, of information from ASIC's national database**

- (1) In this section:
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***data processor*** means a mechanical, electronic or other device for processing data.

- (2) In a proceeding in a court, a writing that purports to have been prepared by ASIC is admissible as prima facie evidence of the matters stated in so much of the writing as sets out what purports to be information obtained by ASIC, by using a data processor, from the national database. In other words, the writing is proof of such a matter in the absence of evidence to the contrary.
- (3) A writing need not bear a certificate or signature in order to be taken to purport to have been prepared by ASIC.
- (4) Nothing in this section limits, or is limited by, section 1274 or 1274A.

### **1274C ASIC certificate**

ASIC may certify that a person was a director or secretary of a company at a particular time or during a particular period. In the absence of evidence to the contrary, a certificate is proof of the matters stated in it.

Note: See section 1274B for the evidentiary status of documents prepared by ASIC from the national database.

### **1275 Relodging of lost registered documents**

- (1) Where a document forming part of the constitution of, or any other document relating to, a body corporate has, since being lodged, been lost or destroyed, a person may apply to ASIC for leave to lodge a copy of the document as originally lodged.
- (2) Where such an application is made, ASIC may direct that notice of the application be given to such persons and in such manner as it thinks fit.
- (3) Whether or not an application has been made to ASIC under subsection (1), ASIC, upon being satisfied:
  - (a) that an original document has been lost or destroyed; and

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- (b) of the date of the lodging of that document; and
  - (c) that a copy of that document produced to ASIC is a correct copy;  
may certify upon the copy that it is so satisfied and grant leave for the copy to be lodged in the manner required by law in respect of the original.
- (4) Upon the lodgment the copy has, and is taken to have had from such date as is mentioned in the certificate as the date of the lodging of the original, the same force and effect for all purposes as the original.
  - (5) A decision of the Tribunal varying or setting aside a decision of ASIC to certify and grant leave under subsection (3) may be lodged with ASIC and is to be registered by it, but no payments, contracts, dealings, acts or things made, had or done in good faith before the registration of the Tribunal's decision and upon the faith of and in reliance upon the certificate are to be invalidated or affected by the Tribunal's decision.
  - (6) Where a transparency of a document referred to in subsection (1) has been incorporated with a register kept by ASIC and is lost or destroyed as referred to in that subsection, this section applies as if the document of which it is a transparency had been so lost or destroyed.

## **Part 9.2—Registration of auditors**

### **Division 1—Interpretation**

#### **1276 Definitions**

In this Part, unless the contrary intention appears:

*body corporate* includes a Part 5.7 body.

*decision*, in relation to the Board, means, in Division 3, a decision of the Board under that Division and includes a refusal to exercise a power under section 1292.

*registered* means registered under Division 2.

## **Division 2—Registration**

### **1279 Application for registration as auditor**

- (1) A natural person may make an application to ASIC for registration as an auditor.
- (2) An application under this section:
  - (a) must be lodged with ASIC; and
  - (b) must contain such information as is prescribed in the regulations; and
  - (c) must be in the prescribed form.

### **1280 Registration of auditors**

- (2) Subject to this section, where an application for registration as an auditor is made under section 1279, ASIC must grant the application and register the applicant as an auditor if:
  - (a) the applicant satisfies subsection (2A) or (2B); and
  - (b) ASIC is satisfied that the applicant has either:
    - (i) satisfied all the components of an auditing competency standard approved by ASIC under section 1280A; or
    - (ii) had such practical experience in auditing as is prescribed; and
  - (c) ASIC is satisfied that the applicant is capable of performing the duties of an auditor and is otherwise a fit and proper person to be registered as an auditor;but otherwise ASIC must refuse the application.
- (2A) The applicant satisfies this subsection if the applicant:
  - (a) holds a degree, diploma or certificate from a prescribed university or another prescribed institution in Australia; and
  - (b) has, in the course of obtaining that degree, diploma or certificate, passed examinations in such subjects, under whatever name, as the appropriate authority of the university

or other institution certifies to ASIC to represent a course of study:

- (i) in accountancy (including auditing) of not less than 3 years duration; and
  - (ii) in commercial law (including company law) of not less than 2 years duration; and
- (c) has satisfactorily completed a course in auditing prescribed by the regulations for the purposes of this paragraph.
- (2B) The applicant satisfies this subsection if the applicant has other qualifications and experience that, in ASIC's opinion, are equivalent to the requirements mentioned in subsection (2A).
- (3) ASIC must not register as an auditor a person who is disqualified from managing corporations under Part 2D.6.
- (4) Subject to subsection (8), ASIC may refuse to register as an auditor a person who is not resident in Australia or New Zealand.
- (5) Where ASIC grants an application by a person for registration as an auditor, ASIC must cause to be issued to the person a certificate by ASIC stating that the person has been registered as an auditor and specifying the day on which the application was granted.
- (7) A registration under this section is taken to have taken effect at the beginning of the day specified in the certificate as the day on which the application for registration was granted and remains in force until:
- (a) the registration is cancelled by ASIC or the Board; or
  - (b) the person who is registered dies.
- (8) ASIC must not refuse to register a person as an auditor unless ASIC has given the person an opportunity to appear at a hearing before ASIC and to make submissions and give evidence to ASIC in relation to the matter.
- (9) Where ASIC refuses an application by a person for registration as an auditor, ASIC must, not later than 14 days after the decision,

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give to the person a notice in writing setting out the decision and the reasons for it.

**1280A Approval of auditing competency standard**

- (1) ASIC may, on application by any person, approve an auditing competency standard for the purposes of paragraph 1280(2)(b). The approval must be in writing.
- (2) If, on application by a person, ASIC approves an auditing competency standard under subsection (1), ASIC may, on application by that person, approve a variation of the standard. The approval must be in writing.
- (3) ASIC must not approve an auditing competency standard, or a variation of an auditing competency standard, unless it is satisfied that:
  - (a) the standard, or the standard as proposed to be varied, provides that a person's performance against each component of the standard is to be appropriately verified by a person who:
    - (i) is a registered company auditor; and
    - (ii) has sufficient personal knowledge of the person's work to be able to give that verification; and
  - (b) the standard, or the standard as proposed to be varied, is not inconsistent with this Act or any other law of the Commonwealth under which ASIC has regulatory responsibilities; and
  - (c) the standard adequately addresses the level of practical experience needed for registration as a company auditor; and
  - (d) the standard is harmonised to the greatest extent possible with other approved auditing competency standards.
- (4) ASIC may revoke an approval of an auditing competency standard:
  - (a) on application by the person who applied for the approval; or
  - (b) if ASIC is no longer satisfied as mentioned in subsection (3).The revocation must be in writing.

- (5) An approval, an approval of a variation, and a revocation of an approval, of an auditing competency standard are legislative instruments.

### **1281 Auditor-General taken to be registered as auditor**

- (1) A person who holds office as, or is for the time being exercising the powers and performing the duties of:
- (a) the Auditor-General; or
  - (b) the Auditor-General of a State or Territory in this jurisdiction;
- is taken, despite any other provision of this Part, to be registered as an auditor.
- (2) A person to whom the Auditor-General of the Commonwealth, or of a State or Territory, delegates:
- (a) the function of conducting an audit; or
  - (b) the power to conduct an audit;
- is taken to be registered as an auditor under this Part for the purposes of applying Chapter 2M to the audit.

### **1285 Register of Auditors**

- (1) ASIC must cause a Register of Auditors to be kept for the purposes of this Act and must cause to be entered in the Register in relation to a person who is registered as an auditor:
- (a) the name of the person; and
  - (b) the day on which the application by that person for registration as an auditor was granted; and
  - (c) the address of the principal place where the person practises as an auditor and the address of the other places (if any) at which he or she so practises; and
  - (d) if the person practises as an auditor as a member of a firm or under a name or style other than his or her own name—the name of that firm or the name or style under which he or she so practises; and

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- (e) particulars of any suspension of the person's registration, under Division 2, as an auditor and of any action taken in respect of the person under paragraph 1292(9)(a), (b) or (c); and may cause to be entered in the Register in relation to a person who is registered as an auditor such other particulars as ASIC considers appropriate.
- (2) Where a person ceases to be registered as an auditor, ASIC must cause to be removed from the Register of Auditors the name of the person and any other particulars entered in the Register in relation to that person.
- (3) A person may inspect and make copies of, or take extracts from, the Register of Auditors.

**1287 Notification of certain matters**

- (1) Where:
  - (a) a person who is a registered company auditor ceases to practise as an auditor; or
  - (b) a change occurs in any matter particulars of which are required by paragraph 1285(1)(a), (c) or (d) to be entered in the Register of Auditors in relation to a person who is a registered company auditor;the person must, not later than 21 days after the occurrence of the event concerned, lodge, in the prescribed form, particulars in writing of that event.
- (4) If a person who is registered as an auditor is disqualified from managing corporations under Part 2D.6, then, within a period of 3 days after they become disqualified, they must lodge written particulars in the prescribed form of the circumstances because of which they become disqualified.

**1287A Annual statements by registered company auditors**

- (1) A person who is a registered company auditor must, within one month after the end of:



- (a) the period of 12 months beginning on the day on which the person's registration begins; and
  - (b) each subsequent period of 12 months;
- lodge with ASIC a statement in respect of that period.
- (1A) A statement under subsection (1):
- (a) must contain such information as is prescribed in the regulations; and
  - (b) must be in the prescribed form.
- (2) ASIC may, on the application of the person made before the end of the period for lodging a statement under subsection (1), extend, or further extend, that period.

### **1289 Auditors and other persons to enjoy qualified privilege in certain circumstances**

#### *Qualified privilege for auditor*

- (1) An auditor has qualified privilege in respect of:
- (a) a statement that the auditor makes (orally or in writing) in the course of the auditor's duties as auditor; or
  - (b) a statement that the auditor makes (orally or in writing) on:
    - (i) a directors' report under section 298 or 306; or
    - (ii) a statement, report or other document that is taken, for any purpose, to be part of that report; or
  - (c) notifying ASIC of a matter under section 311; or
  - (d) a disclosure made by the auditor in response to a notice given to the auditor under subsection 30A(1) or 225A(5) of the ASIC Act.

Note: If the auditor is an audit company, the company has qualified privilege under this subsection in respect of statements made, and notices given, by individuals on behalf of the company if those statements and notices can be properly attributed to the company.

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*Qualified privilege for registered company auditor acting on behalf of audit company*

- (2) If the auditor is an audit company, a registered company auditor acting on behalf of the company has qualified privilege in respect of:
- (a) a statement that the registered company auditor makes (orally or in writing) in the course of the performance, on the behalf of the company, of the company's duties as auditor; or
  - (b) a statement that the registered company auditor makes (orally or in writing), on behalf of the company, on:
    - (i) a directors' report under section 298 or 306; or
    - (ii) any statement, report or other document that is taken, for any purpose, to be part of that report; or
  - (c) a notification of a matter that the registered company auditor gives ASIC, on behalf of the company, under section 311; or
  - (d) a disclosure made by the registered company auditor in response to a notice given to the audit company under subsection 225A(5) of the ASIC Act.

*Extent of auditor's duties—answering questions put to auditor by members*

- (3) For the purposes of this section, an auditor's duties as auditor include:
- (a) answering questions put to the auditor (or the auditor's representative) at an AGM; and
  - (b) providing answers to questions that are submitted to the auditor under section 250PA.

*Qualified privilege for person representing auditor at AGM*

- (4) A person who represents an auditor at an AGM has qualified privilege in respect of any statement that the person makes in the course of representing the auditor at that AGM.

*Qualified privilege for subsequent publication*

- (5) A person has qualified privilege in respect of the publishing of a document that:
- (a) is prepared by an auditor in the course of the auditor's duties;  
or
  - (b) required by or under this Act to be lodged (whether or not the document has been lodged).
- (6) A person has qualified privilege in respect of the publishing of any statement:
- (a) made by an auditor as mentioned in subsection (1); or
  - (b) made by a registered company auditor as mentioned in subsection (2); or
  - (c) made by a person as mentioned in subsection (4).

## **Division 2A—Conditions on registration of auditors**

### **1289A ASIC may impose conditions on registration**

- (1) Under this section, ASIC may impose only conditions of a kind specified in the regulations.
- (2) Subject to this section, ASIC may, at any time, by giving written notice to a person registered as an auditor:
  - (a) impose conditions, or additional conditions, on their registration; and
  - (b) vary or revoke conditions imposed on their registration.
- (3) ASIC may do so:
  - (a) on its own initiative; or
  - (b) if the registered company auditor lodges with ASIC an application for ASIC to do so, which is accompanied by the documents, if any, required by regulations made for the purposes of this paragraph.

Note: For fees in respect of lodging applications, see Part 9.10.

- (4) Except where conditions are varied on the application of the registered company auditor, ASIC may only impose conditions or additional conditions, or vary the conditions, on registration after giving the auditor an opportunity:
  - (a) to appear, or be represented, at a hearing before ASIC that takes place in private; and
  - (b) to make submissions to ASIC in relation to the matter.

This subsection does not apply to ASIC imposing conditions at the time when the applicant is registered.

## **Division 3—Cancellation or suspension of registration**

### **1290 Cancellation at request of registered person**

- (1) Where a person who is registered as an auditor requests ASIC to cancel his or her registration, ASIC may cancel the registration of that person as an auditor.
- (2) A decision of ASIC under subsection (1) to cancel the registration of a person as an auditor comes into effect as soon as practicable upon the making of the decision.

### **1291 Immediate suspension or cancellation**

ASIC may cancel or suspend a person's registration as an auditor if:

- (a) the person is liable to pay levy imposed by the *ASIC Supervisory Cost Recovery Levy Act 2017*; and
- (b) the following have not been paid in full at least 12 months after the due date for payment:
  - (i) an amount of levy (if any) payable in respect of the person;
  - (ii) an amount of late payment penalty payable (if any) in relation to the levy;
  - (iii) an amount of shortfall penalty payable (if any) in relation to the levy.

Note: See section 1298 for the effect of suspension.

### **1291A Notice of suspension or cancellation**

*Application of this section*

- (1) This section applies if ASIC decides under section 1291 to suspend or cancel the registration of a person as an auditor.

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*ASIC must give notice of decision*

- (2) ASIC must, within 10 business days after making the decision, give a written notice setting out the decision, and the reasons for the decision.

*When decision comes into effect*

- (3) The decision comes into effect on the day after the notice is given to the person.

*Failure to give notice does not affect validity of decision*

- (4) A failure by ASIC to give the notice under subsection (2) within 10 business days does not affect the validity of the decision.

**1291B ASIC may vary or revoke suspension**

- (1) This section applies if ASIC has suspended the registration of a person as an auditor under section 1291.
- (2) ASIC may at any time vary or revoke the suspension by giving written notice to the person.

**1292 Powers of Board in relation to auditors**

- (1) The Board may, if it is satisfied on an application by ASIC or APRA for a person who is registered as an auditor to be dealt with under this section that, before, at or after the commencement of this section:
- (a) the person has:
    - (ia) contravened section 324DB; or
    - (i) contravened section 1287A; or
    - (ia) failed to comply with a condition of the person's registration as an auditor; or
    - (ii) ceased to be resident in Australia or New Zealand; or
  - (b) the person either:

- (i) has not performed any audit work during a continuous period of not less than 5 years; or
  - (ii) has not performed any significant audit work during a continuous period of not less than 5 years;
- and, as a result, has ceased to have the practical experience necessary for carrying out audits for the purposes of this Act; or
- (d) the person has failed, whether in or outside this jurisdiction, to carry out or perform adequately and properly:
    - (i) the duties of an auditor; or
    - (ii) any duties or functions required by an Australian law to be carried out or performed by a registered company auditor;or is otherwise not a fit and proper person to remain registered as an auditor;
- by order, cancel, or suspend for a specified period, the registration of the person as an auditor.
- (1A) In determining for the purposes of subparagraph (1)(b)(ii) whether audit work performed by a person is significant, have regard to:
- (a) the nature of the audit; and
  - (b) the extent to which the person was involved in the audit; and
  - (c) the level of responsibility the person assumed in relation to the audit.
- (7) The Board must, if it is satisfied on an application by ASIC or APRA for a person who is registered as an auditor to be dealt with under this section:
- (a) that the person is disqualified from managing corporations under Part 2D.6; or
  - (b) that the person is incapable, because of mental infirmity, of managing his or her affairs;
- by order, cancel the registration of the person as an auditor.
- (9) Where, on an application by ASIC or APRA for a person who is registered as an auditor to be dealt with under this section, the Board is satisfied that the person has failed to carry out or perform

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adequately and properly any of the duties or functions mentioned in paragraph (1)(d), or is otherwise not a fit and proper person to remain registered as an auditor the Board may deal with the person in one or more of the following ways:

- (a) by admonishing or reprimanding the person;
- (b) by requiring the person to give an undertaking to engage in, or to refrain from engaging in, specified conduct;
- (c) by requiring the person to give an undertaking to refrain from engaging in specified conduct except on specified conditions;

and, if a person fails to give an undertaking when required to do so under paragraph (b) or (c), or contravenes an undertaking given pursuant to a requirement under that paragraph, the Board may, by order, cancel, or suspend for a specified period, the registration of the person as an auditor.

- (10) The Board's powers under subsection (9) may be exercised in addition to, or in substitution for, the exercise of the Board's powers to cancel or suspend a registration under subsection (1).
- (11) The Board may exercise any of its powers under this Division in relation to a person as a result of conduct engaged in by the person whether or not that conduct constituted or might have constituted an offence, and whether or not any proceedings have been brought or are to be brought in relation to that conduct.
- (12) This section has effect subject to section 1294.

**1294 Board to give opportunity for hearing etc.**

- (1) The Board must not:
  - (a) cancel or suspend the registration of a person as an auditor; or
  - (b) deal with a person in any of the ways mentioned in subsection 1292(9);

unless the Board has given the person an opportunity to appear at a hearing held by the Board and to make submissions to, and adduce evidence before, the Board in relation to the matter.



- (2) Where subsection (1) requires the Board to give a person an opportunity to appear at a hearing and to make submissions to, and bring evidence before, the Board in relation to a matter, the Board must give ASIC and APRA an opportunity to appear at the hearing and to make submissions to, and bring evidence before, the Board in relation to the matter.

#### **1294A Pre-hearing conference**

- (1) If subsection 1294(1) requires the Board to give a person an opportunity to appear at a hearing and to make submissions to, and bring evidence before, the Board in relation to a matter, the Chairperson of the Board may, if he or she considers that it would assist in the conduct of the hearing to do so, convene one or more conferences with the person.
- (2) The Chairperson of the Board may allow any of the following persons to attend a conference:
- (a) a representative of ASIC;
  - (b) a representative of APRA;
  - (c) any other person.
- (3) The Chairperson of the Board must give written notice of a conference to ASIC and APRA at least 14 days before the conference.
- (4) At a conference, the Chairperson of the Board may, on behalf of the Board:
- (a) fix a date or dates for the hearing; and
  - (b) give directions about the time within which submissions are to be made to the Board in relation to the matter; and
  - (c) give directions about the time within which evidence is to be brought before the Board in relation to the matter; and
  - (d) give directions as to the procedure to be followed at or in connection with the hearing.

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**1295 Board may remove suspension**

- (1) Where a registration of a person as an auditor is suspended by the Board, the Board may, on an application by the person or of its own motion, by order, terminate the suspension.
- (2) An order under subsection (1) has effect accordingly.

**1296 Notice of Board's decision**

- (1) Where the Board decides to exercise any of its powers under section 1292 in relation to a person, or decides that it is required to make an order under subsection 1292(7) in relation to a person, the Board must, within 14 days after the decision:
  - (a) give to the person a notice in writing setting out the decision and the reasons for it; and
  - (b) lodge a copy of the notice referred to in paragraph (a); and
  - (c) cause to be published in the *Gazette* a notice in writing setting out the decision.
- (1A) If:
  - (a) the Board decides to exercise the power, or makes the order, on the basis of particular conduct engaged in by the person; and
  - (b) the person engaged in that conduct in the course of participating in the conduct of an audit on behalf of an audit firm or audit company;the notice under paragraph (1)(c) may identify the audit firm or audit company.
- (1B) If the Board:
  - (a) decides to exercise any of its powers under section 1292 in relation to a person; or
  - (b) decides that it is required to make an order under subsection 1292(7) in relation to a person;then, in addition to meeting the requirements of subsection (1), the Board may take such steps as it considers reasonable and appropriate to publicise:

- (c) the decision; and
- (d) the reasons for the decision.

Without limiting this, the Board may make the decision and reasons available on the internet.

(1C) If:

- (a) the Board decides to exercise the power under section 1292, or makes the order under subsection 1292(7), on the basis of particular conduct engaged in by the person; and
- (b) the person engaged in that conduct in the course of participating in the conduct of an audit on behalf of an audit firm or audit company;

a publication under subsection (1B) may identify the audit firm or audit company.

- (2) Where the Board decides to refuse to exercise its powers under section 1292 in relation to a person, or decides that it is not required to make an order under subsection 1292(7) in relation to a person, the Board must, within 14 days after the decision:
  - (a) give to the person a notice in writing setting out the decision and the reasons for it; and
  - (b) lodge a copy of the notice referred to in paragraph (a).
- (3) The validity of a decision of the Board is not affected by failure of the Board to comply with subsection (1) or (2), as the case requires, in relation to the decision.

### **1297 Time when Board's decision comes into effect**

- (1) Subject to subsection (2) and to sections 41 and 44A of the *Administrative Appeals Tribunal Act 1975*, an order made by the Board cancelling or suspending the registration of a person as an auditor comes into effect:
  - (a) at the end of the day on which there is given to the person a paragraph 1296(1)(a) notice of the decision pursuant to which the order is made; or
  - (b) at the end of such longer period (not exceeding 90 days) as the Board determines.

**Chapter 9** Miscellaneous

**Part 9.2** Registration of auditors

**Division 3** Cancellation or suspension of registration

**Section 1298**

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- (2) Where the Board makes an order of a kind referred to in subsection (1), it may, in order to enable an application to be made to the Tribunal for review of the decision to make the order, determine that the order is not to come into effect until a specified time or until the happening of a specified event.
- (3) The Board may at any time vary or revoke a determination made under subsection (2), including such a determination that has been varied at least once before.
- (4) A determination in force under subsection (2) has effect accordingly.

**1298 Effect of suspension**

A person whose registration as an auditor is suspended is, except for the purposes of subsection 1285(2), section 1287 (other than paragraph 1287(1)(a)), section 1287A and this Division, taken not to be registered as an auditor so long as the registration is suspended.

## **Division 4—Validation of approval of auditing competency standard**

### **1298P Validation of approval of auditing competency standard**

- (1) This section applies, for the purposes of the laws of the Commonwealth (including this Act), in relation to the approval dated 24 November 2004 under section 1280A of an auditing competency standard (whether or not the approval is in force when this section commences).
- (2) The *Legislation Act 2003* has effect, and is taken always to have had effect, as if:
  - (a) the approval had been lodged for registration immediately after the approval was given; and
  - (b) the approval had been registered immediately after it was lodged for registration; and
  - (c) any other requirement imposed by that Act in relation to the approval had been met.
- (3) However, this section does not affect rights or liabilities arising between parties to proceedings heard and finally determined by a court on or before the commencement of this section, to the extent that those rights or liabilities arose from, or were affected by, the approval.

#### *Definitions*

- (4) In this section:

*lodge* has the same meaning as in the *Legislation Act 2003*.

*register* has the same meaning as in the *Legislation Act 2003*.

### **1298Q Compensation for acquisition of property**

- (1) If the operation of section 1298P would result in an acquisition of property from a person otherwise than on just terms, the

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Commonwealth is liable to pay a reasonable amount of compensation to the person.

- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) To avoid doubt, this section applies in relation to the operation of section 1298P instead of section 1350.
- (4) In this section:

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

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

## **Part 9.2A—Authorised audit companies**

### **Division 1—Registration**

#### **1299A Application for registration as authorised audit company**

- (1) A company may apply to ASIC for registration as an authorised audit company.
- (2) An application under this section:
  - (a) must contain such information as is prescribed in the regulations; and
  - (b) must be in the prescribed form.

#### **1299B Eligibility for registration as an authorised audit company**

A company is eligible to be registered as an authorised audit company if and only if:

- (a) each of the directors of the company:
  - (i) is a registered company auditor; and
  - (ii) is not disqualified from managing a corporation under Part 2D.6; and
- (b) each share in the company is held and beneficially owned by a person who is:
  - (i) an individual; or
  - (ii) the legal personal representatives of an individual; and
- (c) a majority of the votes that may be cast at a general meeting of the company attach to shares in the company that are held and beneficially owned by individuals who are registered company auditors; and
- (d) ASIC is satisfied that the company has adequate and appropriate professional indemnity insurance for claims that may be made against the company in relation to the audit of companies and registered schemes for the purposes of this Act; and

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- (e) the company is not a Chapter 5 body corporate.

**1299C Registration as authorised audit company**

- (1) ASIC must grant the application and register the company as an authorised audit company if the company is eligible to be registered as an authorised audit company. Otherwise ASIC must refuse the application.
- (2) If ASIC grants the company's application, ASIC must issue to the company a certificate by ASIC stating that the company has been registered as an authorised audit company and specifying the day on which the application was granted.
- (3) The company's registration under this section takes effect at the beginning of the day specified in the certificate as the day on which the application for registration was granted and remains in force until:
  - (a) the registration is cancelled by ASIC; or
  - (b) the company is wound up.
- (4) ASIC must not refuse to register the company as an authorised audit company unless ASIC has given the company an opportunity to be represented at a hearing before ASIC and to make submissions and give evidence to ASIC in relation to the matter.
- (5) If ASIC refuses the company's application, ASIC must, not later than 14 days after the decision, give to the company a notice in writing setting out the decision and the reasons for it.

**1299D Registration may be subject to conditions**

- (1) The company's registration as an authorised audit company is subject to:
  - (a) the provisions of this Part; and
  - (b) the conditions or restrictions specified in the regulations; and
  - (c) any other conditions or restrictions determined by ASIC.



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- (2) ASIC may determine conditions or restrictions for the purposes of paragraph (1)(c) either at the time when the company is registered as an authorised audit company or subsequently.
- (3) ASIC determines a condition or restriction by written notice to the company.

**1299E Register of authorised audit companies**

- (1) ASIC must keep a Register of Authorised Audit Companies for the purposes of this Act.
- (2) In relation to each authorised audit company, ASIC must enter in the Register:
  - (a) the name of the company; and
  - (b) the company's ACN or ABN; and
  - (c) the day on which the company's registration under section 1299C took effect; and
  - (d) the address of the company's registered office; and
  - (e) the address of the principal place where the company practises as an auditor and the address of the other places (if any) at which the company so practises; and
  - (f) the name and address of:
    - (i) each director of the company; and
    - (ii) each person who performs a chief executive officer function (within the meaning of section 295A) in relation to the company; and
  - (g) the details of any conditions or restrictions determined under paragraph 1299D(1)(c) in relation to the registration; and
  - (h) details of any suspension of the registration.
- (3) ASIC may enter in the Register in relation to the company any other details that ASIC considers appropriate.
- (4) If a company ceases to be registered as an authorised audit company, ASIC must remove the entry in relation to the company from the Register.

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- (5) A person may inspect and make copies of, or take extracts from, the Register.

**1299F Notification of certain matters**

- (1) An authorised audit company must notify ASIC if a condition or restriction to which the company's registration is subject is contravened.
- (2) The notice under subsection (1) must:
- (a) set out details of the contravention; and
  - (b) be given within 14 days after the company becomes aware of the contravention; and
  - (c) be lodged with ASIC in the prescribed form.
- (3) An authorised audit company must notify ASIC if:
- (a) details of a matter are required by subsection 1299E(2) to be entered in the Register of Authorised Audit Companies in relation to the company; and
  - (b) a change occurs in that matter while the company is registered as an authorised audit company.
- (4) The notice under subsection (3) must:
- (a) set out details of the change; and
  - (b) be given within 28 days after the change occurs; and
  - (c) be lodged with ASIC in the prescribed form.
- (5) A company that applies for registration as an authorised audit company must notify ASIC if:
- (a) details of a matter would be required by subsection 1299E(2) to be entered in the Register of Authorised Audit Companies in relation to the company if it were to be registered; and
  - (b) a change occurs in that matter before the application is granted or rejected.
- (6) The notice under subsection (5) must:
- (a) set out details of the change; and
  - (b) be given within 28 days after the change occurs; and
-

(c) be lodged with ASIC in the prescribed form.

**1299G Annual statements by authorised audit company**

- (1) A company that is an authorised audit company must, within one month after the end of:
  - (a) the period of 12 months beginning on the day on which the company became registered as an authorised audit company; and
  - (b) each subsequent period of 12 months;lodge with ASIC a statement in respect of that period.
- (1A) A statement under subsection (1):
  - (a) must contain such information as is prescribed in the regulations; and
  - (b) must be in the prescribed form.
- (2) ASIC may, on the application of an authorised audit company made before the end of the period for lodging a statement under subsection (1), extend, or further extend, that period.
- (3) An offence based on subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- (4) A director of a company must take all reasonable steps to comply with, or to secure compliance with, subsection (1).

## Division 2—Cancellation or suspension of registration

### 1299H Cancellation at request of registered person

- (1) ASIC may cancel a company's registration as an authorised audit company if the company requests ASIC to cancel the registration.
- (2) ASIC must take the steps necessary to cancel the registration as soon as practicable after the request is made.

### 1299I Cancellation or suspension in other cases

ASIC may cancel or suspend a company's registration as an authorised audit company if:

- (a) the company ceases to be eligible to be registered as an authorised audit company; or
- (b) the company fails to meet conditions or observe restrictions imposed on the company's registration as an authorised audit company; or
- (c) in the case of a company that is a leviable entity (within the meaning of the *ASIC Supervisory Cost Recovery Levy Act 2017*)—the following have not been paid in full at least 12 months after the due date for payment:
  - (i) an amount of levy (if any) payable in respect of the company;
  - (ii) an amount of late payment penalty payable (if any) in relation to the levy;
  - (iii) an amount of shortfall penalty payable (if any) in relation to the levy.

Note: See section 1299K for when the cancellation takes effect.

### 1299J Notice of cancellation or suspension

- (1) If ASIC decides to cancel or suspend a company's registration as an authorised audit company under section 1299I, ASIC must, within 14 days after the decision:

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- (a) give to the company written notice setting out the decision and the reasons for it; and
  - (b) publish written notice of the decision in the *Gazette*.
- (2) The validity of a decision by ASIC is not affected by a failure by ASIC to comply with subsection (1) in relation to the decision.

**1299K Time when ASIC's decision comes into effect**

- (1) A decision by ASIC to cancel or suspend a company's registration as an authorised audit company comes into effect at the end of the day on which the company is given notice of the decision under paragraph 1299J(1)(a). This subsection has effect subject to subsection (2) and to sections 41 and 44A of the *Administrative Appeals Tribunal Act 1975*.
- (2) ASIC may, in order to enable an application to be made to the Tribunal for review of the decision to cancel or suspend the registration, determine that the decision to cancel or suspend the company's registration as an authorised audit company is not to come into effect until:
- (a) a specified time; or
  - (b) the happening of a specified event.
- (3) ASIC may at any time vary or revoke a determination made under subsection (2), including such a determination that has been varied at least once before.
- (4) A determination in force under subsection (2) has effect accordingly.

**1299L Effect of suspension**

A company whose registration as an authorised audit company is suspended is, except for the purposes of subsection 1299E(4), sections 1299F and 1299G and this Division, taken not to be registered as an authorised audit company so long as the registration is suspended.

**Chapter 9** Miscellaneous

**Part 9.2A** Authorised audit companies

**Division 2** Cancellation or suspension of registration

Section 1299M

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**1299M Effect of cancellation**

If a company's registration as an authorised audit company is cancelled (whether under section 1299H or 1299I), each appointment of the company as auditor for a company or registered scheme for the purposes of this Act that is in force on the day on which the cancellation decision takes effect is terminated at the end of that day.

Note: This means that the authorised audit company ceases to be auditor without resigning and that the position of auditor for the company or scheme will immediately become vacant unless there is another auditor who has been appointed, and who can continue to act, as auditor for the company or registered scheme.

## Part 9.3—Books

### 1300 Inspection of books

- (1) A book that is by this Act required to be available for inspection must, subject to and in accordance with this Act, be available for inspection at the place where, in accordance with this Act, it is kept and at all times when the registered office in this jurisdiction of the body corporate concerned is required to be open to the public.
- (2) If any register kept by a company or a foreign company for the purposes of this Act is kept at a place other than the registered office of the company or foreign company, that place must be open to permit the register to be inspected during the same hours as those during which the registered office of the company or foreign company is required to be open to the public.
- (2A) If a person asks a proprietary company in writing to inspect a particular book of the company that the person has a right to inspect, the company must make it available within 7 days, for inspection by the person at the place where it is required to be kept.  

Note: This section applies to a CCIV as if the CCIV were a proprietary company: see section 1242B.
- (2B) An offence based on subsection (2A) is an offence of strict liability.  

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- (3) A person permitted by this Act (other than section 70-30 of Schedule 2) to inspect a book may make copies of, or take extracts from, the book and any person who refuses or fails to allow a person so permitted to make a copy of, or take an extract from, the book is guilty of an offence.  

Note: Section 70-30 of Schedule 2 is about books relating to an external administration.
- (4) An offence based on subsection (3) is an offence of strict liability.

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

### *Books relating to notified foreign passport funds*

- (5) Subsection (1) does not apply in relation to the books of the operator of a notified foreign passport fund that relate to the fund, or the books of a notified foreign passport fund.
- (6) If a book of that kind is by this Act required to be available for inspection, it must, subject to and in accordance with this Act, be available for inspection:
  - (a) at the registered office in this jurisdiction of the operator of the fund; and
  - (b) at all times when that office is open to the public.

### **1301 Location of books on computers**

- (1) This section applies if:
  - (a) a corporation records, otherwise than in writing, matters (*the stored matters*) this Act requires to be contained in a book; and
  - (b) the record of the stored matters is kept at a place (*the place of storage*) other than the place (*the place of inspection*) where the book is, apart from this section, required to be kept; and
  - (c) at the place of inspection means are provided by which the stored matters are made available for inspection in written form; and
  - (d) the corporation has lodged a notice:
    - (i) stating that this section is to apply in respect of:
      - (A) except where sub-subparagraph (B) applies—the book; or
      - (B) if the stored matters are only some of the information that is required to be contained in the book—the book and matters that are of the same kind as the stored matters; and
    - (ii) specifying the situation of the place of storage and the place of inspection.



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- (2) Subject to subsection (4), the corporation is taken to have complied with the requirements of this Act as to the location of the book, but only in so far as the book is required to contain the stored matters.
- (3) Subject to subsection (4), for the purposes of the application of subsection 1085(3) and section 1300 in relation to the corporation and the book, the book is taken to be kept at the place of inspection, even though the record of the stored matters is kept at the place of storage.
- (4) If:
  - (a) the situation of the place of storage or the place of inspection changes; and
  - (b) the corporation does not lodge notice of the change within 14 days after the change;this section, as it applies to the corporation because of the lodging of the notice referred to in paragraph (1)(d), ceases to so apply at the end of that period of 14 days.

### **1303 Court may compel compliance**

If any person in contravention of this Act refuses to permit the inspection of any book or to supply a copy of any book, the Court may by order compel an immediate inspection of the book or order the copy to be supplied.

### **1304 Translations of instruments**

- (1) Where under this Act a person is required to lodge an instrument or a certified copy of an instrument and the instrument is not written in English, the person must lodge at the same time a certified translation of the instrument into English.
- (2) Where under this Act a body corporate is required to make an instrument available for inspection and the instrument is not written in English, the body corporate must keep at its registered office or, if it does not have a registered office, at its principal office in this jurisdiction, a certified translation of the instrument into English.

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- (3) In this section, *instrument* includes any certificate, contract or other document.

### 1305 Admissibility of books in evidence

- (1) A book kept by a body corporate under a requirement of this Act is admissible in evidence in any proceeding and is prima facie evidence of any matter stated or recorded in the book.
- (2) A document purporting to be a book kept by a body corporate is, unless the contrary is proved, taken to be a book kept as mentioned in subsection (1).

### 1306 Form and evidentiary value of books

- (1) A book that is required by this Act to be kept or prepared may be kept or prepared:
- (a) by making entries in a bound or looseleaf book; or
  - (b) by recording or storing the matters concerned by means of a mechanical, electronic or other device; or
  - (c) in any other manner approved by ASIC.
- (2) Subsection (1) does not authorise a book to be kept or prepared by a mechanical, electronic or other device unless:
- (a) the matters recorded or stored will be capable, at any time, of being reproduced in a written form; or
  - (b) a reproduction of those matters is kept in a written form approved by ASIC.
- (3) A corporation must take all reasonable precautions, including such precautions (if any) as are prescribed, for guarding against damage to, destruction of or falsification of or in, and for discovery of falsification of or in, any book or part of a book required by this Act to be kept or prepared by the corporation.
- (4) Where a corporation records or stores any matters by means of a mechanical, electronic or other device, any duty imposed by this Act to make a book containing those matters available for inspection or to provide copies of the whole or a part of a book

containing those matters is to be construed as a duty to make the matters available for inspection in written form or to provide a document containing a clear reproduction in writing of the whole or part of them, as the case may be.

- (4A) The regulations may provide for how up to date the information contained in an instrument prepared for the purposes of subsection (4) must be.
- (5) If:
- (a) because of this Act, a book that this Act requires to be kept or prepared is prima facie evidence of a matter; and
  - (b) the book, or a part of the book, is kept or prepared by recording or storing matters (including that matter) by means of a mechanical, electronic or other device;
- a written reproduction of that matter as so recorded or stored is prima facie evidence of that matter.
- (6) A writing that purports to reproduce a matter recorded or stored by means of a mechanical, electronic or other device is, unless the contrary is established, taken to be a reproduction of that matter.

### **1307 Falsification of books**

- (1) An officer, former officer, employee, former employee, member or former member of a company who engages in conduct that results in the concealment, destruction, mutilation or falsification of any securities of or belonging to the company or any books affecting or relating to affairs of the company is guilty of an offence.

Note: This subsection applies in relation to CCIVs with modifications: see section 1242C.

- (2) Where matter that is used or intended to be used in connection with the keeping of any books affecting or relating to affairs of a company is recorded or stored in an illegible form by means of a mechanical device, an electronic device or any other device, a person who:

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- (a) records or stores by means of that device matter that the person knows to be false or misleading in a material particular; or
  - (b) engages in conduct that results in the destruction, removal or falsification of matter that is recorded or stored by means of that device, or has been prepared for the purpose of being recorded or stored, or for use in compiling or recovering other matter to be recorded or stored by means of that device; or
  - (c) having a duty to record or store matter by means of that device, fails to record or store the matter by means of that device:
    - (i) with intent to falsify any entry made or intended to be compiled, wholly or in part, from matter so recorded or stored; or
    - (ii) knowing that the failure so to record or store the matter will render false or misleading in a material particular other matter so recorded or stored;
- contravenes this subsection.
- (3) It is a defence to a charge arising under subsection (1) or (2) if the defendant proves that he, she or it acted honestly and that in all the circumstances the act or omission constituting the offence should be excused.

Note: A defendant bears a legal burden in relation to the matter mentioned in subsection (3), see section 13.4 of the *Criminal Code*.

## **Part 9.4—Offences**

### **Division 1A—Application of the Criminal Code**

#### **1308A Application of *Criminal Code***

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

## Division 1—Specific offences

### 1308B False or misleading statements about share capital

- (1) A corporation must not advertise or publish:
  - (a) a statement of the amount of its capital that is misleading; or
  - (b) a statement in which the total of all amounts paid and unpaid on shares in the company is stated but the amount of paid up capital or the amount of any charge on uncalled capital is not stated.
- (2) An offence based on subsection (1) is an offence of strict liability.

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

### 1308 False or misleading documents

#### *Fault-based offence*

- (1) A person commits an offence if:
  - (a) a document:
    - (i) is required under or for the purposes of this Act; or
    - (ii) is lodged with or submitted to ASIC or the Registrar; and
  - (b) the person:
    - (i) makes, or authorises the making of, a statement in the document; or
    - (ii) omits, or authorises the omission of, a matter or thing from the document; and
  - (c) the person knows that the document is materially false or misleading because of the statement or omission.

Note: For when a document is *materially false or misleading*, see subsection (6).

- (2) A person is not liable to be proceeded against for an offence in consequence of a regulation made under section 1364 as well as for an offence against subsection (1) of this section.

*Strict liability offence—failure to take reasonable steps*

- (3) A person commits an offence of strict liability if:
- (a) a document:
    - (i) is required under or for the purposes of this Act; or
    - (ii) is lodged with or submitted to ASIC or the Registrar; and
  - (b) the person:
    - (i) makes, or authorises the making of, a statement in the document; or
    - (ii) omits, or authorises the omission of, a matter or thing from the document; and
  - (c) the document is materially false or misleading because of the statement or omission; and
  - (d) the person did not take all reasonable steps to ensure that the document was not materially false or misleading because of the statement or omission.

Note 1: For when a document is *materially false or misleading*, see subsection (6).

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

*Civil penalty—knowledge or recklessness*

- (4) A person contravenes this subsection if:
- (a) a document:
    - (i) is required under or for the purposes of this Act; or
    - (ii) is lodged with or submitted to ASIC or the Registrar; and
  - (b) the person:
    - (i) makes, or authorises the making of, a statement in the document; or
    - (ii) omits, or authorises the omission of, a matter or thing from the document; and
  - (c) the person knows that, or is reckless as to whether, the document is materially false or misleading because of the statement or omission.

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Note 1: For when a document is *materially false or misleading*, see subsection (6).

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

*Civil penalty—failure to take reasonable steps*

- (5) A person contravenes this subsection if:
- (a) a document:
    - (i) is required under or for the purposes of this Act; or
    - (ii) is lodged with or submitted to ASIC or the Registrar; and
  - (b) the person:
    - (i) makes, or authorises the making of, a statement in a document; or
    - (ii) omits, or authorises the omission of, a matter or thing from a document; and
  - (c) the document is materially false or misleading because of the statement or omission; and
  - (d) the person did not take all reasonable steps to ensure that the document was not materially false or misleading because of the statement or omission.

Note 1: For when a document is *materially false or misleading*, see subsection (6).

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

*When a document is materially false or misleading*

- (6) For the purposes of this section, a document is *materially false or misleading* if:
- (a) the document includes a statement that:
    - (i) is false in a material particular or materially misleading; or
    - (ii) is based on information that is false in a material particular or materially misleading, or has omitted from it a matter or thing the omission of which renders the document materially misleading; or



- (b) a matter or thing is omitted from the document and, without the matter or thing, the document is false in a material particular or materially misleading.

*Other interpretive provisions*

- (7) For the purposes of this section, a person who votes in favour of a resolution approving, or who otherwise approves, a document is taken to have authorised:
  - (a) the making of any statement in the document; and
  - (b) the omission of any matter or thing from the document.
- (8) For the purposes of this section, a statement, report or other document that:
  - (a) relates to affairs of a company or of a subsidiary of a company; and
  - (b) is attached to or included with a report of the directors provided under section 314 to members of the company or laid before the company at an annual general meeting of the company;is taken to be part of the report referred to in paragraph (b) of this subsection, even if it is not otherwise required by this Act to be laid before the company in general meeting.
- (9) For the purposes of this section:
  - (a) a notice under subsection 708AA(2), 708A(5), 1012DAA(2) or 1012DA(5) is taken to be a notice required for the purposes of this Act; and
  - (b) a notice under subsection 708AA(2), 708A(5), 1012DAA(2) or 1012DA(5) is taken to be misleading in a material respect if it fails to comply with paragraph 708AA(7)(d), 708A(6)(e), 1012DAA(7)(e) or 1012DA(6)(f).

**1309 False information etc.**

- (1) An officer or employee of a corporation who makes available or gives information, or authorises or permits the making available or giving of information, to:
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- (a) a director, auditor, member, debenture holder or trustee for debenture holders of the corporation; or
- (b) if the corporation is taken for the purposes of Chapter 2M to be controlled by another corporation—an auditor of the other corporation; or
- (c) an operator of a financial market (whether the market is operated in Australia or elsewhere) or an officer of such a market; or
- (ca) a CSF intermediary;

being information, whether in documentary or any other form, that relates to the affairs of the corporation and that, to the knowledge of the officer or employee:

- (d) is false or misleading in a material particular; or
- (e) has omitted from it a matter or thing the omission of which renders the information misleading in a material respect;

contravenes this subsection.

Note: This subsection applies in relation to CCIVs with modifications: see section 1242D.

- (2) An officer or employee of a corporation who makes available or gives information, or authorises or permits the making available or giving of information, to:
  - (a) a director, auditor, member, debenture holder or trustee for debenture holders of the corporation; or
  - (b) if the corporation is taken for the purposes of Chapter 2M to be controlled by another corporation—an auditor of the other corporation; or
  - (c) an operator of a financial market (whether the market is operated in Australia or elsewhere) or an officer of such a market;being information, whether in documentary or any other form, relating to the affairs of the corporation that:
  - (d) is false or misleading in a material particular; or

- (e) has omitted from it a matter or thing the omission of which renders the information misleading in a material respect; without having taken reasonable steps to ensure that the information:
- (f) was not false or misleading in a material particular; and
- (g) did not have omitted from it a matter or thing the omission of which rendered the information misleading in a material respect;
- contravenes this subsection.

Note: This subsection applies in relation to CCIVs with modifications: see section 1242D.

- (3) The references in subsections (1) and (2) to a person making available or giving, or authorising or permitting the making available or giving of, information relating to the affairs of a corporation include references to a person making available or giving, or authorising or permitting the making available or giving of, information as to the state of knowledge of that person with respect to the affairs of the corporation.
- (4) Where information is made available or given to a person referred to in paragraph (1)(a), (b) or (c) or (2)(a), (b) or (c) in response to a question asked by that person, the question and the information are to be considered together in determining whether the information was false or misleading.
- (5) For the purposes of this section:
- (a) a notice under subsection 708AA(2), 708A(5), 1012DAA(2) or 1012DA(5) is taken to be a notice required for the purposes of this Act; and
- (b) a notice under subsection 708AA(2), 708A(5), 1012DAA(2) or 1012DA(5) is taken to be misleading in a material respect if it omits information that is excluded information for the purposes of section 708AA, 708A, 1012DAA or 1012DA.
- (6) Paragraphs (1)(a) and (b) do not apply in relation to a corporation that is an Aboriginal and Torres Strait Islander corporation.

**Chapter 9** Miscellaneous

**Part 9.4** Offences

**Division 1** Specific offences

**Section 1309**

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Note: Similar offences are created in relation to Aboriginal and Torres Strait Islander corporations under section 561-5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

- (7) For the purposes of subsection (2), a person is taken to have taken reasonable steps to ensure that information was not false or misleading in a material particular if the person proves that:
- (a) the person made all inquiries (if any) that were reasonable in the circumstances; and
  - (b) after doing so, the person believed on reasonable grounds that the information was not misleading or deceptive in a material particular.
- (8) For the purposes of subsection (2), a person is taken to have taken reasonable steps to ensure that information did not have omitted from it any matter or thing the omission of which rendered the information misleading in a material respect if the person proves that:
- (a) the person made all inquiries (if any) that were reasonable in the circumstances; and
  - (b) after doing so, the person believed on reasonable grounds that there was no such omission.
- (9) For the purposes of subsection (2), a person is taken to have taken reasonable steps to ensure that information was not false or misleading in a material particular if the person proves that:
- (a) the person relied on information given to the person by:
    - (i) if the person is a body—someone other than a director, employee or agent of the body; or
    - (ii) if the person is an individual—someone other than an employee or agent of the individual; and
  - (b) the reliance placed on that information by the person was reasonable in all the circumstances.

Note: This subsection applies in relation to information given to CCIVs with modifications: see section 1242D.

- (10) For the purposes of subsection (2), a person is taken to have taken reasonable steps to ensure that information did not have omitted

from it any matter or thing the omission of which rendered the information misleading in a material respect if the person proves that:

- (a) the person relied on information given to the person by:
  - (i) if the person is a body—someone other than a director, employee or agent of the body; or
  - (ii) if the person is an individual—someone other than an employee or agent of the individual; and
- (b) the reliance placed on that information by the person was reasonable in all the circumstances.

Note: This subsection applies in relation to information given to CCIVs with modifications: see section 1242D.

*Fault-based offence*

- (11) A person commits an offence if the person contravenes subsection (1) or (2).

*Civil liability*

- (12) A person contravenes this subsection if the person contravenes subsection (2).

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

**1310 Obstructing or hindering ASIC etc.**

A person must not, without lawful excuse, obstruct or hinder ASIC, or any other person, in the performance or exercise of a function or power under this Act.

## Division 2—Offences generally

### 1311 General penalty provisions

- (1) A person who:
- (a) does an act or thing that the person is forbidden to do by or under a provision of this Act; or
  - (b) does not do an act or thing that the person is required or directed to do by or under a provision of this Act; or
  - (c) otherwise contravenes a provision of this Act;
- is guilty of an offence by virtue of this subsection, unless that or another provision of this Act provides that the person:
- (d) is guilty of an offence; or
  - (e) is not guilty of an offence.

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

- (1A) Paragraphs (1)(a), (b) and (c) only apply to a provision in the following list if a penalty, pecuniary or otherwise, is set out in Schedule 3 for that provision, or for a provision or provisions in which that provision is included:
- (aa) Part 1.2AA;
  - (a) Chapters 2A, 2B and 2C;
  - (b) Parts 2F.2 and 2F.3;
  - (c) Chapters 2G, 2H, 2J, 2M (other than Part 2M.4), 2N, 2P and 5A;
  - (d) Parts 5B.1 and 5B.3;
  - (daa) Chapter 5D;
  - (da) Chapter 6CA;
  - (dba) Part 6D.3A;
  - (db) Chapter 7;
  - (dc) Chapter 8;
  - (dd) Chapter 8A;
  - (de) Chapter 8B;

(e) Chapter 10.

### **1311A Penalty for committing an offence**

- (1) A person who commits an offence against this Act is punishable on conviction by a penalty not exceeding the penalty applicable to the offence.
- (2) If:
  - (a) a person commits an offence in the person's capacity as trustee of a registrable superannuation entity; and
  - (b) the penalty applicable to the offence is, or includes, a fine; then, in determining the fine for the offence, the court must take into account the impact that the fine under consideration would have on the beneficiaries of the entity.

### **1311B Penalty applicable to an offence committed by an individual**

- (1) The *penalty applicable* to an offence committed by an individual is:
  - (a) for an offence for which a fine is the only penalty specified—the fine specified; and
  - (b) for an offence for which a term of imprisonment is the only penalty specified—either the term of imprisonment, the fine worked out under this section, or both.
- (2) If:
  - (a) a term of imprisonment is the only penalty specified for an offence; and
  - (b) the term of imprisonment is less than 10 years; the fine mentioned in paragraph (1)(b) is the number of penalty units worked out using the individual fine formula.
- (3) The *individual fine formula* is:

Term of imprisonment,  
expressed in months  $\times 10$

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- (4) If:
- (a) a term of imprisonment is the only penalty specified for an offence; and
  - (b) the term of imprisonment is 10 years or more;
- the fine mentioned in paragraph (1)(b) is the greater of:
- (c) 4,500 penalty units; and
  - (d) if the court can determine the benefit derived and detriment avoided because of the offence—that amount multiplied by 3.
- (5) This section applies in relation to an offence committed by an individual unless there is a contrary intention under this Act in relation to the penalty applicable to the offence. In that case, the ***penalty applicable*** is the penalty specified for the offence.

- Note: The following are examples of cases in which a penalty is specified that would indicate a contrary intention:
- (a) the table item in Schedule 3 relating to subsection 794D(3), which specifies a penalty for each day, or part of a day, in respect of which an offence is committed;
  - (b) a regulation made under paragraph 1364(2)(w) prescribing a penalty for an individual for a contravention of the regulations.

**1311C Penalty applicable to an offence committed by a body corporate**

- (1) The ***penalty applicable*** to an offence committed by a body corporate is:
- (a) for an offence for which a fine is the only penalty specified—the fine specified multiplied by 10; and
  - (b) for an offence for which a term of imprisonment is the only penalty specified—the fine worked out under this section.
- (2) If:
- (a) a term of imprisonment is the only penalty specified for an offence; and
  - (b) the term of imprisonment is less than 10 years;



the fine mentioned in paragraph (1)(b) is the number of penalty units worked out using the individual fine formula, multiplied by 10.

- (3) If:
- (a) a term of imprisonment is the only penalty specified for an offence; and
  - (b) the term of imprisonment is 10 years or more;
- the fine mentioned in paragraph (1)(b) is the greatest of:
- (c) 45,000 penalty units; and
  - (d) if the court can determine the benefit derived and detriment avoided because of the offence—that amount multiplied by 3; and
  - (e) 10% of the annual turnover of the body corporate for the 12-month period ending at the end of the month in which the body corporate committed, or began committing, the offence.
- (4) This section applies in relation to an offence committed by a body corporate unless there is a contrary intention under this Act in relation to the penalty applicable to the offence. In that case, the ***penalty applicable*** is the penalty specified for the offence.

Note: The following are examples of cases in which a penalty is specified that would indicate a contrary intention:

- (a) subsection 1211B(3), which specifies a penalty for a body corporate;
- (b) the table item in Schedule 3 relating to subsection 794D(3), which specifies a penalty for each day, or part of a day, in respect of which an offence is committed;
- (c) a regulation made under paragraph 1364(2)(w) prescribing a penalty for a body corporate for a contravention of the regulations.

### **1311D Meaning of *benefit derived and detriment avoided* because of an offence**

The ***benefit derived and detriment avoided*** because of an offence is the sum of:

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- (a) the total value of all benefits obtained by one or more persons that are reasonably attributable to the commission of the offence; and
- (b) the total value of all detriments avoided by one or more persons that are reasonably attributable to the commission of the offence.

**1311E Where is the penalty for an offence specified?**

- (1) The penalty *specified* for an offence is:
  - (a) if a penalty, pecuniary or otherwise, is specified in Schedule 3 for the provision under which the offence is created, or a provision or provisions in which that provision is included—that penalty; and
  - (b) if a penalty, pecuniary or otherwise, is specified in any other provision of this Act for the provision under which the offence is created, or a provision or provisions in which that provision is included—that penalty.
- (2) To avoid doubt, a penalty is not *specified* for an offence if it is a consequence for committing the offence that is not a punishment on conviction for the offence.
- (3) Without limiting subsection (2), each of the following is a consequence for committing an offence that is not a punishment on conviction for the offence:
  - (a) the availability of a pecuniary penalty order for the contravention of a civil penalty provision that relates to the same conduct as that which gave rise to the offence;
  - (b) the availability of an infringement notice in relation to an alleged commission of the offence;
  - (c) the availability of administrative consequences as a result of the commission of the offence, such as:
    - (i) disqualification from any office; or
    - (ii) consequences in relation to a licence; or
    - (iii) other actions that may be taken by ASIC under this Act or any other Act;

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- (d) the availability under any law of the Commonwealth or of a State or Territory (including the general law) of an order to refund money, pay compensation, relinquish a benefit or make any other payment if the offence is committed;
- (e) the availability under any law of the Commonwealth or of a State or Territory (including the general law) of an injunction or any other order directing a person to take, or refrain from taking, action if the offence is committed.

**1311F If no penalty is specified**

If no penalty is specified for an offence:

- (a) the offence is an offence of strict liability; and
- (b) 20 penalty units is taken to be the penalty specified for the offence.

**1313A Offences committed partly in and partly out of the jurisdiction**

Where:

- (a) a person does or omits to do an act outside this jurisdiction; and
  - (b) if that person had done or omitted to do that act in this jurisdiction, the person would, by reason of also having done or omitted to do an act in this jurisdiction, have been guilty of an offence against this Act;
- the person is guilty of that offence.

**1314 Continuing offences**

- (1) Where:
  - (a) by or under a provision, an act is or was required to be done within a particular period or before a particular time; and
  - (b) failure to do the act within that period or before that time constitutes an offence; and
  - (c) the act is not done within that period or before that time;then:

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- (d) the obligation to do the act continues, after that period has ended or that time has passed, and whether or not a person is or has been convicted of a primary substantive offence in relation to failure to do the act, until the act is done; and
  - (e) subsections (3) and (4) apply.
- (2) Where:
- (a) by or under a provision, an act is or was required to be done but neither a period nor a time for the doing of the Act is or was specified; and
  - (b) failure to do the act constitutes an offence; and
  - (c) a person is or has been convicted of a primary substantive offence in relation to failure to do the act;
- then:
- (d) the obligation to do the act continues, despite the conviction, until the act is done; and
  - (e) subsections (3) and (4) apply.
- (3) Where:
- (a) at a particular time, a person is or was first convicted of a substantive offence, or is or was convicted of a second or subsequent substantive offence, in relation to failure to do the act; and
  - (b) the failure to do the act continued after that time;
- then:
- (c) the person is, in relation to failure to do the act, guilty of a further offence in respect of so much of the period throughout which the failure to do the act continued or elapsed after that time and before the relevant day in relation to the further offence; and
  - (d) for the purposes of this Act and of the *Crimes Act 1914*, the further offence is taken to be constituted by failure to do the act during so much of that period as so elapsed.
- (4) Where:
- (a) the provision referred to in paragraph (1)(a) or (2)(a), as the case may be, provides or provided that:

- (i) an officer or employee of a body corporate; or
  - (ii) a person;
- who is or was in default, or is or was involved in a contravention constituted by the failure to do the act, is or was guilty of an offence or contravenes or contravened a provision of this Act; and
- (b) throughout a particular period (in this subsection called the **relevant period**):
    - (i) the failure to do the act continued; and
    - (ii) a person (in this subsection called the **derivative offender**) is or was in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the failure to do the act; and
    - (iii) in a case where subparagraph (a)(i) applies—the derivative offender is or was an officer or employee of the body;

then:

- (c) in a case where either or both of the following events occurs or occur:
  - (i) a person is or was convicted, before or during the relevant period, of a primary substantive offence in relation to failure to do the act;
  - (ii) the derivative offender is or was convicted, before or during the relevant period, of a primary derivative offence in relation to failure to do the act;the derivative offender is, in relation to failure to do the act, guilty of an offence (in this paragraph called the **relevant offence**) in respect of so much (if any) of the relevant period as elapsed:
  - (iii) after the conviction referred to in subparagraph (i) or(ii), or after the earlier of the convictions referred to in subparagraphs (i) and (ii), as the case may be; and
  - (iv) before the relevant day in relation to the relevant offence; and
- (d) in a case where, at a particular time during the relevant period, the derivative offender is or was first convicted of a

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secondary derivative offence, or is or was convicted of a second or subsequent secondary derivative offence, in relation to failure to do the act—the derivative offender is, in relation to failure to do the act, guilty of a further offence in respect of so much of the relevant period as elapsed after that time and before the relevant day in relation to the further offence.

- (5) Where a person is guilty, by virtue of subsection (3) or (4), of an offence in respect of the whole or a part of a particular period, the penalty applicable to the offence is a fine of the amount obtained by multiplying half a penalty unit by the number of days in that period, or in that part of that period, as the case may be.

- (6) In this section:

**act** includes thing.

**primary derivative offence**, in relation to failure to do an act, means an offence (other than an offence of which a person is guilty by virtue of this section) of which a person is or was guilty by virtue of being an officer of a corporation, or a person, who is or was in any way, by act or omission, directly or indirectly, knowingly concerned in or party to failure to do the act.

**primary substantive offence**, in relation to a failure to do an act, means an offence (other than an offence of which a person is or was guilty by virtue of this section) constituted by failure to do the act, or by failure to do the act within a particular period or before a particular time.

**provision** means a section, or a subsection of a section, of this Act.

**relevant day**, in relation to an offence of which a person is guilty by virtue of this section, means:

- (a) in a case where the information relating to the offence specifies a day in relation to the offence for the purposes of this section, being a day not later than the day on which the information is laid—the day the information so specifies; or

- (b) in any other case—the day on which the information relating to the offence is laid.

*required* includes directed.

*secondary derivative offence*, in relation to failure to do an act, means an offence or further offence of which a person is, in relation to failure to do the act, guilty by virtue of paragraph (4)(c) or (d).

*substantive offence*, in relation to failure to do an act, means:

- (a) a primary substantive offence in relation to failure to do the act; or
  - (b) a further offence of which a person is, in relation to failure to do the act, guilty by virtue of subsection (3).
- (7) For the purposes of subsection (4), a provision of this Act is, whether or not it expressly provides as mentioned in paragraph (4)(a), taken to provide that a person who is or was involved in a contravention constituted by a failure to do an act required by the provision contravenes or contravened that provision.

### **1315 Proceedings: how taken**

- (1) Subject to this Act, in any proceedings for an offence against this Act, any information, charge, complaint or application may be laid or made by:
  - (a) ASIC; or
  - (b) an ASIC delegate; or
  - (c) another person authorised in writing by the Minister to institute the proceedings.
- (2) A delegation for the purposes of paragraph (1)(b), or an authorisation for the purposes of paragraph (1)(c), may relate to all offences, or to specified offences, against this Act.
- (3) Nothing in this section affects the operation of the *Director of Public Prosecutions Act 1983*.

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**1316 Time for instituting criminal proceedings**

Despite anything in any other law, proceedings for an offence against this Act may be instituted within the period of 5 years after the act or omission alleged to constitute the offence or, with the Minister's consent, at any later time.

**1316A Privilege against self-incrimination not available to bodies corporate in Corporations Act criminal proceedings**

- (1) In a Corporations Act criminal proceeding, a body corporate is not entitled to refuse or fail to comply with a requirement:
- (a) to answer a question or give information; or
  - (b) to produce a book or any other thing; or
  - (c) to do any other act whatever;
- on the ground that the answer or information, production of the book or other thing, or doing that other act, as the case may be, might tend:
- (d) to incriminate the body (whether in respect of an offence to which the proceeding relates or otherwise); or
  - (e) to make the body liable to a penalty (whether in respect of anything to which the proceeding relates or otherwise).
- (2) Subsection (1) applies whether or not the body concerned is a defendant in the proceeding or in any other proceeding.

- (3) In this section:

***Corporations Act criminal proceeding*** means a proceeding in a court when exercising jurisdiction in respect of a criminal matter arising under this Act.

**1317 Certain persons to assist in prosecutions**

- (1) Where a prosecution in respect of an offence against this Act has been instituted, or ASIC is of the opinion that a prosecution in respect of an offence against this Act ought to be instituted, against a person (in this section referred to as the ***defendant***), ASIC may:



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- (a) if the defendant is a natural person—require any person who is or was a partner, employee or agent of the defendant; or
  - (b) if the defendant is a body corporate—require any person who is or was an officer, employee or agent of the defendant;
- to assist in the prosecution, and the person who is so required must give all assistance in connection with the prosecution that that person is reasonably able to give.

Note: This section applies in relation to a defendant who is a CCIV with modifications: see section 1242D.

- (2) ASIC must not make such a requirement as is mentioned in subsection (1) of a person who, in the opinion of ASIC, is or is likely to be a defendant in the proceedings or is or has been such a person's lawyer.
- (3) If a person to whom paragraph (1)(a) or (b) relates fails to give assistance as required by subsection (1), the person contravenes this section and, without affecting any penalty to which the person may be liable for the contravention, the Court may, on the application of ASIC, order the person to comply with the requirement within such time, and in such manner, as the Court orders.
- (4) In this section, **agent**, in relation to the defendant, includes a banker of the defendant and a person engaged as an auditor by the defendant, whether that person is an employee or an officer of the defendant or not.

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## Part 9.4AAA—Protection for whistleblowers

Note: This Part applies in relation to CCIVs with modifications: see 1242E.

### 1317AA Disclosures qualifying for protection under this Part

*Disclosure to ASIC, APRA or prescribed body*

- (1) A disclosure of information by an individual (the **discloser**) qualifies for protection under this Part if:
  - (a) the discloser is an eligible whistleblower in relation to a regulated entity; and
  - (b) the disclosure is made to any of the following:
    - (i) ASIC;
    - (ii) APRA;
    - (iii) a Commonwealth authority prescribed for the purposes of this subparagraph in relation to the regulated entity; and
  - (c) subsection (4) or (5) applies to the disclosure.

Note: Section 1317AAD (public interest disclosure and emergency disclosure) and paragraph 1317AB(1)(c) (protection from self-incrimination etc.) may apply to a disclosure covered by this subsection.

*Disclosure to eligible recipients*

- (2) A disclosure of information by an individual (the **discloser**) qualifies for protection under this Part if:
  - (a) the discloser is an eligible whistleblower in relation to a regulated entity; and
  - (b) the disclosure is made to an eligible recipient in relation to the regulated entity; and
  - (c) subsection (4) or (5) applies to the disclosure.

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*Disclosure to legal practitioner*

- (3) A disclosure of information by an individual qualifies for protection under this Part if the disclosure is made to a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of this Part.

*Disclosable matters*

- (4) This subsection applies to a disclosure of information if the discloser has reasonable grounds to suspect that the information concerns misconduct, or an improper state of affairs or circumstances, in relation to:
- (a) the regulated entity; or
  - (b) if the regulated entity is a body corporate—a related body corporate of the regulated entity.
- (5) Without limiting subsection (4), this subsection applies to a disclosure of information if the discloser has reasonable grounds to suspect that the information indicates that any of the following:
- (a) the regulated entity, or an officer or employee of the regulated entity;
  - (b) if the regulated entity is a body corporate—a related body corporate of the regulated entity, or an officer or employee of a related body corporate of the regulated entity;
- has engaged in conduct that:
- (c) constitutes an offence against, or a contravention of, a provision of any of the following:
    - (i) this Act;
    - (ii) the ASIC Act;
    - (iii) the *Banking Act 1959*;
    - (iv) the *Financial Sector (Collection of Data) Act 2001*;
    - (v) the *Insurance Act 1973*;
    - (vi) the *Life Insurance Act 1995*;
    - (vii) the *National Consumer Credit Protection Act 2009*;
    - (viii) the *Superannuation Industry (Supervision) Act 1993*;

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- (ix) an instrument made under an Act referred to in any of subparagraphs (i) to (viii); or
- (d) constitutes an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more; or
- (e) represents a danger to the public or the financial system; or
- (f) is prescribed by the regulations for the purposes of this paragraph.

Note: There is no requirement for a discloser to identify himself or herself in order for a disclosure to qualify for protection under this Part.

### 1317AAA Eligible whistleblowers

An individual is an *eligible whistleblower* in relation to a regulated entity if the individual is, or has been, any of the following:

- (a) an officer of the regulated entity;
- (b) an employee of the regulated entity;
- (c) an individual who supplies services or goods to the regulated entity (whether paid or unpaid);
- (d) an employee of a person that supplies services or goods to the regulated entity (whether paid or unpaid);
- (e) an individual who is an associate of the regulated entity;
- (f) for a regulated entity that is a superannuation entity:
  - (i) an individual who is a trustee (within the meaning of the *Superannuation Industry (Supervision) Act 1993*), custodian (within the meaning of that Act) or investment manager (within the meaning of that Act) of the superannuation entity; or
  - (ii) an officer of a body corporate that is a trustee, custodian or investment manager of the superannuation entity; or
  - (iii) an employee of an individual referred to in subparagraph (i) or a body corporate referred to in subparagraph (ii); or
  - (iv) an individual who supplies services or goods to an individual referred to in subparagraph (i) or a body

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- corporate referred to in subparagraph (ii) (whether paid or unpaid); or
- (v) an employee of a person that supplies services or goods to an individual referred to in subparagraph (i) or a body corporate referred to in subparagraph (ii) (whether paid or unpaid);
  - (g) a relative of an individual referred to in any of paragraphs (a) to (f);
  - (h) a dependant of an individual referred to in any of paragraphs (a) to (f), or of such an individual's spouse;
  - (i) an individual prescribed by the regulations for the purposes of this paragraph in relation to the regulated entity.

**1317AAB Regulated entities**

Each of the following is a *regulated entity*:

- (a) a company;
- (b) a corporation to which paragraph 51(xx) of the Constitution applies;
- (c) an ADI (within the meaning of the *Banking Act 1959*), an authorised NOHC (within the meaning of that Act) or a subsidiary of an ADI or an authorised NOHC;
- (d) a general insurer (within the meaning of the *Insurance Act 1973*), an authorised NOHC (within the meaning of that Act) or a subsidiary of a general insurer or an authorised NOHC;
- (e) a life company (within the meaning of the *Life Insurance Act 1995*), a registered NOHC (within the meaning of that Act) or a subsidiary of a life company or a registered NOHC;
- (f) a superannuation entity or a trustee (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) of a superannuation entity;
- (g) an entity prescribed by the regulations for the purposes of this paragraph.

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**1317AAC Eligible recipients**

- (1) Each of the following is an **eligible recipient** in relation to a regulated entity that is a body corporate:
  - (a) an officer or senior manager of the body corporate or a related body corporate;
  - (b) an auditor, or a member of an audit team conducting an audit, of the body corporate or a related body corporate;
  - (c) an actuary of the body corporate or a related body corporate;
  - (d) a person authorised by the body corporate to receive disclosures that may qualify for protection under this Part.
- (2) Each of the following is an **eligible recipient** in relation to a regulated entity that is a superannuation entity:
  - (a) an officer of the superannuation entity;
  - (b) an auditor, or a member of an audit team conducting an audit, of the superannuation entity;
  - (c) an actuary of the superannuation entity;
  - (d) an individual who is a trustee (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) of the superannuation entity;
  - (e) a director of a body corporate that is the trustee (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) of the superannuation entity;
  - (f) a person authorised by the trustee or trustees (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) of the superannuation entity to receive disclosures that may qualify for protection under this Part.
- (3) The regulations may prescribe persons or bodies that are **eligible recipients** in relation to all regulated entities, or in relation to a class or classes of regulated entities.
- (4) Subsections (1), (2) and (3) do not limit each other.

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**1317AAD Public interest disclosure and emergency disclosure**

- (1) A disclosure of information (the *public interest disclosure*) by an individual (the *discloser*) qualifies for protection under this Part if:
- (a) the discloser has previously made a disclosure of that information (the *previous disclosure*) that qualifies for protection under this Part under subsection 1317AA(1); and
  - (b) at least 90 days have passed since the previous disclosure was made; and
  - (c) the discloser does not have reasonable grounds to believe that action is being, or has been, taken to address the matters to which the previous disclosure related; and
  - (d) the discloser has reasonable grounds to believe that making a further disclosure of the information in accordance with this subsection would be in the public interest; and
  - (e) after the end of the period referred to in paragraph (b), the discloser gave the body to which the previous disclosure was made a written notification that:
    - (i) includes sufficient information to identify the previous disclosure; and
    - (ii) states that the discloser intends to make a public interest disclosure; and
  - (f) the public interest disclosure is made to:
    - (i) a member of the Parliament of the Commonwealth, the Parliament of a State or the legislature of a Territory; or
    - (ii) a journalist; and
  - (g) the extent of the information disclosed in the public interest disclosure is no greater than is necessary to inform the recipient referred to in paragraph (f) of the misconduct or the improper state of affairs or circumstances referred to in subsection 1317AA(4) or the conduct referred to in subsection 1317AA(5), as the case may be.
- (2) A disclosure of information (the *emergency disclosure*) by an individual (the *discloser*) qualifies for protection under this Part if:

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- (a) the discloser has previously made a disclosure of that information (the *previous disclosure*) that qualifies for protection under this Part under subsection 1317AA(1); and
  - (b) the discloser has reasonable grounds to believe that the information concerns a substantial and imminent danger to the health or safety of one or more persons or to the natural environment; and
  - (c) the discloser gives the body to which the previous disclosure was made a written notification that:
    - (i) includes sufficient information to identify the previous disclosure; and
    - (ii) states that the discloser intends to make an emergency disclosure; and
  - (d) the emergency disclosure is made to:
    - (i) a member of the Parliament of the Commonwealth, the Parliament of a State or the legislature of a Territory; or
    - (ii) a journalist; and
  - (e) the extent of the information disclosed in the emergency disclosure is no greater than is necessary to inform the recipient referred to in paragraph (d) of the substantial and imminent danger.
- (3) In this section:

*journalist* means a person who is working in a professional capacity as a journalist for any of the following:

- (a) a newspaper or magazine;
- (b) a radio or television broadcasting service;
- (c) an electronic service (including a service provided through the internet) that:
  - (i) is operated on a commercial basis, or operated by a body that provides a national broadcasting service (within the meaning of the *Broadcasting Services Act 1992*); and
  - (ii) is similar to a newspaper, magazine or radio or television broadcast.



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**1317AADA Personal work-related grievances**

- (1) Subsections 1317AA(1) and (2) do not apply to a disclosure of information by an individual (the *discloser*) to the extent that the information disclosed:
- (a) concerns a personal work-related grievance of the discloser; and
  - (b) does not concern a contravention, or an alleged contravention, of section 1317AC that involves detriment caused to the discloser or a threat made to the discloser.

Note: A disclosure concerning a personal work-related grievance that is made to a legal practitioner may qualify for protection under this Part under subsection 1317AA(3).

- (2) For the purposes of subsection (1), the information disclosed concerns a *personal work-related grievance* of the discloser if:
- (a) the information concerns a grievance about any matter in relation to the discloser's employment, or former employment, having (or tending to have) implications for the discloser personally; and
  - (b) the information:
    - (i) does not have significant implications for the regulated entity to which it relates, or another regulated entity, that do not relate to the discloser; and
    - (ii) does not concern conduct, or alleged conduct, referred to in paragraph 1317AA(5)(c), (d), (e) or (f).

Examples of grievances that may be personal work-related grievances under paragraph (a) (but subject to paragraph (b)) are as follows:

- (a) an interpersonal conflict between the discloser and another employee;
- (b) a decision relating to the engagement, transfer or promotion of the discloser;
- (c) a decision relating to the terms and conditions of engagement of the discloser;
- (d) a decision to suspend or terminate the engagement of the discloser, or otherwise to discipline the discloser.

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**1317AAE Confidentiality of whistleblower's identity**

- (1) A person (the *first person*) contravenes this subsection if:
- (a) another person (the *discloser*) makes a disclosure of information (the *qualifying disclosure*) that qualifies for protection under this Part; and
  - (b) the first person discloses any of the following (the *confidential information*):
    - (i) the identity of the discloser;
    - (ii) information that is likely to lead to the identification of the discloser; and
  - (c) the confidential information is information that the first person obtained directly or indirectly because of the qualifying disclosure; and
  - (d) the disclosure referred to in paragraph (b) is not authorised under subsection (2) or (3).

Note 1: Failure to comply with this subsection is an offence (see subsection 1311(1)).

Note 2: This subsection is also a civil penalty provision (see section 1317E). For relief from liability to a civil penalty relating to this subsection, see section 1317S.

- (2) A disclosure referred to in paragraph (1)(b) is authorised under this subsection if it:
- (a) is made to ASIC; or
  - (b) is made to APRA; or
  - (c) is made to a member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*); or
  - (d) is made to a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of this Part; or
  - (e) is made to a person or body prescribed by the regulations for the purposes of this paragraph; or
  - (f) is made with the consent of the discloser.

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- (3) Without limiting subsection (2), a disclosure referred to in paragraph (1)(b) is authorised under this subsection if it:
- (a) is made by ASIC, APRA or a member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*); and
  - (b) is made to a Commonwealth authority, or a State or Territory authority, for the purpose of assisting the authority in the performance of its functions or duties.
- (4) Subsection (1) does not apply if:
- (a) the disclosure referred to in paragraph (1)(b):
    - (i) is not of the identity of the discloser; and
    - (ii) is reasonably necessary for the purposes of investigating a matter referred to in subsection 1317AA(4) or (5) to which the qualifying disclosure relates; and
  - (b) the first person takes all reasonable steps to reduce the risk that the discloser will be identified as a result of the disclosure referred to in paragraph (1)(b).

Note: In a prosecution for an offence, a defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

**1317AB Disclosure that qualifies for protection not actionable etc.**

- (1) If a person makes a disclosure that qualifies for protection under this Part:
- (a) the person is not subject to any civil, criminal or administrative liability (including disciplinary action) for making the disclosure; and
  - (b) no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the person on the basis of the disclosure; and
  - (c) if the disclosure qualifies for protection under this Part under subsection 1317AA(1) or section 1317AAD—the information is not admissible in evidence against the person in criminal proceedings or in proceedings for the imposition

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of a penalty, other than proceedings in respect of the falsity of the information.

Note: Except as provided for by paragraph (c), this subsection does not prevent the person being subject to any civil, criminal or administrative liability for conduct of the person that is revealed by the disclosure.

- (2) Without limiting subsection (1):
- (a) the person has qualified privilege in respect of the disclosure; and
  - (b) a contract to which the person is a party may not be terminated on the basis that the disclosure constitutes a breach of the contract.

### 1317AC Victimisation prohibited

#### *Actually causing detriment to another person*

- (1) A person (the **first person**) contravenes this subsection if:
- (a) the first person engages in conduct; and
  - (b) the first person's conduct causes any detriment to another person (the **second person**); and
  - (c) when the first person engages in the conduct, the first person believes or suspects that the second person or any other person made, may have made, proposes to make or could make a disclosure that qualifies for protection under this Part; and
  - (d) the belief or suspicion referred to in paragraph (c) is the reason, or part of the reason, for the conduct.

Note 1: Failure to comply with this subsection is an offence (see subsection 1311(1)).

Note 2: This subsection is also a civil penalty provision (see section 1317E). For relief from liability to a civil penalty relating to this subsection, see section 1317S.

#### *Threatening to cause detriment to another person*

- (2) A person (the **first person**) contravenes this subsection if:
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- (a) the first person makes to another person (the *second person*) a threat to cause any detriment to the second person or to a third person; and
- (b) the first person:
  - (i) intends the second person to fear that the threat will be carried out; or
  - (ii) is reckless as to causing the second person to fear that the threat will be carried out; and
- (c) the first person makes the threat because a person:
  - (i) makes a disclosure that qualifies for protection under this Part; or
  - (ii) may make a disclosure that would qualify for protection under this Part.

Note 1: Failure to comply with this subsection is an offence (see subsection 1311(1)).

Note 2: This subsection is also a civil penalty provision (see section 1317E). For relief from liability to a civil penalty relating to this subsection, see section 1317S.

*Officers and employees involved in contravention*

- (3) If a company contravenes subsection (1) or (2), any officer or employee of the company who is involved in that contravention contravenes this subsection.

Note 1: Failure to comply with this subsection is an offence (see subsection 1311(1)).

Note 2: This subsection is also a civil penalty provision (see section 1317E). For relief from liability to a civil penalty relating to this subsection, see section 1317S.

*Threats*

- (4) For the purposes of subsection (2), a threat may be:
  - (a) express or implied; or
  - (b) conditional or unconditional.

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- (5) In a prosecution for an offence against subsection (2) or proceedings in relation to a contravention of subsection (2), it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

**1317AD Compensation and other remedies—circumstances in which an order may be made**

- (1) A court may make an order under section 1317AE in relation to a person (the *first person*) if:
- (a) the first person engages in conduct (*detrimental conduct*) that:
    - (i) causes any detriment to another person (the *second person*); or
    - (ii) constitutes the making of a threat to cause any such detriment to another person (the *second person*); and
  - (b) when the first person engages in the detrimental conduct, the first person believes or suspects that the second person or any other person made, may have made, proposes to make or could make a disclosure that qualifies for protection under this Part; and
  - (c) the belief or suspicion referred to in paragraph (b) is the reason, or part of the reason, for the detrimental conduct.
- (2) A court may make an order under section 1317AE in relation to a person (the *first person*) if:
- (a) the first person is or was an officer or employee of a body corporate; and
  - (b) paragraphs (1)(a), (b) and (c) of this section apply to the body corporate because of detrimental conduct engaged in by the body corporate; and
  - (c) the first person:
    - (i) aided, abetted, counselled or procured the detrimental conduct; or
    - (ii) induced, whether by threats or promises or otherwise, the detrimental conduct; or

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- (iii) was in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the detrimental conduct; or
  - (iv) conspired with others to effect the detrimental conduct.
- (2A) A court may make an order under section 1317AE in relation to a person (the **first person**) that is a body corporate if:
- (a) another person (the **third person**) engages in conduct (**detrimental conduct**) that:
    - (i) causes any detriment to a person (the **second person**) other than the first person or the third person; or
    - (ii) constitutes the making of a threat to cause any such detriment to a person (the **second person**) other than the first person or the third person; and
  - (b) when the third person engages in the detrimental conduct, the third person believes or suspects that the second person or any other person made, may have made, proposes to make or could make a disclosure that qualifies for protection under this Part; and
  - (c) the belief or suspicion referred to in paragraph (b) is the reason, or part of the reason, for the detrimental conduct; and
  - (d) the first person is under a duty to prevent the third person engaging in the detrimental conduct, or a duty to take reasonable steps to ensure that the third person does not engage in the detrimental conduct; and
  - (e) the first person fails in part or whole to fulfil that duty.

*Burden of proof*

- (2B) In proceedings where a person seeks an order under section 1317AE in relation to another person:
- (a) the person seeking the order bears the onus of adducing or pointing to evidence that suggests a reasonable possibility of the matters in:
    - (i) if subsection (1) of this section applies— paragraph (1)(a); or

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- (ii) if subsection (2) of this section applies—  
paragraph (1)(a), as mentioned in paragraph (2)(b); or
- (iii) if subsection (2A) of this section applies—  
paragraphs (2A)(a) and (d); and
- (b) if that onus is discharged—the other person bears the onus of  
proving that the claim is not made out.

*Threats*

- (3) For the purposes of this section, a threat may be:
  - (a) express or implied; or
  - (b) conditional or unconditional.
- (4) In proceedings for the purposes of section 1317AE, it is not  
necessary to prove that the person threatened actually feared that  
the threat would be carried out.

**1317ADA Detriment**

In sections 1317AC and 1317AD, *detriment* includes (without  
limitation) any of the following:

- (a) dismissal of an employee;
- (b) injury of an employee in his or her employment;
- (c) alteration of an employee's position or duties to his or her  
disadvantage;
- (d) discrimination between an employee and other employees of  
the same employer;
- (e) harassment or intimidation of a person;
- (f) harm or injury to a person, including psychological harm;
- (g) damage to a person's property;
- (h) damage to a person's reputation;
- (i) damage to a person's business or financial position;
- (j) any other damage to a person.



**1317AE Compensation and other remedies—orders that may be made**

- (1) For the purposes of subsections 1317AD(1), (2) and (2A), a court may make any of the following orders:
  - (a) an order requiring the first person to compensate the second person, or any other person, for loss, damage or injury suffered as a result of the detrimental conduct;
  - (b) if the court is satisfied that the first person engaged in the detrimental conduct in connection with the first person's position as an employee:
    - (i) an order requiring the first person to compensate the second person, or any other person, for a part of loss, damage or injury as a result of the detrimental conduct, and an order requiring the first person's employer to compensate the second person, or any other person, for a part of loss, damage or injury as a result of the detrimental conduct; or
    - (ii) an order requiring the first person and the first person's employer jointly to compensate the second person, or any other person, for loss, damage or injury suffered as a result of the detrimental conduct; or
    - (iii) an order requiring the first person's employer to compensate the second person, or any other person, for loss, damage or injury as a result of the detrimental conduct;
  - (c) an order granting an injunction, on such terms as the court thinks appropriate, to prevent, stop or remedy the effects of the detrimental conduct;
  - (d) an order requiring the first person to apologise to the second person, or any other person, for engaging in the detrimental conduct;
  - (e) if the second person is or was employed in a particular position and the detrimental conduct wholly or partly consists, or consisted, of the termination, or purported termination, of the second person's employment—an order

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- that the second person be reinstated in that position or a position at a comparable level;
- (f) if the court thinks it is appropriate—an order requiring the first person to pay exemplary damages to the second person, or any other person;
  - (g) any other order the court thinks appropriate.
- (2) If the detrimental conduct wholly or partly consists, or consisted, of terminating or purporting to terminate a person's employment (including detrimental conduct that forces or forced the person to resign), the court must, in making an order mentioned in paragraph (1)(a) or (b), consider the period, if any, the person is likely to be without employment as a result of the detrimental conduct. This subsection does not limit any other matter the court may consider.
- (3) In deciding whether to make an order under paragraph (1)(b) in relation to the first person's employer, the court may have regard to the following:
- (a) whether the employer took reasonable precautions, and exercised due diligence, to avoid the detrimental conduct;
  - (b) if the employer has a policy dealing with any or all of the matters referred to in subsection 1317AI(5) (whether or not section 1317AI requires the employer to have such a policy)—the extent to which the employer gave effect to that policy;
  - (c) any duty that the employer was under to prevent the detrimental conduct, or to take reasonable steps to ensure that the detrimental conduct was not engaged in.
- (4) If the court makes an order under subparagraph (1)(b)(ii), the first person and the first person's employer are jointly and severally liable to pay the compensation concerned.

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**1317AF Interaction between civil proceedings, civil penalties and criminal offences**

To avoid doubt, a person may bring civil proceedings for an order under section 1317AE, or civil proceedings for a contravention of subsection 1317AC(1), (2) or (3), in relation to particular conduct, even if a prosecution for a criminal offence against section 1317AC in relation to that conduct has not been brought, or cannot be brought.

**1317AG Identifying information not to be disclosed etc. to courts or tribunals**

If a person (the *discloser*) makes a disclosure of information that qualifies for protection under this Part, the discloser or any other person is not to be required:

- (a) to disclose to a court or tribunal:
  - (i) the identity of the discloser; or
  - (ii) information that is likely to lead to the identification of the discloser; or
- (b) to produce to a court or tribunal a document containing:
  - (i) the identity of the discloser; or
  - (ii) information that is likely to lead to the identification of the discloser;

except where:

- (c) it is necessary to do so for the purposes of giving effect to this Part; or
- (d) the court or tribunal thinks it necessary in the interests of justice to do so.

Note: A discloser may also be able to apply to the court or tribunal, in accordance with the rules of the court or tribunal, for an order protecting the discloser's identity.

**1317AH Costs only if proceedings instituted vexatiously etc.**

- (1) This section applies to a proceeding (including an appeal) in a court in relation to a matter arising under section 1317AE in which

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a person (the *claimant*) is seeking an order under subsection 1317AE(1).

- (2) The claimant must not be ordered by the court to pay costs incurred by another party to the proceedings, except in accordance with subsection (3) of this section.
- (3) The claimant may be ordered to pay the costs only if:
  - (a) the court is satisfied that the claimant instituted the proceedings vexatiously or without reasonable cause; or
  - (b) the court is satisfied that the claimant's unreasonable act or omission caused the other party to incur the costs.

### 1317AI Whistleblower policies

- (1) A public company must:
  - (a) have a policy that sets out the matters referred to in subsection (5); and
  - (b) make that policy available to officers and employees of the company.

Note: Failure to comply with this subsection is an offence: see subsection 1311(1).

- (2) A proprietary company that has been a large proprietary company for any financial year (the *first financial year*) must, on each day in each later financial year that is at least 6 months after the last day of the first financial year:
  - (a) have a policy that sets out the matters referred to in subsection (5); and
  - (b) make that policy available to officers and employees of the company.

Note: Failure to comply with this subsection is an offence: see subsection 1311(1).

- (3) Without limiting subsection (2), a proprietary company that is the trustee (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) of a registrable superannuation entity (within the meaning of that Act) must:

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- (a) have a policy that sets out the matters referred to in subsection (5); and
- (b) make that policy available to officers and employees of the company.

Note: Failure to comply with this subsection is an offence: see subsection 1311(1).

- (4) An offence based on subsection (1), (2) or (3) is an offence of strict liability.

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

- (5) The matters that a policy must set out for the purposes of paragraph (1)(a), (2)(a) or (3)(a) are:
  - (a) information about the protections available to whistleblowers, including protections under this Part; and
  - (b) information about to whom disclosures that qualify for protection under this Part may be made, and how they may be made; and
  - (c) information about how the company will support whistleblowers and protect them from detriment; and
  - (d) information about how the company will investigate disclosures that qualify for protection under this Part; and
  - (e) information about how the company will ensure fair treatment of employees of the company who are mentioned in disclosures that qualify for protection under this Part, or to whom such disclosures relate; and
  - (f) information about how the policy is to be made available to officers and employees of the company; and
  - (g) any matters prescribed by the regulations for the purposes of this paragraph.

### **1317AJ Exemption orders—class orders for companies**

- (1) ASIC may, by legislative instrument, make an order in respect of a specified class of company relieving companies in the class from all or specified requirements of section 1317AI.

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- (2) The order may:
  - (a) be expressed to be subject to conditions; and
  - (b) be indefinite or limited to a specified period.

**1317AK Review of operation of whistleblower protections**

- (1) The Minister must cause a review to be undertaken of the operation of:
  - (a) this Part; and
  - (b) Part IVD of the *Taxation Administration Act 1953*.

Note: Part IVD of the *Taxation Administration Act 1953* provides for protections for whistleblowers in relation to tax.

- (2) The review must be conducted as soon as practicable after the end of 5 years after this section commences.
- (3) The Minister must cause a written report about the review to be prepared.
- (4) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

## **Part 9.4A—Review by Administrative Appeals Tribunal of certain decisions**

### **1317A Definitions**

In this Part:

*decision* has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

### **1317B Applications for review**

- (1) Subject to this Part, applications may be made to the Tribunal for review of a decision made under this Act by:
  - (a) the Minister; or
  - (b) ASIC; or
  - (c) the Companies Auditors Disciplinary Board; or
  - (d) a committee convened under Part 2 of Schedule 2.
- (1A) Subject to this Part, applications may also be made to the Tribunal for review of a decision made by the Registrar under the data standards or disclosure framework.
- (2) For the purposes of this Act and the *Administrative Appeals Tribunal Act 1975*, ASIC and APRA are taken to be persons whose interests are affected by a decision made under this Act by the Companies Auditors Disciplinary Board.

### **1317C Excluded decisions**

Section 1317B does not apply in relation to:

- (a) a decision in respect of which any provision in the nature of an appeal or review is expressly provided by this Act; or
- (b) a decision that is declared by this Act to be conclusive or final or is embodied in a document declared by this Act to be conclusive evidence of an act, matter or thing; or

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- (ca) a decision of ASIC to order the winding up of a company under section 489EA; or
- (d) a decision made by ASIC in the performance of a function, or in the exercise of a power, under section 601CC or 601CL or Chapter 5A; or
- (e) a decision by ASIC to refuse to exercise a power under section 601CC or 601CL or Chapter 5A; or
- (f) a decision to apply under section 596A or 596B for the Court to summon a person for examination about a corporation's examinable affairs; or
- (g) a decision to apply under section 597A for the Court to require a person to file an affidavit about a corporation's examinable affairs; or
- (ga) a decision of ASIC under section 655A; or
- (gb) a decision of ASIC under section 673 in relation to securities of the target of a takeover bid during the bid period; or
- (gc) a decision by ASIC whether to make an application under section 657C, 657G, 659B, 1325A, 1325B or 1325C; or
- (gca) a decision by ASIC to make market integrity rules under section 798G; or
- (gcb) a decision by the Minister to:
  - (i) consent to the making of a market integrity rule; or
  - (ii) direct ASIC to revoke or amend a market integrity rule; or
- (gcc) a decision by ASIC to do or not do anything under regulations made for the purposes of section 798K (alternatives to civil proceedings); or
- (gd) a decision of the Minister under Division 1 of Part 7.4; or
- (gda) a decision by the Minister:
  - (i) to make a determination under section 901B, or to amend or revoke such a determination; or
  - (ii) to consent, under section 901K or 903H, to the making of a derivative transaction rule or a derivative trade repository rule, or to consent to the variation or revocation of such a rule; or



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- (iii) to direct ASIC, under section 901L or 903J, to amend or revoke a derivative transaction rule or a derivative trade repository rule; or
- (gdb) a decision by ASIC to make derivative transaction rules or derivative trade repository rules under section 901A or 903A, or to vary or revoke such rules; or
- (gdc) a decision by ASIC to do or not do anything under regulations made for the purpose of section 901F or 903E; or
- (gdd) a decision by ASIC to make client money reporting rules under section 981J; or
- (gde) a decision by ASIC to do or not do anything under regulations made for the purposes of section 981N (alternatives to civil proceedings for contraventions of client money reporting rules); or
- (gdf) a decision by ASIC to make a declaration under subsection 908AC(2), or to vary or revoke such a declaration (about significant financial benchmarks); or
- (gdg) a decision by the Minister under:
  - (i) subsection 908AC(4) to consent to the making of a declaration under subsection 908AC(2); or
  - (ii) subsection 908AD(3) to direct ASIC to revoke a declaration made under subsection 908AC(2); or
- (gdh) a decision of the Minister under subsection 908BU(2) to disallow a direction or notice given by ASIC under section 908BT (about compliance directions or notices given to benchmark administrator licensees); or
- (gdi) a decision by ASIC to make rules under Division 3 of Part 7.5B, or to vary or revoke such rules; or
- (gdj) a decision by ASIC to do or not do anything under regulations made for the purposes of subsection 908CG(1) (alternatives to civil proceedings for contraventions of rules about financial benchmarks); or
- (gdk) a decision by the Minister:
  - (i) under subsection 908CM(2) to consent to the making of rules under Division 3 of Part 7.5B; or

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- (ii) under subsection 908CN(3) to direct ASIC to vary or revoke rules made under Division 3 of Part 7.5B; or
- (gdl) a decision by ASIC to require something, by giving written notice, under the compelled financial benchmark rules; or
- (gdm) any of the following decisions by ASIC:
  - (i) a decision under subsection 1023D(3) (which relates to making product intervention orders);
  - (ii) a decision under subsection 1023H(1) (which relates to extensions of product intervention orders);
  - (iii) a decision under section 1023J (which relates to amendments of product intervention orders) that, under subsection 1023J(6), must be by legislative instrument;
  - (iv) a decision under section 1023K (which relates to revocation of product intervention orders) that, under subsection 1023K(4), must be by legislative instrument; or
- (ge) a decision of ASIC under section 1101A or 1101AA; or
- (gk) a decision of ASIC:
  - (i) to give an infringement notice under section 1317DAM; or
  - (ii) to extend, or to refuse to extend, the payment period for an infringement notice under section 1317DAR; or
  - (iii) to make an arrangement, or to refuse to make an arrangement, to pay the amount payable under an infringement notice by instalments under section 1317DAS; or
  - (iv) to withdraw, or not to withdraw, an infringement notice under section 1317DAT; or
- (gg) a decision by the Registrar to make, amend or repeal data standards under section 1270G; or
- (gh) a decision by the Registrar to make, amend or repeal the disclosure framework under section 1270K; or
- (h) a decision to make a determination under subsection 1317D(3); or

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- (i) a decision of ASIC to issue an infringement notice under section 1317DAC; or
- (j) a decision of ASIC to withdraw, or not to withdraw, an infringement notice under section 1317DAI; or
- (k) a decision of ASIC under section 40-5 of Schedule 2 (which deals with directing liquidators to comply with requirements to lodge documents etc.); or
- (l) a decision of ASIC under section 40-10 of Schedule 2 (which deals with directing liquidators to correct inaccuracies etc.); or
- (m) a decision of ASIC under section 40-100 of Schedule 2 to take no action in relation to matters raised by an industry notice lodged under that section (notice by industry bodies of possible grounds for disciplinary action); or
- (n) a decision of ASIC to give a direction under section 70-70 of Schedule 2 (which deals with directing external administrators to comply with requests for information etc.); or
- (o) a decision of ASIC under section 70-85 of Schedule 2 (a decision to impose a condition on the use or disclosure of relevant material).

**1317D Notice of reviewable decision and review rights**

- (1) This section applies if the Minister, ASIC, the Companies Auditors Disciplinary Board or a committee convened under Part 2 of Schedule 2 (the *decision maker*) makes a decision to which section 1317B applies.
- (2) Subject to subsection (3), the decision maker must take such steps as are reasonable in the circumstances to give to each person whose interests are affected by the decision notice, in writing or otherwise:
  - (a) of the making of the decision; and
  - (b) of the person's right to have the decision reviewed by the Tribunal.

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- (3) Subsection (2) does not require the decision maker to give notice to a person affected by the decision or to the persons in a class of persons affected by the decision, if the decision maker determines that giving notice to the person or persons is not warranted, having regard to:
  - (a) the cost of giving notice to the person or persons; and
  - (b) the way in which the interests of the person or persons are affected by the decision.
- (4) A failure to comply with this section does not affect the validity of the decision.
- (5) The fact that a person has not been given notice of the decision because of a determination under subsection (3) constitutes special circumstances for the purposes of subsection 29(6) of the *Administrative Appeals Tribunal Act 1975*.

## **Part 9.4AA—Infringement notices for alleged contraventions of continuous disclosure provisions**

### **1317DAA Definitions**

(1) In this Part:

***compensation proceedings*** means:

- (a) proceedings under section 1317H, 1317HA, 1317HB, 1317HC or 1317HE; and
- (b) proceedings under section 12GF of the ASIC Act in relation to a contravention of section 12DA of that Act; and
- (c) any other proceedings by a person for compensation for loss or damage suffered by the person.

***compliance period*** for an infringement notice has the meaning affected by section 1317DAH.

***contravention proceedings*** means proceedings under section 1101B by a person referred to in paragraph 1101B(1)(b) or (d).

***enforcement proceedings*** means proceedings under section 793C by a person referred to in paragraph 793C(1)(b), (c) or (d).

***infringement notice*** means an infringement notice issued under section 1317DAC.

***penalty and disclosure proceedings*** means the proceedings referred to in column 3 of the table in subsection 1317DAG(2).

***public interest proceedings*** means proceedings under section 50 of the ASIC Act.

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- (2) For the purposes of applying this Part to a disclosing entity that is an undertaking to which interests in a registered scheme relate:
- (a) references to the disclosing entity are taken to be references to the responsible entity for the registered scheme; and
  - (b) references to a financial report for a financial year being lodged by a disclosing entity are taken to be references to such a report being lodged by the responsible entity in relation to the scheme; and
  - (c) references to securities of a disclosing entity are taken to be references to interests in the registered scheme; and
  - (d) references to a disclosing entity being convicted of an offence based on subsection 674(2) or 675(2) are taken to be references to the responsible entity being convicted of such an offence in relation to the registered scheme; and
  - (f) references to a disclosing entity having breached an enforceable undertaking given to ASIC under section 93AA or 93A of the ASIC Act in relation to the requirements of subsection 674(2) or 675(2) are taken to be references to the responsible entity having breached such an undertaking given in relation to the registered scheme.
- (3) For the purposes of applying this Part to a disclosing entity that is an undertaking to which interests in a notified foreign passport fund relate:
- (a) references to the disclosing entity are taken to be references to the operator of the fund; and
  - (b) references to a financial report for a financial year being lodged by a disclosing entity are taken to be references to a copy of a report for the fund for the financial year, prepared in accordance with the financial reporting requirements applying to the fund under the Passport Rules for the home economy for the fund, being lodged by the operator of the fund; and
  - (c) references to securities of a disclosing entity are taken to be references to interests in the fund; and
  - (d) references to a disclosing entity being convicted of an offence based on subsection 674(2) or 675(2) are taken to be
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- references to the operator of the fund being convicted of such an offence in relation to the fund; and
- (f) references to a disclosing entity having breached an enforceable undertaking given to ASIC under section 93AA or 93B of the ASIC Act in relation to the requirements of subsection 674(2) or 675(2) are taken to be references to the operator of the fund having breached such an undertaking given in relation to the fund.
- (4) For the purposes of this Part, in determining whether a disclosing entity has contravened subsection 674(2) or 675(2), treat the offences created by those subsections as being offences of strict liability.

**1317DAB Purpose and effect of this Part**

- (1) The purpose of this Part is to provide for the issue of an infringement notice to a disclosing entity for an alleged contravention of subsection 674(2) or 675(2).
- (2) This Part does not:
- (a) require an infringement notice to be issued to the disclosing entity for the alleged contravention of subsection 674(2) or 675(2); or
  - (b) affect the liability of the disclosing entity to civil or criminal proceedings in relation to the alleged contravention of subsection 674(2) or 675(2) if:
    - (i) an infringement notice is not issued to the disclosing entity for the alleged contravention; or
    - (ii) an infringement notice issued to the disclosing entity for the alleged contravention is withdrawn under section 1317DAI; or
  - (c) prevent a Court from imposing a higher penalty than the penalty specified in the infringement notice if the disclosing entity does not comply with the infringement notice.

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**1317DAC Issue of infringement notice**

*Issue of infringement notice*

- (1) Subject to section 1317DAD, if ASIC has reasonable grounds to believe that a disclosing entity has contravened subsection 674(2) or 675(2), ASIC may issue an infringement notice to the disclosing entity.
- (2) ASIC issues the infringement notice to the disclosing entity by serving it on the disclosing entity.
- (3) ASIC must not issue more than one infringement notice to the disclosing entity for the same alleged contravention of subsection 674(2) or 675(2).

*ASIC must have regard to certain matters*

- (4) In determining whether to issue an infringement notice to a listed disclosing entity for an alleged contravention of subsection 674(2), ASIC must have regard to:
  - (a) any guidelines issued by the relevant market operator for the listed disclosing entity that relate to the provisions of the listing rules referred to in subsection 674(1); and
  - (b) any other relevant matter.

*Infringement notice does not have effect*

- (5) The infringement notice does not have any effect if the infringement notice:
  - (a) is issued more than 12 months after the day on which the contravention of subsection 674(2) or 675(2) is alleged to have occurred; or
  - (b) relates to more than one alleged contravention of subsection 674(2) or 675(2) by the disclosing entity.



**1317DAD Statement of reasons must be given**

*Statement of reasons*

- (1) Before issuing the infringement notice, ASIC must:
  - (a) give the disclosing entity a written statement that sets out ASIC's reasons for believing that the disclosing entity has contravened subsection 674(2) or 675(2); and
  - (b) give a representative of the disclosing entity an opportunity to:
    - (i) appear at a private hearing before ASIC; and
    - (ii) give evidence to ASIC; and
    - (iii) make submissions to ASIC;in relation to the alleged contravention of subsection 674(2) or 675(2).
- (2) If the disclosing entity is a listed disclosing entity, ASIC must consult with the relevant market operator for the disclosing entity before giving the disclosing entity the statement under this subsection.
- (3) ASIC does not need to consult the relevant market operator under subsection (2) if:
  - (a) the disclosing entity is the relevant market operator; or
  - (b) the disclosing entity conducts a business in competition with a business conducted by the relevant market operator.

*Limit on the use of evidence or information given to ASIC*

- (4) Evidence or information that a representative of the disclosing entity gives ASIC under paragraph (1)(b) in relation to the alleged contravention of subsection 674(2) or 675(2) is:
  - (a) not admissible in evidence against the disclosing entity in any proceedings; and
  - (b) not admissible in evidence against a representative of the disclosing entity in any proceedings (other than proceedings

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for an offence based on the evidence or information given being false or misleading).

**1317DAE Matters to be included in infringement notice**

- (1) The infringement notice:
  - (a) must state the day on which it is issued; and
  - (b) must state the name and address of the disclosing entity to whom it is issued; and
  - (c) must state that it is being issued by ASIC; and
  - (d) must state that ASIC may publish details of the disclosing entity's compliance with the infringement notice under section 1317DAJ if the disclosing entity complies with the notice; and
  - (e) must give details of the alleged contravention by the disclosing entity, including:
    - (i) the date of the alleged contravention; and
    - (ii) the particular provision that was contravened; and
  - (g) must specify the penalty that is payable in relation to the alleged contravention; and
  - (h) must state that the penalty is payable to ASIC on behalf of the Commonwealth; and
  - (i) if it is alleged that the disclosing entity contravened subsection 674(2)—may specify information that the disclosing entity must notify to the relevant market operator in accordance with the provisions of the listing rules referred to in subsection 674(1); and
  - (j) if it is alleged that the disclosing entity contravened subsection 675(2)—may require the disclosing entity to lodge a document with ASIC that contains specified information; and
  - (k) must explain the effect of sections 1317DAF, 1317DAG and 1317DAH; and
  - (l) must state that the disclosing entity may make written representations to ASIC seeking the withdrawal of the infringement notice; and

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- (m) must contain any other matters that are prescribed in the regulations.
- (2) Subject to subsection (3), the penalty specified in the infringement notice under paragraph (1)(g) for an alleged contravention of subsection 674(2) is:
- (a) \$100,000 if the disclosing entity is a Tier 1 entity; or
  - (b) \$66,000 if the disclosing entity is a Tier 2 entity; or
  - (c) \$33,000 if the disclosing entity is a Tier 3 entity.
- (3) The penalty specified in the infringement notice under paragraph (1)(g) for an alleged contravention of subsection 674(2) is:
- (a) \$100,000 if the disclosing entity is a Tier 2 entity; or
  - (b) \$66,000 if the disclosing entity is a Tier 3 entity;
- if:
- (c) the disclosing entity has at any time been convicted of an offence based on subsection 674(2) or 675(2); or
  - (d) a civil penalty order under Part 9.4B has at any time been made against the disclosing entity in relation to a contravention of subsection 674(2) or 675(2) (as those subsections applied before the commencement of Part 1 of Schedule 2 to the *Treasury Laws Amendment (2021 Measures No. 1) Act 2021*); or
  - (e) the disclosing entity has at any time breached an enforceable undertaking given to ASIC under section 93AA, 93A or 93B of the ASIC Act in relation to the requirements of subsection 674(2) or 675(2).
- (4) Subject to subsection (5), the penalty specified in the infringement notice under paragraph (1)(g) for an alleged contravention of subsection 675(2) is \$33,000.
- (5) The penalty specified in the infringement notice under paragraph (1)(g) for an alleged contravention of subsection 675(2) is \$66,000 if:

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- (a) the disclosing entity has at any time been convicted of an offence based on subsection 674(2) or 675(2); or
  - (b) a civil penalty order under Part 9.4B has at any time been made against the disclosing entity in relation to a contravention of subsection 674(2) or 675(2) (as those subsections applied before the commencement of Part 1 of Schedule 2 to the *Treasury Laws Amendment (2021 Measures No. 1) Act 2021*); or
  - (c) the disclosing entity has at any time breached an enforceable undertaking given to ASIC under section 93AA, 93A or 93B of the ASIC Act in relation to the requirements of subsection 674(2) or 675(2).
- (6) For the purposes of this section:
- (a) a disclosing entity is:
    - (i) a **Tier 1 entity** if its market capitalisation on the relevant day exceeds \$1,000 million; and
    - (ii) a **Tier 2 entity** if its market capitalisation on the relevant day exceeds \$100 million but does not exceed \$1,000 million; and
    - (iii) a **Tier 3 entity** if its market capitalisation on the relevant day does not exceed \$100 million or it is not possible to work out its market capitalisation on the relevant day because it has not lodged a financial report with ASIC before the relevant day; and
  - (b) the **relevant day** for an infringement notice is the last day of the financial year in relation to which the latest financial report by the disclosing entity has been lodged with ASIC before the infringement notice is issued.
- (7) This is how to work out a disclosing entity's **market capitalisation** on the relevant day:
- (a) for each class of security of the disclosing entity that is a quoted security:
    - (i) work out the closing price, on the relevant day, for securities in that class on the prescribed financial market on which the securities are quoted; and

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- (ii) multiply that price by the number of securities in that class on issue on the relevant day (as shown in the financial report lodged with ASIC for the period that ends on the relevant day); and
- (b) add up the amounts obtained under paragraph (a): the result is the disclosing entity's market capitalisation on the relevant day.

Disregard quoted securities of the disclosing entity that are options.

**1317DAF Effect of issue and compliance with infringement notice**

*Circumstances in which this section applies*

- (1) This section applies if subsection (2) or (3) is satisfied.
- (2) This subsection is satisfied if:
  - (a) the compliance period for the infringement notice has not ended; and
  - (b) the infringement notice is not withdrawn under section 1317DAI; and
  - (c) subsection (3) has not been satisfied.
- (3) This subsection is satisfied if, within the compliance period for the infringement notice, the disclosing entity:
  - (a) pays the penalty specified in the infringement notice; and
  - (b) either:
    - (i) if it is alleged in the infringement notice that the disclosing entity contravened subsection 674(2)—notifies the relevant market operator, in accordance with the provisions of the listing rules referred to in subsection 674(1), of any information specified in the infringement notice; or
    - (ii) if it is alleged in the infringement notice that the disclosing entity contravened subsection 675(2)—lodges any required document with ASIC that contains the information specified in the infringement notice.

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Note: If this subsection is satisfied, ASIC must not withdraw the infringement notice, see section 1317DAI.

*No contravention etc. by the disclosing entity*

- (4) The disclosing entity is not, by reason only of subsection (3) being satisfied, regarded as:
- (a) having contravened the provision specified in the infringement notice; or
  - (b) having been convicted of an offence constituted by the same conduct that constituted the alleged contravention of the provision specified in the infringement notice.

*No proceedings may be started etc.*

- (5) Subject to subsection (6), no proceedings (whether criminal or civil) may be started or continued against the disclosing entity in relation to:
- (a) the alleged contravention of the provision specified in the infringement notice; or
  - (b) an offence constituted by the same conduct that constituted the alleged contravention.
- (6) Subsection (5) does not apply to the following proceedings:
- (a) compensation proceedings, contravention proceedings, enforcement proceedings and public interest proceedings that relate to the alleged contravention of the provision specified in the infringement notice;
  - (b) proceedings to enforce the following orders of a Court:
    - (i) an order made in relation to proceedings referred to in paragraph (a);
    - (ii) an order made under subsection 1335(2) in relation to proceedings referred to in paragraph (a) other than public interest proceedings;
  - (c) any other proceedings in respect of a breach of an order referred to in paragraph (b);

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- (d) an appeal to a Court against the following decisions or orders of a Court:
  - (i) a decision or order made in relation to proceedings referred to in paragraph (a);
  - (ii) a decision or order made under subsection 1335(2) in relation to the proceedings referred to in paragraph (a) other than public interest proceedings.
- (7) To avoid doubt, subsection (5) does not prevent ASIC from:
  - (a) making an order under section 91 of the ASIC Act; or
  - (b) bringing proceedings to enforce the order.

**1317DAG Effect of failure to comply with infringement notice**

*Circumstances in which this section applies*

- (1) This section applies if an infringement notice issued to a disclosing entity is not withdrawn under section 1317DAI.

*No other proceedings may be started etc.*

- (3) Subject to subsection (4), no proceedings may be started or continued against the disclosing entity in relation to:
  - (a) the alleged contravention of the provision specified in the infringement notice; or
  - (b) an offence constituted by the same conduct that constituted the alleged contravention.
- (4) Subsection (3) does not apply to the following proceedings:
  - (a) compensation proceedings, contravention proceedings, enforcement proceedings and public interest proceedings that relate to the alleged contravention of the provision specified in the infringement notice;
  - (b) proceedings to enforce the following orders of a Court:
    - (i) an order made in relation to penalty and disclosure proceedings;

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- (ii) an order made in relation to proceedings referred to in paragraph (a);
- (iii) an order made under subsection 1335(2) in relation to penalty and disclosure proceedings;
- (iv) an order made under subsection 1335(2) in relation to proceedings referred to in paragraph (a) other than public interest proceedings;
- (c) any other proceedings in respect of a breach of an order referred to in paragraph (b);
- (d) an appeal to a Court against the following decisions or orders of a Court:
  - (i) a decision or order made in relation to penalty and disclosure proceedings;
  - (ii) a decision or order made in relation to proceedings referred to in paragraph (a);
  - (iii) a decision or order made under subsection 1335(2) in relation to penalty and disclosure proceedings;
  - (iv) a decision or order made under subsection 1335(2) in relation to proceedings referred to in paragraph (a) other than public interest proceedings.
- (5) To avoid doubt, subsection (3) does not prevent ASIC from:
  - (a) making a determination under subsection 708AA(3), 708A(2), 713(6), 713A(23), 1012DAA(3), 1012DA(2) or 1013FA(3) of this Act; or
  - (b) making an order under section 91 of the ASIC Act; or
  - (c) accepting an undertaking under section 93AA, 93A or 93B of the ASIC Act; or
  - (d) bringing proceedings to enforce the determination, order or undertaking.



**1317DAH Compliance period for infringement notice**

- (1) Subject to this section, the compliance period for an infringement notice is a period of 28 days beginning on the day after the day on which the infringement notice is issued.
- (2) ASIC may extend, by notice in writing, the compliance period for the infringement notice if ASIC is satisfied that it is appropriate to do so.
- (3) Only one extension may be given and the extension must not be for longer than 28 days.
- (4) Notice of the extension must be given to the disclosing entity that was issued with the infringement notice.
- (5) A failure to comply with subsection (4) does not affect the validity of the extension.
- (6) If ASIC extends the compliance period for an infringement notice, a reference in this Act to the compliance period for an infringement notice is taken to be a reference to the compliance period as so extended.

**1317DAI Withdrawal of infringement notice**

*Disclosing entity may seek withdrawal*

- (1) If an infringement notice is issued to a disclosing entity, the disclosing entity may make written representations to ASIC seeking the withdrawal of the infringement notice.
- (2) Evidence or information that a representative of the disclosing entity gives ASIC in the course of making representations under subsection (1) is:
  - (a) not admissible in evidence against the disclosing entity in any proceedings; and
  - (b) not admissible in evidence against a representative of the disclosing entity in any proceedings (other than proceedings

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for an offence based on the evidence or information given being false or misleading).

*Withdrawal*

- (3) Subject to subsection (4), ASIC may withdraw the infringement notice (whether or not the disclosing entity has made representations seeking the withdrawal) if ASIC is satisfied that it is appropriate to do so.
- (4) ASIC must not withdraw the infringement notice if subsection 1317DAF(3) is satisfied.

*Withdrawal notice*

- (5) The withdrawal must be made by notice in writing and must be given to the disclosing entity.
- (6) The withdrawal notice must state:
  - (a) the name and address of the disclosing entity; and
  - (b) the day on which the infringement notice was issued to the disclosing entity; and
  - (c) that the infringement notice is withdrawn; and
  - (e) that a prosecution for an offence based on the provision specified in the infringement notice may be brought against the disclosing entity.

*Refund of penalty*

- (7) If:
  - (a) the disclosing entity pays the penalty specified in the infringement notice; and
  - (b) the infringement notice is withdrawn after the disclosing entity pays the penalty;ASIC must refund to the disclosing entity an amount equal to the amount paid.

**1317DAJ Publication in relation to infringement notices**

- (1) If:
- (a) ASIC issues an infringement notice to a disclosing entity;  
and
  - (b) subsection 1317DAF(3) (compliance with the infringement notice) is satisfied;
- ASIC may publish details of the disclosing entity's compliance with the infringement notice under subsection (2) or (3) or under both of those subsections.
- (2) ASIC publishes details of the disclosing entity's compliance with the infringement notice under this subsection if it publishes a copy of the infringement notice in the *Gazette* together with the following statements:
- (a) a statement that the disclosing entity has complied with the infringement notice;
  - (b) a statement that compliance with the notice is not an admission of guilt or liability;
  - (c) a statement that the disclosing entity is not regarded as having contravened the provision specified in the notice.
- (3) ASIC publishes details of the disclosing entity's compliance with the infringement notice under this subsection if:
- (a) ASIC issues a statement (whether written or oral) about the disclosing entity's compliance with the infringement notice;  
and
  - (b) the statement is limited to an accurate summary of the infringement notice including:
    - (i) the name of the disclosing entity; and
    - (ii) the amount of the penalty payable under the notice in relation to the alleged contravention; and
    - (iii) the conduct specified in the notice as the conduct in relation to which the infringement notice was issued;
- together with the following statements:

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- (iv) a statement that the disclosing entity has complied with the infringement notice;
  - (v) a statement that compliance with the notice is not an admission of guilt or liability;
  - (vi) a statement that the relevant disclosing entity is not regarded as having contravened the provision specified in the notice.
- (4) ASIC must not otherwise publish details of:
- (a) an infringement notice; or
  - (b) a disclosing entity's compliance with an infringement notice.
- Failure to comply with this subsection is not an offence.

## **Part 9.4AB—Infringement notices for other alleged contraventions**

### **Division 1—General**

#### **1317DAM When an infringement notice may be given**

- (1) If ASIC believes on reasonable grounds that a person has contravened a provision subject to an infringement notice under this Part, ASIC may give the person an infringement notice for the alleged contravention.
- (1A) Subject to section 1317DAPA, if a Financial Services and Credit Panel believes on reasonable grounds that a person has contravened a restricted civil penalty provision, the panel may give the person an infringement notice for the alleged contravention.
- (2) An infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.
- (3) A single infringement notice must relate only to a single contravention of a single provision unless subsection (4) applies.
- (4) ASIC or a Financial Services and Credit Panel may give a person a single infringement notice relating to multiple contraventions of a single provision if:
  - (a) the provision requires the person to do a thing within a particular period or before a particular time; and
  - (b) the person fails or refuses to do that thing within that period or before that time; and
  - (c) the failure or refusal occurs on more than 1 day; and
  - (d) each contravention is constituted by the failure or refusal on one of those days.
- (5) If an alleged contravention would, if proved, constitute both a contravention of a civil penalty provision and of an offence

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provision, the infringement notice must relate to the alleged contravention of the offence provision.

**1317DAN Provisions subject to an infringement notice**

The following provisions are *subject to an infringement notice* under this Part:

- (a) strict liability offences against this Act;
- (b) absolute liability offences against this Act;
- (c) other prescribed offences;
- (d) prescribed civil penalty provisions;
- (e) civil penalty provisions of an approved code of conduct;
- (f) civil penalty provisions of a mandatory code of conduct.

**1317DAP Matters to be included in an infringement notice**

- (1) An infringement notice must:
  - (a) be identified by a unique number; and
  - (b) state the day on which it is given; and
  - (c) state the name of the person to whom the notice is given; and
  - (d) state the name and contact details of the person who gave the notice; and
  - (e) give brief details of the alleged contravention, or each alleged contravention, to which the notice relates, including:
    - (i) the provision that was allegedly contravened; and
    - (ii) the maximum penalty that a court could impose for each contravention, if the provision were contravened; and
    - (iii) the time (if known) and day of, and the place of, each alleged contravention; and
  - (f) state the amount that is payable under the notice; and
  - (g) give an explanation of how payment of the amount is to be made; and
  - (h) state that the payment period for the notice will be 28 days, beginning on the day after the notice is given, unless the

period is extended, an arrangement is made for payment by instalments or the notice is withdrawn; and

- (i) state that, if the person to whom the notice is given pays the amount within the payment period, then (unless the notice is withdrawn):
  - (i) if the alleged contravention is of an offence provision and would not also constitute a contravention of a civil penalty provision—the person will not be liable to be prosecuted in a court for the alleged contravention; or
  - (ii) if the alleged contravention is of an offence provision and would also constitute a contravention of a civil penalty provision—the person is not liable to be prosecuted in a court, and proceedings seeking a pecuniary penalty order will not be brought, in relation to the alleged contravention; or
  - (iii) if the alleged contravention is of a civil penalty provision—proceedings seeking a pecuniary penalty order will not be brought in relation to the alleged contravention; and
- (j) state that payment of the amount is not an admission of guilt or liability; and
- (k) state that the person may apply to:
  - (i) if the notice was given to the person by a Financial Services and Credit Panel—the panel; or
  - (ii) otherwise—ASIC;to have the period in which to pay the amount extended or for an arrangement to pay the amount by instalments; and
- (l) state that the person may choose not to pay the amount and, if the person does so:
  - (i) if the alleged contravention is of an offence provision and would not also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court for the alleged contravention; or
  - (ii) if the alleged contravention is of an offence provision and would also constitute a contravention of a civil penalty provision—the person may be prosecuted in a

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- court, or proceedings seeking a pecuniary penalty order may be brought, in relation to the alleged contravention; or
- (iii) if the alleged contravention is of a civil penalty provision—proceedings seeking a pecuniary penalty order may be brought in relation to the alleged contravention; and
- (m) set out how the notice can be withdrawn; and
- (n) state that if the notice is withdrawn:
- (i) if the alleged contravention is of an offence provision and would not also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court for the alleged contravention; or
- (ii) if the alleged contravention is of an offence provision and would also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court, or proceedings seeking a pecuniary penalty order may be brought, in relation to the alleged contravention; or
- (iii) if the alleged contravention is of a civil penalty provision—proceedings seeking a pecuniary penalty order may be brought in relation to the alleged contravention; and
- (o) state that the person may make written representations to ASIC seeking the withdrawal of the notice.
- (2) The amount to be stated in the notice for the purposes of paragraph (1)(f) is:
- (a) for a single contravention of an offence provision—half the maximum penalty that a court could impose on the person for the contravention; and
- (b) for multiple contraventions of an offence provision—the amount worked out under paragraph (a) for a single contravention multiplied by the number of contraventions; and



- (c) for a single contravention of a civil penalty provision that is not a restricted civil penalty provision—12 penalty units for an individual and 60 penalty units for a body corporate; and
- (d) for multiple contraventions of a civil penalty provision that is not a restricted civil penalty provision—the amount worked out under paragraph (c) for a single contravention multiplied by the number of contraventions; and
- (e) for a single contravention of a restricted civil penalty provision—12 penalty units; and
- (f) for multiple contraventions of a restricted civil penalty provision—12 penalty units multiplied by the number of contraventions.

### **1317DAPA Giving infringement notices in relation to restricted civil penalty provisions**

#### *Giving an infringement notice following proposed action notice*

- (1) A Financial Services and Credit Panel must not give a person an infringement notice for the alleged contravention by the person of a restricted civil penalty provision unless:
  - (a) the panel gave the person a proposed action notice in relation to a proposal to give the infringement notice to the person and either:
    - (i) no submission or request for a hearing was made within the response period for the notice; or
    - (ii) a submission or request for a hearing was made within the response period for the notice and the panel has considered the submission or held the hearing (as the case may be); or
  - (b) all of the following apply:
    - (i) the panel gave the relevant provider a proposed action notice in relation to a proposed instrument under subsection 921K(1) in relation to the person and circumstances mentioned in that subsection;
    - (ii) those circumstances consist of, or include, the contravention;

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- (iii) a submission or request for a hearing was made within the response period for the proposed action notice;
- (iv) the panel has considered the submission or held the hearing (as the case may be).

*Instruments under subsection 921K(1) and warnings and reprimands*

- (2) A Financial Services and Credit Panel must not give a person an infringement notice for the alleged contravention by the person of a restricted civil penalty provision if:
  - (a) the panel, or another Financial Services and Credit Panel, has:
    - (i) made an instrument under subsection 921K(1) in relation to the person; or
    - (ii) given the person a warning or reprimand; because of circumstances mentioned in subsection 921K(1) or 921T(1); and
  - (b) those circumstances consist of, or include, the contravention.

## **Division 2—Infringement notices given by ASIC**

### **1317DAPB Application of Division**

This Division applies in relation to an infringement notice given to a person by ASIC.

### **1317DAQ Payment period**

#### *Usual payment period*

- (1) The **payment period** for an infringement notice begins on the day after the notice is given and, unless otherwise specified in this section, continues for 28 days.

#### *Payment period extended under section 1317DAR*

- (2) If, under section 1317DAR, ASIC extends the payment period for the notice, the **payment period** is as extended.
- (3) If ASIC refuses an application under subsection 1317DAR(1) for an extension of the payment period for the notice, the **payment period** ends on the latest of the following days:
  - (a) the last day of the period that, without the extension that has been refused, would be the payment period for the notice;
  - (b) the day that is 7 days after the day the applicant was given notice of ASIC's decision not to extend;
  - (c) the day that is 7 days after the day the application is taken to have been refused under subsection 1317DAR(4).

#### *Instalments*

- (4) If, under section 1317DAS, ASIC makes an arrangement for the amount payable under the notice to be paid by instalments, the **payment period** ends on the earlier of the following days:
  - (a) the last day on which an instalment is to be paid under the arrangement;

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- (b) if the person fails to pay an instalment in accordance with the arrangement, the last day on which the missed instalment was to be paid.
- (5) If ASIC refuses an application made under subsection 1317DAS(1) to make an arrangement for the amount payable under the notice to be paid by instalments, the **payment period** ends on the latest of the following days:
  - (a) the last day of the period that, without the instalment arrangement, would be the payment period for the notice;
  - (b) the day that is 7 days after the day the applicant was given notice of ASIC's decision not to make the arrangement;
  - (c) the day that is 7 days after the day the application is taken to have been refused under subsection 1317DAS(4).

*Payment period if ASIC refuses to withdraw infringement notice*

- (6) If ASIC refuses a representation made under subsection 1317DAT(1) for the notice to be withdrawn, the **payment period** ends on the latest of the following days:
  - (a) the last day of the period that, without the withdrawal, would be the payment period for the notice;
  - (b) the day that is 7 days after the day the person was given notice of ASIC's decision not to withdraw the notice;
  - (c) the day that is 7 days after the day on which, under subsection 1317DAT(5), ASIC is taken to have refused to withdraw the infringement notice.

**1317DAR Extension of time to pay amount**

- (1) A person to whom an infringement notice has been given may, during the payment period for the notice, apply to ASIC for an extension of the payment period for the notice.
- (2) ASIC may, in writing, extend the payment period for an infringement notice:
  - (a) if a person makes an application in accordance with subsection (1); or

- (b) on ASIC's own initiative.  
ASIC may do so before or after the end of the payment period.
- (3) ASIC must do each of the following within 14 days after an application in accordance with subsection (1) is made:
- (a) grant or refuse to grant an extension of the payment period for the infringement notice;
  - (b) give the applicant notice in writing of ASIC's decision.
- (4) If ASIC does not comply with subsection (3):
- (a) ASIC is taken to have refused to grant an extension of the payment period for the infringement notice; and
  - (b) the refusal is taken to have occurred on the last day of the 14 day period.
- (5) ASIC may extend the payment period more than once under subsection (2).

#### **1317DAS Payment by instalments**

- (1) A person to whom an infringement notice has been given may, within 28 days after the infringement notice is given, apply to ASIC to make an arrangement to pay the amount payable under the infringement notice by instalments.
- (2) ASIC may, in writing, make an arrangement for a person to pay the amount payable under an infringement notice by instalments:
- (a) if a person makes an application in accordance with subsection (1); or
  - (b) on ASIC's own initiative.
- ASIC may do so before or after the end of the payment period.
- (3) ASIC must do each of the following within 14 days after an application in accordance with subsection (1) is made:
- (a) decide to make, or refuse to make, an arrangement for the applicant to pay the amount payable under the infringement notice by instalments;
  - (b) give the applicant notice in writing of ASIC's decision;

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- (c) if ASIC decides to make the arrangement, specify in the notice:
  - (i) the day by which each instalment is to be paid; and
  - (ii) the amount of each instalment.
- (4) If ASIC does not comply with subsection (3):
  - (a) ASIC is taken to have refused to make an arrangement for the applicant to pay the amount payable under the infringement notice by instalments; and
  - (b) the refusal is taken to have occurred on the last day of the 14 day period.
- (5) ASIC may vary an arrangement for a person to pay the amount payable under an infringement notice by instalments.
- (6) If:
  - (a) a person does not pay all of the instalments in accordance with an arrangement made under this section; and
  - (b) the person is prosecuted, or proceedings seeking a pecuniary penalty order are brought, for the alleged contravention;ASIC must refund to the person the amount of any instalments paid.

**1317DAT Withdrawal of an infringement notice**

*Representations seeking withdrawal of notice*

- (1) A person to whom an infringement notice has been given may, within 28 days after the infringement notice is given, make written representations to ASIC seeking the withdrawal of the notice.

*Withdrawal of notice*

- (2) ASIC may withdraw an infringement notice given to a person:
  - (a) if the person makes representations to ASIC in accordance with subsection (1); or
  - (b) on ASIC's own initiative.ASIC may do so before or after the end of the payment period.

- (3) ASIC must, within 14 days after a representation is made in accordance with subsection (1):
- (a) decide to withdraw, or refuse to withdraw, the infringement notice; and
  - (b) if ASIC decides to withdraw the notice—give the applicant a withdrawal notice in accordance with subsection (6); and
  - (c) if ASIC decides to refuse to withdraw the notice—give the applicant notice of that fact.
- (4) When deciding whether to withdraw, or refuse to withdraw, an infringement notice, ASIC:
- (a) must take into account any written representations seeking the withdrawal that were given by the person to ASIC; and
  - (b) may take into account the following:
    - (i) whether a court has previously imposed a penalty on the person for a contravention of a provision of this Act;
    - (ii) the circumstances of the alleged contravention;
    - (iii) whether the person has paid an amount, stated in an earlier infringement notice, for a contravention of a provision of this Act;
    - (iv) any other matter ASIC considers relevant.
- (5) If ASIC does not comply with subsection (3):
- (a) ASIC is taken to have refused to make an arrangement for the applicant to pay the amount payable under the infringement notice by instalments; and
  - (b) the refusal is taken to have occurred on the last day of the 14 day period.

*Notice of withdrawal*

- (6) The withdrawal notice must state:
- (a) the person's name and address; and
  - (b) the day the infringement notice was given; and
  - (c) the identifying number of the infringement notice; and
  - (d) that the infringement notice is withdrawn; and

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(e) that:

- (i) if the alleged contravention is of an offence provision and would not also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court for the alleged contravention; or
- (ii) if the alleged contravention is of an offence provision and would also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court, or proceedings seeking a pecuniary penalty order may be brought, in relation to the alleged contravention; or
- (iii) if the alleged contravention is of a civil penalty provision—proceedings seeking a pecuniary penalty order may be brought in relation to the alleged contravention.

*Refund of amount if infringement notice withdrawn*

(7) If:

- (a) ASIC withdraws the infringement notice; and
- (b) the person has already paid all or part of the amount stated in the notice;

ASIC must refund to the person an amount equal to the amount paid.



## **Division 3—Infringement notices given by Financial Services and Credit Panels**

### **1317DATA Application of Division**

This Division applies in relation to an infringement notice given to a person by a Financial Services and Credit Panel.

### **1317DATB Payment period, extension of time and payment by instalments**

- (1) Sections 1317DAQ, 1317DAR and 1317DAS apply, in relation to an infringement notice given to a person by a Financial Services and Credit Panel, with the modifications provided for in subsections (2) to (6) of this section.
- (2) The following provisions apply, in accordance with subsection (1), as if any reference in them to ASIC were a reference to the Chair of the panel:
  - (a) subsections 1317DAQ(2) to (5);
  - (b) subsections 1317DAR(2) to (5);
  - (c) subsections 1317DAS(2) to (5).
- (3) The following provisions apply, in accordance with subsection (1), as if any reference in them to ASIC were a reference to the panel:
  - (a) subsection 1317DAR(1);
  - (b) subsection 1317DAS(1).
- (4) Section 1317DAQ applies, in accordance with subsection (1) of this section, as if subsection 1317DAQ(6) were omitted and the following subsection substituted:

“(6) If the panel under subsection 1317DATC(3) refuses, or under subsection 1317DATC(5) is taken to refuse, a representation made for the notice to be withdrawn, the *payment period* ends on the later of the following days:

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- (a) the last day of the period that, without the withdrawal, would be the payment period for the notice;
  - (b) the day that is 7 days after the day the person was given notice of the panel's decision not to withdraw the notice;
  - (c) the day that is 7 days after the day on which the panel is taken to have refused to withdraw the infringement notice.”.
- (5) Section 1317DAR applies, in accordance with subsection (1) of this section, as if paragraph 1317DAR(2)(b) were omitted and the following paragraph substituted:
- “(b) if ASIC requests, in writing, that the Chair of the panel that gave the infringement notice extend the period.”.
- (6) Section 1317DAS applies, in accordance with subsection (1) of this section, as if paragraph 1317DAS(2)(b) were omitted and the following paragraph substituted:
- “(b) if ASIC requests, in writing, that the Chair of the panel that gave the infringement notice make such an arrangement.”.

**1317DATC Withdrawal of an infringement notice given by a Financial Services and Credit Panel**

*Representations seeking withdrawal of notice*

- (1) A person to whom an infringement notice has been given by a Financial Services and Credit Panel may, within 28 days after the infringement notice is given, make written representations to ASIC seeking the withdrawal of the notice.

*Withdrawal of notice*

- (2) ASIC may request a Financial Services and Credit Panel (whether or not the panel gave the infringement notice to the person) to make a decision under subsection (3) in relation to the infringement notice if:
- (a) a person makes representations in relation to the notice under subsection (1); or

- (b) ASIC is satisfied that there has been a change in any of the circumstances on the basis of which the notice was given to the person.
- (3) If ASIC makes a request under subsection (2), the panel must, within 14 days after it is made:
  - (a) decide to withdraw, or refuse to withdraw, the infringement notice; and
  - (b) give the person a written notice of its decision.
- (4) When deciding whether to withdraw, or refuse to withdraw, the infringement notice, the panel:
  - (a) must take into account any written representations seeking the withdrawal that were given by the person to ASIC in accordance with subsection (1); and
  - (b) may take into account the following:
    - (i) whether a court has previously imposed a penalty on the person for a contravention of a provision of this Act;
    - (ii) the circumstances of the alleged contravention of the restricted civil penalty provision to which the notice relates;
    - (iii) whether the person has paid an amount, stated in an earlier infringement notice, for a contravention of a provision of this Act;
    - (iv) any other matter the panel considers relevant.
- (5) If the panel does not comply with subsection (3):
  - (a) the panel is taken to have refused to withdraw the infringement notice; and
  - (b) the refusal is taken to have occurred on the last day of the 14 day period.

*Refund of amount if infringement notice withdrawn*

- (6) If:
  - (a) the panel withdraws the infringement notice; and

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(b) the person has already paid all or part of the amount stated in the notice;

ASIC must refund to the person an amount equal to the amount paid.

## **Division 4—Other matters**

### **1317DAU Effect of payment of amount**

- (1) If the person to whom an infringement notice for an alleged contravention of a provision is given pays the amount stated in the notice before the end of the payment period for the notice:
  - (a) any liability of the person for the alleged contravention is discharged; and
  - (b) if the alleged contravention is of an offence provision and would not also constitute a contravention of a civil penalty provision—the person may not be prosecuted in a court for the alleged contravention; and
  - (c) if the alleged contravention is of an offence provision and would also constitute a contravention of a civil penalty provision—the person may not be prosecuted in a court, and proceedings seeking a pecuniary penalty order may not be brought, in relation to the alleged contravention; and
  - (d) if the alleged contravention is of a civil penalty provision—proceedings seeking a pecuniary penalty order may not be brought in relation to the alleged contravention; and
  - (e) the person is not regarded as having admitted guilt or liability for the alleged contravention; and
  - (f) if the provision is an offence provision—the person is not regarded as having been convicted of the alleged offence.
- (2) Subsection (1) does not apply if the notice has been withdrawn.

### **1317DAV Effect of this Part**

This Part does not:

- (a) require an infringement notice to be given to a person for an alleged contravention of:
  - (i) a provision subject to an infringement notice under this Part; or
  - (ii) a restricted civil penalty provision; or

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- (b) affect the liability of a person for an alleged contravention of a provision subject to an infringement notice under this Part, or a restricted civil penalty provision, if:
  - (i) the person does not comply with an infringement notice given to the person for the contravention; or
  - (ii) an infringement notice is not given to the person for the contravention; or
  - (iii) an infringement notice is given to the person for the contravention and is subsequently withdrawn; or
- (c) prevent the giving of 2 or more infringement notices to a person for an alleged contravention of:
  - (i) a provision subject to an infringement notice under this Part; or
  - (ii) a restricted civil penalty provision; or
- (d) limit a court's discretion to determine the amount of a penalty to be imposed on a person who is found to have contravened:
  - (i) a provision subject to an infringement notice under this Part; or
  - (ii) a restricted civil penalty provision.

## **Part 9.4B—Civil consequences of contravening civil penalty provisions**

### **Division 1—The Court may make declarations of contravention, pecuniary penalty orders, relinquishment orders, refund orders and compensation orders**

#### **1317E Declaration of contravention of a civil penalty provision**

*Declaration of contravention*

- (1) If a Court is satisfied that a person has contravened a civil penalty provision, the Court must make a declaration of contravention.
- (2) The declaration must specify the following:
  - (a) the Court that made the declaration;
  - (b) the civil penalty provision that was contravened;
  - (c) the person who contravened the provision;
  - (d) the conduct that constituted the contravention;
  - (e) if the contravention is of a corporation/scheme civil penalty provision—the corporation, registered scheme or notified foreign passport fund to which the conduct related;
  - (f) if the contravention is of subsection 1211B(1) or (2) (complying with the Passport Rules for this jurisdiction)—the passport fund in relation to which the obligation was imposed on the person;
  - (g) if the contravention is of subsection 670A(4), 727(6), 728(4) or 1309(12) (misleading statements etc.)—the corporation, registered scheme or notified foreign passport fund to which the conduct related.

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**Part 9.4B** Civil consequences of contravening civil penalty provisions

**Division 1** The Court may make declarations of contravention, pecuniary penalty orders, relinquishment orders, refund orders and compensation orders

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*Meanings of civil penalty provision, corporation/scheme civil penalty provision and financial services civil penalty provision*

- (3) In this Act:
- (a) a provision specified in column 1 of the following table is a ***civil penalty provision***; and
  - (b) a civil penalty provision categorised as a corporation/scheme provision in column 3 of the following table is a ***corporation/scheme civil penalty provision***; and
  - (c) a civil penalty provision categorised as a financial services provision in column 3 of the following table is a ***financial services civil penalty provision***; and
  - (d) a provision that is specified as having no categorisation in column 3 of the following table is neither a ***corporation/scheme civil penalty provision*** nor a ***financial services civil penalty provision***.

<b>Civil penalty provisions</b>		
<b>Column 1 Provision</b>	<b>Column 2 Brief description of the provision</b>	<b>Column 3 Categorisation of the provision</b>
subsections 180(1), 181(1) and (2), 182(1) and (2) and 183(1) and (2)	officers' duties	corporation/scheme
subsections 188(1) and (2)	responsibilities of secretaries etc. for corporate contraventions	corporation/scheme
subsection 209(2)	related parties rules	corporation/scheme
subsections 254L(2), 256D(3), 259F(2) and 260D(2)	share capital transactions	corporation/scheme
subsections 344(1) and (1A)	requirements for financial reports	corporation/scheme
subsection 458F(1)	obligation to declare and publish notice if company not eligible for temporary restructuring relief	corporation/scheme



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<b>Civil penalty provisions</b>		
<b>Column 1 Provision</b>	<b>Column 2 Brief description of the provision</b>	<b>Column 3 Categorisation of the provision</b>
subsection 588G(2)	insolvent trading	corporation/scheme
subsection 588GAB(2)	preventing creditor-defeating dispositions	corporation/scheme
subsection 588GAC(2)	procuring creditor-defeating dispositions	corporation/scheme
subsections 596AC(1), (2), (3) and (4)	avoiding employee entitlements	corporation/scheme
subsection 601ED(8)	obligation to be registered if operating certain managed investment schemes	corporation/scheme
subsection 601FC(5)	duties of responsible entity	corporation/scheme
subsection 601FD(3)	duties of officers of responsible entity	corporation/scheme
subsection 601FE(3)	duties of employees of responsible entity	corporation/scheme
subsection 601FG(2)	acquisition of interest in scheme by responsible entity	corporation/scheme
subsection 601JD(3)	duties of members	corporation/scheme
subsection 601UAA(2)	duties of officers of licensed trustee company	corporation/scheme
subsection 601UAB(2)	duties of employees of licensed trustee company	corporation/scheme
subsection 670A(4)	misstatements in, or omissions from, takeover and compulsory acquisition and buy-out documents	uncategorised
subsections 674A(2), 674A(3), 675A(2) and 675A(3)	continuous disclosure—knowledge, recklessness or negligence	financial services
subsection 727(6)	offering securities without a current disclosure document	uncategorised

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**Part 9.4B** Civil consequences of contravening civil penalty provisions

**Division 1** The Court may make declarations of contravention, pecuniary penalty orders, relinquishment orders, refund orders and compensation orders

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<b>Civil penalty provisions</b>		
<b>Column 1</b> <b>Provision</b>	<b>Column 2</b> <b>Brief description of the provision</b>	<b>Column 3</b> <b>Categorisation of the provision</b>
subsection 728(4)	misstatement in, or omission from, disclosure document	uncategorised
subsection 791A(3)	need for an Australian market licence	uncategorised
subsection 792A(2)	general obligations of market licensees	uncategorised
subsection 792B(7)	market licensee to notify ASIC of certain matters	uncategorised
subsection 798H(1)	complying with market integrity rules	uncategorised
subsection 820A(3)	need for an Australian CS facility licence	uncategorised
subsection 821A(2)	general obligations of CS facility licensees	uncategorised
subsection 821B(6)	CS facility licensee to notify ASIC of certain matters	uncategorised
subsection 853F(3)	obligations on disqualified individuals	uncategorised
section 901E	complying with derivative transaction rules	uncategorised
section 903D	complying with derivative trade repository rules	uncategorised
subsection 904A(2)	general obligations of derivative trade repository licensees	uncategorised
subsection 904C(1A)	obligation to notify ASIC of inability to meet obligations under section 904A	uncategorised
subsection 905A(3)	need to hold a licence to operate a derivative trade repository	uncategorised
subsection 908CF(1)	complying with financial benchmark rules or compelled	uncategorised

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<b>Civil penalty provisions</b>		
<b>Column 1 Provision</b>	<b>Column 2 Brief description of the provision</b>	<b>Column 3 Categorisation of the provision</b>
	financial benchmark rules	
subsections 908DA(1) and (2) and 908DB(1) and (2)	manipulating financial benchmarks	uncategorised
subsection 911A(5B)	need for an Australian financial services licence	uncategorised
subsection 911B(4)	providing financial services on behalf of a person who carries on a financial services business	uncategorised
subsection 912A(5A)	general obligations of a financial services licensee	uncategorised
subsection 912DAA(7)	failure by a financial services licensee to report to ASIC a reportable situation in relation to the licensee	uncategorised
subsection 912DAB(8)	failure by a financial services licensee to report to ASIC a reportable situation in relation to another financial services licensee, or to give a copy of the report to the other financial services licensee	uncategorised
subsection 912DAC(4)	failure by a financial services licensee to notify ASIC that the licensee has become, or ceased to be, a participant in a licensed market or a licensed CS facility	uncategorised
subsection 912EA(5)	failure by a financial services licensee to notify an affected client of a reportable situation	uncategorised
subsection 912EB(9)	failure by a financial services licensee to investigate a reportable situation, notify an affected client of the outcome of the investigation	uncategorised

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**Part 9.4B** Civil consequences of contravening civil penalty provisions

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<b>Civil penalty provisions</b>		
<b>Column 1 Provision</b>	<b>Column 2 Brief description of the provision</b>	<b>Column 3 Categorisation of the provision</b>
	or compensate an affected client	
subsection 920C(4)	need to comply with a banning order	uncategorised
subsection 921BA(5)	relevant providers to meet education and training standards	uncategorised
subsection 921BB(4)	relevant providers who provide tax (financial) advice services to meet requirement for continuing professional development	uncategorised
subsection 921E(3)	relevant providers to comply with the Code of Ethics	uncategorised
subsection 921F(8)	requirements relating to provisional relevant providers	uncategorised
subsection 921L(2)	relevant providers to comply with direction under paragraph 921L(1)(a)	uncategorised
section 921Y	unregistered relevant providers not to provide personal advice	uncategorised
subsection 921Z(4)	financial services licensees not to continue to authorise unregistered relevant providers to provide personal advice	uncategorised
subsection 922M(5)	need to comply with obligation to notify ASIC	uncategorised
subsection 941A(3)	obligation on financial services licensee to give a Financial Services Guide if financial service provided to person as a retail client	uncategorised
subsection 941B(4)	obligation on authorised representative to give a Financial Services Guide if financial service provided to person as a retail client	uncategorised

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<b>Civil penalty provisions</b>		
<b>Column 1 Provision</b>	<b>Column 2 Brief description of the provision</b>	<b>Column 3 Categorisation of the provision</b>
subsection 946A(4)	obligation to give client a Statement of Advice	uncategorised
subsection 948C(2)	obligation to give client a Cash Settlement Fact Sheet	uncategorised
subsection 952E(9)	giving a defective disclosure document or statement (whether or not known to be defective)	uncategorised
subsection 952H(3)	financial services licensee failing to ensure authorised representative gives disclosure documents or statements as required	uncategorised
subsections 961K(1) and (2)	financial services licensee responsible for breach of certain best interests duties	uncategorised
section 961L	financial services licensee to ensure compliance with certain best interests duties	uncategorised
subsection 961Q(1)	authorised representative responsible for breach of certain best interests duties	uncategorised
subsection 962G(4)	fee recipient must give client a fee disclosure statement	uncategorised
section 962P	charging ongoing fee after termination of ongoing fee arrangement	uncategorised
subsection 962R(4)	fee recipient must obtain consent to deduct ongoing fees from an account	uncategorised
subsection 962S(5)	fee recipient must obtain consent to arrange for deductions of ongoing fees from an account	uncategorised

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<b>Civil penalty provisions</b>		
<b>Column 1 Provision</b>	<b>Column 2 Brief description of the provision</b>	<b>Column 3 Categorisation of the provision</b>
subsection 962S(8)	fee recipient must not accept payment of ongoing fees resulting from a deduction from an account without consent	uncategorised
subsection 962U(3)	fee recipient to confirm receipt of variation or withdrawal of consent for deductions of ongoing fees	uncategorised
subsection 962V(3)	fee recipient to give written notice of cessation of consent to account provider	uncategorised
subsections 963E(1) and (2)	financial services licensee responsible for breach of ban on conflicted remuneration	financial services
section 963F	financial services licensee must ensure representatives do not accept conflicted remuneration	financial services
subsection 963G(1)	authorised representative must not accept conflicted remuneration	financial services
section 963J	employer must not pay employees conflicted remuneration	financial services
section 963K	financial product issuer or seller must not give conflicted remuneration to financial services licensee or representative	financial services
section 963P	person covered by section 963M must pay amount etc. in accordance with regulations	financial services
subsection 964A(1)	platform operator must not accept volume-based shelf-space fees	financial services
subsections 964D(1) and (2)	financial services licensee responsible for breach of asset-based fees on borrowed	financial services

## Section 1317E

<b>Civil penalty provisions</b>		
<b>Column 1 Provision</b>	<b>Column 2 Brief description of the provision</b>	<b>Column 3 Categorisation of the provision</b>
	amounts	
subsection 964E(1)	authorised representative must not charge asset-based fees on borrowed amounts	financial services
section 965	anti-avoidance of Part 7.7A provisions	financial services
subsection 981B(3)	obligation to pay money into an account	uncategorised
subsection 981C(2)	various matters relating to accounts maintained for the purposes of section 981B	uncategorised
subsection 981M(1)	complying with client money reporting rules	uncategorised
subsection 985E(1)	issuing or increasing limit of margin lending facility without having made assessment etc.	financial services
subsection 985H(1)	failure to assess a margin lending facility as unsuitable	financial services
subsection 985J(1)	failure to give assessment to retail client if requested before issue of facility or increase in limit	financial services
subsection 985J(2)	failure to give assessment to retail client if requested after issue of facility or increase in limit	financial services
subsection 985J(4)	demanding payment to give assessment to retail client	financial services
subsection 985K(1)	issuing or increasing limit of margin lending facility if unsuitable	financial services
section 985L	making issue of margin lending facility conditional on retail client agreeing to receive communications	financial services

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<b>Civil penalty provisions</b>		
<b>Column 1 Provision</b>	<b>Column 2 Brief description of the provision</b>	<b>Column 3 Categorisation of the provision</b>
	through agent	
subsection 985M(1)	failure to notify of margin call where there is no agent	financial services
subsection 985M(2)	failure to notify of margin call where there is an agent	financial services
subsection 993D(4)	failure to pay loan money into an account as required	financial services
subsections 994B(2) and (9)	failure to make and make available target market determinations for financial products	financial services
subsection 994C(2)	failure to review target market determinations	financial services
subsection 994C(4)	engaging in retail product distribution conduct in relation to financial products before review of target market determinations	financial services
subsection 994C(5)	failure to inform regulated persons of obligations not to engage in retail product distribution conduct in relation to financial products before review of target market determinations	financial services
subsection 994C(7)	engaging in retail product distribution conduct in relation to financial products before review of target market determinations	financial services
section 994D	engaging in retail product distribution conduct where no target market determination	financial services
subsections 994E(1) and (3)	ensuring that retail product distribution conduct is consistent with target market determinations	financial services



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<b>Civil penalty provisions</b>		
<b>Column 1 Provision</b>	<b>Column 2 Brief description of the provision</b>	<b>Column 3 Categorisation of the provision</b>
subsections 994F(1) and (3)	failure to keep records	financial services
subsections 994F(4), (5) and (6)	failure to report complaints and other information	financial services
subsection 994F(8)	failure to comply with requirements of regulations	financial services
section 994G	failure to notify ASIC	financial services
subsection 994H(3)	failure to provide information to ASIC on request	financial services
subsections 994J(7) and (8)	failure to comply with stop order obligations	financial services
subsection 1012A(5)	obligation to give Product Disclosure Statement—personal advice recommending particular financial product	financial services
subsection 1012B(6)	obligation to give Product Disclosure Statement—situations related to issue of financial products	financial services
subsection 1012C(11)	obligation to give Product Disclosure Statement—offers related to sale of financial products	financial services
subsection 1017BA(4B)	trustee of regulated superannuation funds—obligation to make product dashboard publicly available	financial services
subsection 1017BB(5AA)	trustee of registrable superannuation entities—obligation to make information relating to investment of assets publicly available	financial services
subsection 1020A(5)	offers etc. relating to certain	financial services

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<b>Civil penalty provisions</b>		
<b>Column 1 Provision</b>	<b>Column 2 Brief description of the provision</b>	<b>Column 3 Categorisation of the provision</b>
	managed investment schemes not to be made in certain circumstances	
subsection 1021E(8)	preparer of defective disclosure document or statement giving the document or statement (whether or not known to be defective)	financial services
subsection 1021G(3)	financial services licensee failing to ensure authorised representative gives etc. disclosure documents or statements as required	financial services
subsection 1023P(1)	engaging in conduct contrary to a product intervention order	financial services
subsection 1023P(2)	failure to notify retail clients	financial services
subsection 1023P(4)	failure to take reasonable steps to make others aware of product intervention order	financial services
section 1041A	market manipulation	financial services
subsection 1041B(1)	false trading and market rigging—creating a false or misleading appearance of active trading etc.	financial services
subsection 1041C(1)	false trading and market rigging—artificially maintaining etc. market price	financial services
section 1041D	dissemination of information about illegal transactions	financial services
subsections 1043A(1) and (2)	insider trading	financial services
section 1101AC	failure to comply with an enforceable code provision	financial services
a provision of a regulation made under	failure to comply with a civil penalty provision of a mandatory	financial services

## Section 1317E

<b>Civil penalty provisions</b>		
<b>Column 1 Provision</b>	<b>Column 2 Brief description of the provision</b>	<b>Column 3 Categorisation of the provision</b>
section 1101AD that includes the words “civil penalty” and one or more amounts in penalty units at the foot of the provision	code of conduct	
subsections 1211B(1) and (2)	contravening the Passport Rules	uncategorised
subsection 1224D(1)	duties owed by director of a CCIV	corporation/scheme
subsection 1224D(2)	duties owed by director of a retail CCIV	corporation/scheme
subsection 1224D(4)	duties owed by director of a wholesale CCIV	corporation/scheme
subsection 1224P(2)	acquisition of share in CCIV by corporate director of retail CCIV	corporation/scheme
subsection 1225(1)	duties owed by officers of corporate director of retail CCIV	corporation/scheme
subsection 1225F(1)	duties owed by employees of corporate director of retail CCIV	corporation/scheme
subsection 1230F(5)	share redemption requirements for CCIVs	corporation/scheme
subsection 1230S(4)	cross-investment restrictions or requirements for CCIVs	corporation/scheme
subsection 1231B(4)	unauthorised reduction of share capital by a CCIV	corporation/scheme
subsection 1231J(5)	directly acquiring own shares	corporation/scheme
subsections 1234J(1), (2) and (3)	holding of sub-fund assets of a CCIV	corporation/scheme
subsection 1272C(5)	requirement to have a director identification number	financial services
subsection 1272D(4)	requirement to apply for a director identification number	financial services

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<b>Civil penalty provisions</b>		
<b>Column 1 Provision</b>	<b>Column 2 Brief description of the provision</b>	<b>Column 3 Categorisation of the provision</b>
subsection 1272G(4)	applying for additional director identification numbers	financial services
subsection 1272H(2)	misrepresenting a director identification number	financial services
subsections 1308(4) and (5)	false or misleading documents	uncategorised
subsection 1309(12)	false information	uncategorised
subsection 1317AAE(1)	breach of confidentiality of identity of whistleblower	uncategorised
subsections 1317AC(1), (2) and (3)	victimisation or threatened victimisation of whistleblower	uncategorised
subclause 29(6) of Schedule 4	disclosure for proposed demutualisation	corporation/scheme

Note 1: Once a declaration has been made, ASIC can seek a pecuniary penalty order (section 1317G) or (in the case of a corporation/scheme civil penalty provision and certain other civil penalty provisions) a disqualification order (section 206C).

Note 2: The descriptions of matters in column 2 are indicative only.

Note 3: Section 908DD contains some matters relevant for making declarations of contravention for subsections 908DA(1) and (2) and 908DB(1) and (2) (about manipulating financial benchmarks).

*Attempt and involvement in contravention treated in same way as actual contravention*

- (4) A person who:
- (a) attempts to contravene a civil penalty provision; or
  - (b) is involved in a contravention of a civil penalty provision;
- is taken to have **contravened** the provision.

**1317F Declaration of contravention is conclusive evidence**

A declaration of contravention is conclusive evidence of the matters referred to in subsection 1317E(2).

**1317G Pecuniary penalty orders**

*Court may order person to pay pecuniary penalty*

- (1) A Court may order a person to pay to the Commonwealth a pecuniary penalty in relation to the contravention of a civil penalty provision if:
- (a) a declaration of contravention of the civil penalty provision by the person has been made under section 1317E; and
  - (b) if the contravention is of a corporation/scheme civil penalty provision, the contravention:
    - (i) materially prejudices the interests of the corporation, scheme or fund, or its members; or
    - (ii) materially prejudices the corporation's ability to pay its creditors; or
    - (iii) is serious; and
  - (c) if the contravention is of a financial services civil penalty provision that is not a Part 7.7A civil penalty provision, the contravention:
    - (i) materially prejudices the interests of acquirers or disposers of the relevant financial products; or
    - (ii) materially prejudices the issuer of the relevant financial products or, if the issuer is a corporation, scheme or fund, the members of that corporation, scheme or fund; or
    - (iii) is serious; and
  - (d) if the contravention is of subsection 1211B(1) or (2) (complying with the Passport Rules for this jurisdiction), the contravention:
    - (i) materially prejudices the interests of the passport fund or its members; or

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(ii) is serious.

The order is a ***pecuniary penalty order***.

*Maximum pecuniary penalty*

- (2) The pecuniary penalty must not exceed the pecuniary penalty applicable to the contravention of the civil penalty provision.

*Pecuniary penalty applicable to the contravention of a civil penalty provision—by an individual*

- (3) The ***pecuniary penalty applicable*** to the contravention of a civil penalty provision by an individual is the greater of:
- (a) 5,000 penalty units; and
  - (b) if the Court can determine the benefit derived and detriment avoided because of the contravention—that amount multiplied by 3.

*Pecuniary penalty applicable to the contravention of a civil penalty provision—by a body corporate*

- (4) The ***pecuniary penalty applicable*** to the contravention of a civil penalty provision by a body corporate is the greatest of:
- (a) 50,000 penalty units; and
  - (b) if the Court can determine the benefit derived and detriment avoided because of the contravention—that amount multiplied by 3; and
  - (c) either:
    - (i) 10% of the annual turnover of the body corporate for the 12-month period ending at the end of the month in which the body corporate contravened, or began to contravene, the civil penalty provision; or
    - (ii) if the amount worked out under subparagraph (i) is greater than an amount equal to 2.5 million penalty units—2.5 million penalty units.

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Section 1317GAA*Contrary intention in relation to pecuniary penalty applicable*

- (5) Subsections (3) and (4) apply in relation to a contravention of a civil penalty provision by an individual or a body corporate unless there is a contrary intention under this Act in relation to the pecuniary penalty applicable to the contravention. In that case, the ***pecuniary penalty applicable*** is the penalty specified for the civil penalty provision.

*Determining pecuniary penalty*

- (6) In determining the pecuniary penalty, the Court must take into account all relevant matters, including:
- (a) the nature and extent of the contravention; and
  - (b) the nature and extent of any loss or damage suffered because of the contravention; and
  - (c) the circumstances in which the contravention took place; and
  - (d) whether the person has previously been found by a court (including a court in foreign country) to have engaged in similar conduct; and
  - (e) in the case of a contravention by the trustee of a registrable superannuation entity—the impact that the penalty under consideration would have on the beneficiaries of the entity.

**1317GAA Civil enforcement of pecuniary penalty order**

- (1) A pecuniary penalty is a debt payable to ASIC on behalf of the Commonwealth.
- (2) ASIC or the Commonwealth may enforce a pecuniary penalty order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgment debt.

Section 1317GAB

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**1317GAB Relinquishing the benefit derived and detriment avoided from contravening a civil penalty provision**

*Relinquishment order*

- (1) A Court may order a person to pay the Commonwealth an amount equal to the benefit derived and detriment avoided because of a contravention of a civil penalty provision if a declaration of contravention by the person has been made under section 1317E. The order is a *relinquishment order*.
- (2) The Court may make a relinquishment order:
  - (a) on its own initiative, during proceedings before the Court; or
  - (b) on application by ASIC, made within 6 years after the alleged contravention.

*Relationship between relinquishment orders and pecuniary penalty orders*

- (3) To avoid doubt, the Court may make a relinquishment order in relation to the contravention of a civil penalty provision even if a pecuniary penalty order could be, or has been, made in relation to the contravention of the civil penalty provision.

Note: The relationship between relinquishment orders and proceedings for an offence are dealt with in sections 1317M, 1317N, 1317P and 1317Q.

**1317GAC Civil enforcement of relinquishment order**

- (1) The amount payable under a relinquishment order is a debt payable to ASIC on behalf of the Commonwealth.
- (2) ASIC or the Commonwealth may enforce a relinquishment order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgment debt.



**1317GAD Meaning of *benefit derived and detriment avoided* because of a contravention of a civil penalty provision**

The *benefit derived and detriment avoided* because of a contravention of a civil penalty provision is the sum of:

- (a) the total value of all benefits obtained by one or more persons that are reasonably attributable to the contravention; and
- (b) the total value of all detriments avoided by one or more persons that are reasonably attributable to the contravention.

**1317GA Refund orders—contravention of section 962P**

- (1) A Court may order that a person (the *fee recipient*) refund a fee paid to the fee recipient by another person (the *client*) if the Court is satisfied that:
  - (a) the fee recipient knowingly or recklessly contravened section 962P in charging the client the fee (charging ongoing fee after termination of ongoing fee arrangement); and
  - (b) it is reasonable in all the circumstances to make the order.

Note: An order may be made under this subsection whether or not a declaration of contravention has been made under section 1317E.

*Applications for order*

- (2) The Court may make the order under this section:
  - (a) on its own initiative, during proceedings before the Court; or
  - (b) on application by ASIC; or
  - (c) on the application of the client.

*When order may be made*

- (3) The Court must not make an order under this section in relation to fees paid more than 6 years before the proceedings for the order are commenced.

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*Recovery of amount as a debt*

- (4) If the Court makes an order that the fee recipient refund an amount specified in the order to the client, the client may recover the amount as a debt due to the client.

**1317GB Refund orders—contraventions of section 962R or 962S**

- (1) This section applies if a person (the *fee recipient*):
- (a) deducts an amount of an ongoing fee payable under an ongoing fee arrangement from an account held by a person (the *account holder*) with the fee recipient; or
  - (b) accepts payment of the amount of the ongoing fee that has been deducted from an account held by a person (the *account holder*) with another person (the *account provider*) under an arrangement the fee recipient made with the account provider.
- (2) A Court may order that the fee recipient refund the amount if the Court is satisfied that:
- (a) either:
    - (i) if paragraph (1)(a) applies—the fee recipient knowingly or recklessly contravened section 962R (fee recipient must not deduct ongoing fees without consent) in deducting the amount; or
    - (ii) if paragraph (1)(b) applies—the fee recipient knowingly or recklessly contravened section 962S (fee recipient must not arrange for deduction of ongoing fees without consent or accept such deductions) in arranging for the deduction of the amount, or accepting payment of the amount; and
  - (b) it is reasonable in all the circumstances to make the order.

Note: An order may be made under this subsection whether or not a declaration of contravention has been made under section 1317E.

*Applications for order*

- (3) The Court may make the order under this section:
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- (a) on its own initiative, during proceedings before the Court; or
- (b) on application by ASIC; or
- (c) on the application of the account holder.

*When order may be made*

- (4) The Court must not make an order under this section in relation to amounts paid more than 6 years before the proceedings for the order are commenced.

*Recovery of amount as a debt*

- (5) If the Court makes an order that the fee recipient refund an amount specified in the order to the account holder, the account holder may recover the amount as a debt due to the account holder.

**1317H Compensation orders—corporation/scheme civil penalty provisions***Compensation for damage suffered*

- (1) A Court may order a person to compensate a corporation, registered scheme or notified foreign passport fund for damage suffered by the corporation, scheme or fund if:
  - (a) the person has contravened a corporation/scheme civil penalty provision in relation to the corporation, scheme or fund; and
  - (b) the damage resulted from the contravention.

The order must specify the amount of the compensation.

Note: An order may be made under this subsection whether or not a declaration of contravention has been made under section 1317E.

*Damage includes profits*

- (2) In determining the damage suffered by the corporation, scheme or fund for the purposes of making a compensation order, include profits made by any person resulting from the contravention or the offence.
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*Damage includes diminution of value of scheme or fund property*

- (3) In determining the damage suffered by the scheme or fund for the purposes of making a compensation order, include any diminution in the value of the property of the scheme or fund.
- (4) If the responsible entity for a registered scheme is ordered to compensate the scheme, the responsible entity must transfer the amount of the compensation to scheme property. If anyone else is ordered to compensate the scheme, the responsible entity may recover the compensation on behalf of the scheme.
- (4A) If the operator of a notified foreign passport fund is ordered to compensate the fund, the operator must transfer the amount of the compensation to the fund property. If anyone else is ordered to compensate the fund, the operator may recover the compensation on behalf of the fund.

*Recovery of damage*

- (5) A compensation order may be enforced as if it were a judgment of the Court.

**1317HA Compensation orders—financial services civil penalty provisions**

*Compensation for damage suffered*

- (1) A Court may order a person (the *liable person*) to compensate another person (including a corporation), registered scheme or notified foreign passport fund for damage suffered by the person, scheme or fund if:
  - (a) the liable person has contravened a financial services civil penalty provision; and
  - (b) the damage resulted from the contravention.

The order must specify the amount of compensation.

Note: An order may be made under this subsection whether or not a declaration of contravention has been made under section 1317E.

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Section 1317HB*Damage includes profits*

- (2) In determining the damage suffered by a person, scheme or fund for the purposes of making a compensation order, include profits made by any person resulting from the contravention.

*Damage includes diminution of value of scheme or fund property*

- (3) In determining the damage suffered by a registered scheme or notified foreign passport fund for the purposes of making a compensation order, include any diminution in the value of the property of the scheme or fund.
- (4) If the responsible entity for a registered scheme is ordered to compensate the scheme, the responsible entity must transfer the amount of the compensation to the scheme property. If anyone else is ordered to compensate the scheme, the responsible entity may recover the compensation on behalf of the scheme.
- (4A) If the operator of a notified foreign passport fund is ordered to compensate the fund, the operator must transfer the amount of the compensation to the fund property. If anyone else is ordered to compensate the fund, the operator may recover the compensation on behalf of the fund.

*Recovery of damage*

- (5) A compensation order may be enforced as if it were a judgment of the Court.

**1317HB Compensation orders—market integrity rules and client money reporting rules***Compensation for damage suffered*

- (1) A Court may order a person (the *liable person*) to compensate another person (including a corporation), a registered scheme or a notified foreign passport fund for damage suffered by the person, scheme or fund if:

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- (a) the liable person has contravened subsection 798H(1) (complying with market integrity rules) or 981M(1) (complying with client money reporting rules); and
- (b) the damage resulted from the contravention.

The order must specify the amount of compensation.

Note: An order may be made under this subsection whether or not a declaration of contravention has been made under section 1317E.

- (2) Subsection (1) does not apply in relation to a contravention by the operator of a licensed market acting in that capacity.

*Damage includes profits*

- (3) In determining the damage suffered by a person, scheme or fund for the purposes of making a compensation order, include profits made by any person resulting from the contravention.

*Damage includes diminution of value of scheme or fund property*

- (4) In determining the damage suffered by a registered scheme or a notified foreign passport fund for the purposes of making a compensation order, include any diminution in the value of the property of the scheme or the fund.
- (4A) If the responsible entity for a registered scheme is ordered to compensate the scheme, the responsible entity must transfer the amount of the compensation to the scheme property. If anyone else is ordered to compensate the scheme, the responsible entity may recover the compensation on behalf of the scheme.
- (4B) If the operator of a notified foreign passport fund is ordered to compensate the fund, the operator must transfer the amount of the compensation to the fund property. If anyone else is ordered to compensate the fund, the operator may recover the compensation on behalf of the fund.

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*Recovery of damage*

- (5) A compensation order may be enforced as if it were a judgment of the Court.

**1317HC Compensation orders—financial benchmark rules or compelled financial benchmark rules***Compensation for damage suffered*

- (1) A Court may order a person (the *liable person*) to compensate another person (including a corporation), or a registered scheme, for damage suffered by the person or scheme if:
- (a) the liable person has contravened subsection 908CF(1) (complying with rules about financial benchmarks); and
  - (b) the damage resulted from the contravention.

The order must specify the amount of compensation.

Note: An order may be made under this subsection whether or not a declaration of contravention has been made under section 1317E.

*Damage includes profits*

- (2) In determining the damage suffered by a person or scheme for the purposes of making a compensation order, include profits made by any person resulting from the contravention.

*Damage to scheme includes diminution of value of scheme property*

- (3) In determining the damage suffered by a registered scheme for the purposes of making a compensation order, include any diminution in the value of the property of the scheme.

*Recovery of damage*

- (4) A compensation order may be enforced as if it were a judgment of the Court.

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**1317HE Compensation orders—Passport Rules**

(1) A Court may order a person (the *liable person*) to compensate another person (other than a passport fund) for damage suffered by the other person if:

- (a) the liable person has contravened subsection 1211B(1) or (2) (failure to comply with the Passport Rules for this jurisdiction); and
- (b) the damage resulted from the contravention.

The order must specify the amount of compensation.

Note: An order may be made under this subsection whether or not a declaration of contravention has been made under section 1317E.

(2) A Court may order a person to compensate a passport fund for damage suffered by the fund if:

- (a) the person has contravened subsection 1211B(1) or (2) (failure to comply with the Passport Rules for this jurisdiction); and
- (b) the damage resulted from the contravention.

The order must specify the amount of compensation.

Note: An order may be made under this subsection whether or not a declaration of contravention has been made under section 1317E.

(3) In determining the damage suffered by a person or passport fund for the purposes of making a compensation order, include profits made by any person resulting from the contravention.

(4) In determining the damage suffered by a passport fund for the purposes of making a compensation order, include any diminution in value of the property of the fund.

(5) If the operator of a passport fund is ordered to compensate the fund, the operator must transfer the amount of the compensation to the fund property. If anyone else is ordered to compensate the fund, the operator may recover the compensation on behalf of the fund.



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- (6) A compensation order may be enforced as if it were a judgment of the Court.

Section 1317J

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## Division 2—Procedural and other matters relating to orders by the Court

### 1317J Who may apply for a declaration or order

#### *Application by ASIC*

- (1) ASIC may apply for a declaration of contravention, a pecuniary penalty order or a compensation order.
- (1A) However, ASIC must not make an application under subsection (1) in relation to an alleged contravention of a restricted civil penalty provision unless:
  - (a) a Financial Services and Credit Panel has given ASIC a notice under subsection 921Q(1) in relation to the alleged contravention; or
  - (b) both of the following apply:
    - (i) a Financial Services and Credit Panel has given a person an infringement notice for the alleged contravention;
    - (ii) the person has not paid the amount that is payable under the infringement notice within the payment period for the infringement notice.

#### *Application by corporation*

- (2) The corporation, the responsible entity for the registered scheme or the operator of the notified foreign passport fund may apply for a compensation order.

Note: An application for a compensation order may be made whether or not a declaration of contravention has been made under section 1317E.

- (3) The corporation, the responsible entity for the registered scheme or the operator of the notified foreign passport fund may intervene in an application for a declaration of contravention or a pecuniary penalty order in relation to the corporation, scheme or fund. The corporation, responsible entity or operator is entitled to be heard on

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all matters other than whether the declaration or order should be made.

*Compensation order relating to financial services civil penalty provision—any other person who suffers damage may apply*

- (3A) Any other person who suffers damage in relation to a contravention, or alleged contravention, of a financial services civil penalty provision may apply for a compensation order under section 1317HA.

Note: An application for a compensation order may be made whether or not a declaration of contravention has been made under section 1317E.

*Compensation order relating to the Passport Rules for this jurisdiction—any other person who suffers damage may apply*

- (3AA) Any other person who suffers damage in relation to a contravention, or alleged contravention, of subsection 1211B(1) or (2) may apply for a compensation order under section 1317HE.

Note: An application for a compensation order may be made whether or not a declaration of contravention has been made under section 1317E.

- (3B) Subsections (2) and (3) do not apply in relation to a contravention of:
- (a) section 901E (complying with derivative transaction rules);
  - or
  - (b) section 903D (complying with derivative trade repository rules).

*No one else may apply*

- (4) No person may apply for a declaration of contravention, a pecuniary penalty order or a compensation order unless permitted by this section.
- (5) Subsection (4) does not exclude the operation of the *Director of Public Prosecutions Act 1983*.

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**1317K Time limit for application for a declaration or order**

Proceedings for a declaration of contravention, a pecuniary penalty order, or a compensation order, may be started no later than 6 years after the contravention.

**1317L Civil evidence and procedure rules for declarations of contravention and civil penalty orders**

The Court must apply the rules of evidence and procedure for civil matters when hearing proceedings for:

- (a) a declaration of contravention; or
- (b) a pecuniary penalty order.

**1317M Civil proceedings after criminal proceedings**

A court must not make a declaration of contravention, a pecuniary penalty order or a relinquishment order against a person for a contravention if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

**1317N Criminal proceedings during civil proceedings**

- (1) Proceedings for a declaration of contravention, a pecuniary penalty order or a relinquishment order against a person are stayed if:
  - (a) criminal proceedings are started or have already been started against the person for an offence; and
  - (b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.
- (2) The proceedings for the declaration or order (the *civil proceedings*) may be resumed if the person is not convicted of the offence. Otherwise:
  - (a) the civil proceedings are dismissed; and
  - (b) costs must not be awarded in relation to the civil proceedings.

### **1317P Criminal proceedings after civil proceedings**

- (1) Subject to subsection (2), criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether:
- (a) a declaration of contravention has been made against the person; or
  - (b) a pecuniary penalty order has been made against the person; or
  - (baa) a relinquishment order has been made against the person; or
  - (ba) a refund order has been made against the person; or
  - (c) a compensation order has been made against the person; or
  - (d) the person has been disqualified from managing a corporation under Part 2D.6; or
  - (e) a banning order, or an order by the Court under section 921A (about disqualification by the Court), has been made against the person.
- (2) Subsection (1) does not apply if:
- (a) an infringement notice is issued under section 1317DAC to the person for an alleged contravention of subsection 674(2) or 675(2); and
  - (b) the infringement notice is not withdrawn under section 1317DAI.

### **1317Q Evidence given in proceedings for penalty not admissible in criminal proceedings**

Evidence of information given or evidence of production of documents by an individual is not admissible in criminal proceedings against the individual if:

- (a) the individual previously gave the evidence or produced the documents in proceedings for a pecuniary penalty order or a relinquishment order against the individual for a contravention of a civil penalty provision (whether or not the order was made); and

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- (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.

However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the pecuniary penalty order or the relinquishment order.

**1317QA Continuing contraventions of civil penalty provisions**

- (1) If an act or thing is required under a civil penalty provision to be done:

- (a) within a particular period; or
- (b) before a particular time;

then the obligation to do that act or thing continues until the act or thing is done (even if the period has expired or the time has passed).

- (2) A person who contravenes a civil penalty provision that requires an act or thing to be done:

- (a) within a particular period; or
- (b) before a particular time;

commits a separate contravention of that provision in respect of each day during which the contravention occurs (including the day the relevant pecuniary penalty order or relinquishment order is made or any later day).

**1317QB State of mind**

- (1) In proceedings for a declaration of contravention or an order under Division 1 against a person for a contravention of a civil penalty provision, it is not necessary to prove:

- (a) the person's intention; or
- (b) the person's knowledge; or
- (c) the person's recklessness; or
- (d) the person's negligence; or
- (e) any other state of mind of the person.

- (2) Subsection (1) does not apply to the extent that the proceedings relate to attempting to contravene a civil penalty provision, or being involved in a contravention of a civil penalty provision.
- (3) Subsection (1) does not affect the operation of section 1317QC (which is about mistake of fact).
- (4) Subsection (1) does not apply to the extent that the civil penalty provision, or a provision that relates to the civil penalty provision, expressly provides otherwise.

### **1317QC Mistake of fact**

- (1) A person is not liable to have a declaration of contravention or an order under Division 1 made against the person for a contravention of a civil penalty provision if:
  - (a) at or before the time of the conduct constituting the contravention, the person:
    - (i) considered whether or not facts existed; and
    - (ii) was under a mistaken but reasonable belief about those facts; and
  - (b) had those facts existed, the conduct would not have constituted a contravention of the civil penalty provision.
- (2) For the purposes of subsection (1), a person may be regarded as having considered whether or not facts existed if:
  - (a) the person had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and
  - (b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.
- (3) A person who wishes to rely on subsection (1) or (2) in proceedings for a declaration of contravention or an order under Division 1 bears an evidential burden in relation to that matter.

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- (4) In subsection (3), *evidential burden*, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

**1317QD Exceptions etc. to civil penalty provisions—burden of proof**

- (1) If, in proceedings for a declaration of contravention or an order under Division 1 against a person for a contravention of a civil penalty provision, the person wishes to rely on any exception, exemption, excuse, qualification or justification provided by the law creating the civil penalty provision, then the person bears an evidential burden in relation to that matter.
- (2) In subsection (1), *evidential burden*, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

**1317QE Civil penalty provisions contravened by employees, agents or officers**

If an element of a civil penalty provision is done by an employee, agent or officer of a body corporate acting:

- (a) within the actual or apparent scope of the employee's, agent's, or officer's employment; or
- (b) within the employee's, agent's, or officer's actual or apparent authority;

the element must also be attributed to the body corporate.

**1317QF Preference must be given to compensate persons who suffer damage as a result of contravention**

- (1) This section applies if a court considers that it is appropriate to:
- (a) make a pecuniary penalty order against a person in relation to a contravention of a civil penalty provision; or
- (b) make a relinquishment order against a person in relation to a contravention of a civil penalty provision; or



- (c) impose a fine against a person in relation to a commission of an offence constituted by the same conduct as the conduct constituting the contravention of the pecuniary penalty order.
- (2) In making the pecuniary penalty order or relinquishment order or imposing the fine, the court:
  - (a) must consider the effect that making the order or imposing the fine would have on the amount available to pay:
    - (i) compensation to which persons might reasonably be expected to be entitled under section 961M, 1317H, 1317HA, 1317HB, 1317HC or 1317HE; or
    - (ii) refunds to which persons might reasonably be expected to be entitled under section 1317GA or 1317GB; and
  - (b) give preference to making an appropriate amount available for refunds and compensation under those sections.
- (3) If the court gives preference to making an appropriate amount available for refunds and compensation under paragraph (2)(b), the court may also make such orders as the court thinks fit for the purpose of ensuring that the amount remains available for the payment of:
  - (a) compensation under section 961M, 1317H, 1317HA, 1317HB, 1317HC or 1317HE; or
  - (b) refunds under section 1317GA or 1317GB.

### **1317R ASIC requiring person to assist**

- (1) ASIC may require a person to give all reasonable assistance in connection with:
  - (a) an application for a declaration of contravention or a pecuniary penalty order; or
  - (b) criminal proceedings for an offence against this Act.
- (2) ASIC can require the person to assist in connection with an application for a declaration or order if, and only if:
  - (a) it appears to ASIC that someone other than the person required to assist may have contravened a civil penalty provision; and

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- (b) ASIC suspects or believes that the person required to assist can give information relevant to the application.
- (3) ASIC can require the person to assist in connection with criminal proceedings if, and only if:
  - (a) it appears to ASIC that the person required to assist is unlikely to be a defendant in the proceedings; and
  - (b) the person required to assist is, in relation to a person who is or should be a defendant in the proceedings:
    - (i) an employee or agent (including a banker or auditor) of the other person; or
    - (ii) if the other person is a corporation—an officer or employee of the other person; or
    - (iii) if the other person is an individual—a partner of the other person.
- (4) ASIC can require the person to assist regardless of whether:
  - (a) an application for the declaration or penalty order has actually been made; or
  - (b) criminal proceedings for the offence have actually begun.
- (5) The person cannot be required to assist if they are or have been a lawyer for:
  - (a) in an application for a declaration or penalty order—the person suspected of the contravention; or
  - (b) in criminal proceedings—a defendant or likely defendant in the proceedings.
- (6) The requirement to assist must be given in writing.
- (7) The Court may order the person to comply with the requirement in a specified way. Only ASIC may apply to the Court for an order under this subsection.

Note: The person must comply with the requirement and may commit an offence if they do not, even if there is no order under this subsection (see section 104 and subsection 1311(1)).

- (8) This section does not limit and is not limited by section 49 of the ASIC Act.

**1317S Relief from liability for contravention of civil penalty provision**

- (1) In this section:

*eligible proceedings:*

- (a) means proceedings for a contravention of a civil penalty provision (including proceedings under section 588M, 588W, 961M, 1317GA, 1317GB, 1317H, 1317HA, 1317HB, 1317HC or 1317HE); and
- (b) does not include proceedings for an offence (except so far as the proceedings relate to the question whether the court should make an order under section 588K, 1317H, 1317HA, 1317HB, 1317HC or 1317HE).
- (2) If:
- (a) eligible proceedings are brought against a person; and
- (b) in the proceedings it appears to the court that the person has, or may have, contravened a civil penalty provision but that:
- (i) the person has acted honestly; and
- (ii) having regard to all the circumstances of the case (including, where applicable, those connected with the person's appointment as an officer, or employment as an employee, of a corporation or of a Part 5.7 body), the person ought fairly to be excused for the contravention;
- the court may relieve the person either wholly or partly from a liability to which the person would otherwise be subject, or that might otherwise be imposed on the person, because of the contravention.
- (3) In determining under subsection (2) whether a person ought fairly to be excused for a contravention of section 588G, the matters to which regard is to be had include, but are not limited to:

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- (a) any action the person took with a view to appointing an administrator of the company or Part 5.7 body or a restructuring practitioner for the company; and
  - (b) when that action was taken; and
  - (c) the results of that action.
- (4) If a person thinks that eligible proceedings will or may be begun against them, they may apply to the Court for relief.
- (5) On an application under subsection (4), the Court may grant relief under subsection (2) as if the eligible proceedings had been begun in the Court.
- (6) For the purposes of subsection (2) as applying for the purposes of a case tried by a judge with a jury:
  - (a) a reference in that subsection to the court is a reference to the judge; and
  - (b) the relief that may be granted includes withdrawing the case in whole or in part from the jury and directing judgment to be entered for the defendant on such terms as to costs as the judge thinks appropriate.
- (7) Nothing in this section limits, or is limited by, section 1317QC or section 1318.

## **Part 9.5—Powers of Courts**

### **1318 Power to grant relief**

- (1) If, in any civil proceeding against a person to whom this section applies for negligence, default, breach of trust or breach of duty in a capacity as such a person, it appears to the court before which the proceedings are taken that the person is or may be liable in respect of the negligence, default or breach but that the person has acted honestly and that, having regard to all the circumstances of the case, including those connected with the person's appointment, the person ought fairly to be excused for the negligence, default or breach, the court may relieve the person either wholly or partly from liability on such terms as the court thinks fit.
- (2) Where a person to whom this section applies has reason to apprehend that any claim will or might be made against the person in respect of any negligence, default, breach of trust or breach of duty in a capacity as such a person, the person may apply to the Court for relief, and the Court has the same power to relieve the person as it would have had under subsection (1) if it had been a court before which proceedings against the person for negligence, default, breach of trust or breach of duty had been brought.
- (3) Where a case to which subsection (1) applies is being tried by a judge with a jury, the judge after hearing the evidence may, if he or she is satisfied that the defendant ought pursuant to that subsection to be relieved either wholly or partly from the liability sought to be enforced against the person, withdraw the case in whole or in part from the jury and forthwith direct judgment to be entered for the defendant on such terms as to costs or otherwise as the judge thinks proper.
- (4) This section applies to a person who is:
  - (a) an officer or employee of a corporation; or

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- (b) an auditor of a corporation, whether or not the person is an officer or employee of the corporation; or
  - (c) an expert in relation to a matter:
    - (i) relating to a corporation; and
    - (ii) in relation to which the civil proceeding has been taken or the claim will or might arise; or
  - (d) a receiver, receiver and manager, liquidator or other person appointed or directed by the Court to carry out any duty under this Act in relation to a corporation.
- (5) This section does not apply to a corporation that is an Aboriginal and Torres Strait Islander corporation.

Note: Similar provision is made in relation to Aboriginal and Torres Strait Islander corporations under section 576-1 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

### **1319 Power of Court to give directions with respect to meetings ordered by the Court**

Where, under this Act, the Court orders a meeting to be convened, the Court may, subject to this Act, give such directions with respect to the convening, holding or conduct of the meeting, and such ancillary or consequential directions in relation to the meeting, as it thinks fit.

### **1322 Irregularities**

- (1) In this section, unless the contrary intention appears:
- (a) a reference to a proceeding under this Act is a reference to any proceeding whether a legal proceeding or not; and
  - (b) a reference to a procedural irregularity includes a reference to:
    - (i) the absence of a quorum at a meeting of a corporation, at a meeting of directors or creditors of a corporation, at a joint meeting of creditors and members of a corporation or at a meeting of members of a registered scheme; and

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(ii) a defect, irregularity or deficiency of notice or time.

Note: This section applies in relation to CCIVs with modifications: see section 1242F.

- (2) A proceeding under this Act is not invalidated because of any procedural irregularity unless the Court is of the opinion that the irregularity has caused or may cause substantial injustice that cannot be remedied by any order of the Court and by order declares the proceeding to be invalid.
- (3) A meeting held for the purposes of this Act, or a meeting notice of which is required to be given in accordance with the provisions of this Act, or any proceeding at such a meeting, is not invalidated only because of the accidental omission to give notice of the meeting or the non-receipt by any person of notice of the meeting, unless the Court, on the application of the person concerned, a person entitled to attend the meeting or ASIC, declares proceedings at the meeting to be void.
- (3AA) A meeting held for the purposes of this Act, or a meeting notice of which is required to be given in accordance with the provisions of this Act, or any proceeding at such a meeting, is not invalidated only because of the inability of a person to access the notice of meeting, unless the Court, on the application of the person concerned, a person entitled to attend the meeting or ASIC, declares proceedings at the meeting to be void.
- Note: Under paragraph 249J(3)(c), a company may, in certain circumstances, give a member notice of a meeting by means of an electronic communication, or by giving the member sufficient information to allow the member to access the notice electronically.
- (3A) If members who are entitled to attend a meeting of members do not have, as a whole, a reasonable opportunity to participate in the meeting or in a proceeding at the meeting, the meeting or proceeding will only be invalid on that ground if:
- (a) the Court is of the opinion that:
- (i) a substantial injustice has been caused or may be caused; and

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- (ii) the injustice cannot be remedied by any order of the Court; and
  - (b) the Court declares the meeting or proceeding invalid.
- (3B) If voting rights are exercised in contravention of subsection 259D(3) (company controlling entity that holds shares in it), the meeting or the resolution on which the voting rights were exercised will only be invalid on that ground if:
  - (a) the court is of the opinion that:
    - (i) a substantial injustice has been caused or may be caused; and
    - (ii) the injustice cannot be remedied by any order of the court; and
  - (b) the court declares the meeting or resolution invalid.
- (4) Subject to the following provisions of this section but without limiting the generality of any other provision of this Act, the Court may, on application by any interested person, make all or any of the following orders, either unconditionally or subject to such conditions as the Court imposes:
  - (a) an order declaring that any act, matter or thing purporting to have been done, or any proceeding purporting to have been instituted or taken, under this Act or in relation to a corporation is not invalid by reason of any contravention of a provision of this Act or a provision of the constitution of a corporation;
  - (b) an order directing the rectification of any register kept by ASIC under this Act;
  - (c) an order relieving a person in whole or in part from any civil liability in respect of a contravention or failure of a kind referred to in paragraph (a);
  - (d) an order extending the period for doing any act, matter or thing or instituting or taking any proceeding under this Act or in relation to a corporation (including an order extending a period where the period concerned ended before the application for the order was made) or abridging the period



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for doing such an act, matter or thing or instituting or taking such a proceeding;  
and may make such consequential or ancillary orders as the Court thinks fit.

- (5) An order may be made under paragraph (4)(a) or (c) notwithstanding that the contravention or failure referred to in the paragraph concerned resulted in the commission of an offence.
- (6) The Court must not make an order under this section unless it is satisfied:
  - (a) in the case of an order referred to in paragraph (4)(a):
    - (i) that the act, matter or thing, or the proceeding, referred to in that paragraph is essentially of a procedural nature;
    - (ii) that the person or persons concerned in or party to the contravention or failure acted honestly; or
    - (iii) that it is just and equitable that the order be made; and
  - (b) in the case of an order referred to in paragraph (4)(c)—that the person subject to the civil liability concerned acted honestly; and
  - (c) in every case—that no substantial injustice has been or is likely to be caused to any person.

**1323 Power of Court to prohibit payment or transfer of money, financial products or other property**

- (1) Where:
  - (a) an investigation is being carried out under the ASIC Act or this Act in relation to an act or omission by a person, being an act or omission that constitutes or may constitute a contravention of this Act; or
  - (b) a prosecution has been begun against a person for a contravention of this Act; or
  - (c) a civil proceeding has been begun against a person under this Act;and the Court considers it necessary or desirable to do so for the purpose of protecting the interests of a person (in this section

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called an *aggrieved person*) to whom the person referred to in paragraph (a), (b) or (c), as the case may be, (in this section called the *relevant person*), is liable, or may be or become liable, to pay money, whether in respect of a debt, by way of damages or compensation or otherwise, or to account for financial products or other property, the Court may, on application by ASIC or by an aggrieved person, make one or more of the following orders:

- (d) an order prohibiting a person who is indebted to the relevant person or to an associate of the relevant person from making a payment in total or partial discharge of the debt to, or to another person at the direction or request of, the person to whom the debt is owed;
- (e) an order prohibiting a person holding money, financial products or other property, on behalf of the relevant person, or on behalf of an associate of the relevant person, from paying all or any of the money, or transferring, or otherwise parting with possession of, the financial products or other property, to, or to another person at the direction or request of, the person on whose behalf the money, financial products or other property, is or are held;
- (f) an order prohibiting the taking or sending out of this jurisdiction, or out of Australia, by a person of money of the relevant person or of an associate of the relevant person;
- (g) an order prohibiting the taking, sending or transfer by a person of financial products or other property of the relevant person, or of an associate of the relevant person:
  - (i) from a place in this jurisdiction to a place outside this jurisdiction (including the transfer of financial products from a register in this jurisdiction to a register outside this jurisdiction); or
  - (ii) from a place in Australia to a place outside Australia (including the transfer of financial products from a register in Australia to a register outside Australia);
- (h) an order appointing:
  - (i) if the relevant person is a natural person—a receiver or trustee, having such powers as the Court orders, of the property or of part of the property of that person; or

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- (ii) if the relevant person is a body corporate—a receiver or receiver and manager, having such powers as the Court orders, of the property or of part of the property of that person;
  - (j) if the relevant person is a natural person—an order requiring that person to deliver up to the Court his or her passport and such other documents as the Court thinks fit;
  - (k) if the relevant person is a natural person—an order prohibiting that person from leaving this jurisdiction, or Australia, without the consent of the Court.
- (2A) A reference in paragraph (1)(g) or (h) to property of a person includes a reference to property that the person holds otherwise than as sole beneficial owner, for example:
- (a) as trustee for, as nominee for, or otherwise on behalf of or on account of, another person; or
  - (b) in a fiduciary capacity.
- (2B) Subsection (2A) is to avoid doubt, is not to limit the generality of anything in subsection (1) and is not to affect by implication the interpretation of any other provision of this Act.
- (2) An order under subsection (1) prohibiting conduct may prohibit the conduct either absolutely or subject to conditions.
- (3) Where an application is made to the Court for an order under subsection (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.
- (4) On an application under subsection (1), the Court must not require the applicant or any other person, as a condition of granting an interim order under subsection (3), to give an undertaking as to damages.
- (5) Where the Court has made an order under this section on a person's application, the Court may, on application by that person
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or by any person affected by the order, make a further order discharging or varying the first-mentioned order.

- (6) An order made under subsection (1) or (2) may be expressed to operate for a specified period or until the order is discharged by a further order under this section.
- (7) Nothing in this section affects the powers that the Court has apart from this section.
- (8) This section has effect subject to the *Bankruptcy Act 1966*.
- (9) A person must not contravene an order by the Court under this section that is applicable to the person.
- (10) An offence based on subsection (9) is an offence of strict liability.

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

### 1324 Injunctions

- (1) Where a person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute:
  - (a) a contravention of this Act; or
  - (b) attempting to contravene this Act; or
  - (c) aiding, abetting, counselling or procuring a person to contravene this Act; or
  - (d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene this Act; or
  - (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Act; or
  - (f) conspiring with others to contravene this Act;the Court may, on the application of ASIC, or of a person whose interests have been, are or would be affected by the conduct, grant an injunction, on such terms as the Court thinks appropriate, restraining the first-mentioned person from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing.

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- (1A) For the purposes of subsection (1):
- (a) a contravention of this Act affects the interests of a creditor or member of a company if the insolvency of the company is an element of the contravention; and
  - (b) a company's contravention of:
    - (i) paragraph 257A(1)(a) (share buy-back not to prejudice ability to pay creditors); or
    - (ia) paragraph 256B(1)(b) (share capital reduction not to prejudice ability to pay creditors); or
    - (ii) paragraph 260A(1)(a) (financial assistance for share acquisition not to prejudice company or shareholders or ability to pay creditors);affects the interests of a creditor or member of the company; and
  - (c) a company's contravention of paragraph 256B(1)(a) (fair and reasonable test for share capital reduction) affects the interests of a member of the company.

This subsection does not limit subsection (1) in any way.

- (1B) If the ground relied on in an application for an injunction is conduct or proposed conduct of a company or other person that it is alleged constitutes, or would constitute:
- (a) a contravention of paragraph 256B(1)(a) or (b), section 257A or paragraph 260A(1)(a); or
  - (b) a contravention of a provision of this Act involving the insolvency of the company because of:
    - (i) the company making a reduction of its share capital to which Division 1 of Part 2J.1 applies; or
    - (ii) the company buying back its shares; or
    - (iii) the company giving financial assistance to which Part 2J.3 applies;
- the Court must assume that the conduct constitutes, or would constitute, a contravention of that paragraph, section or provision unless the company or person proves otherwise.

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- (2) Where a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing that the person is required by this Act to do, the Court may, on the application of:
  - (a) ASIC; or
  - (b) any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing;grant an injunction, on such terms as the Court thinks appropriate, requiring the first-mentioned person to do that act or thing.
- (3) Where an application for an injunction under subsection (1) or (2) has been made, the Court may, if the Court determines it to be appropriate, grant an injunction by consent of all the parties to the proceedings, whether or not the Court is satisfied that that subsection applies.
- (4) Where in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).
- (5) The Court may discharge or vary an injunction granted under subsection (1), (2) or (4).
- (6) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised:
  - (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
  - (b) whether or not the person has previously engaged in conduct of that kind; and
  - (c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.
- (7) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised:
  - (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and

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- (b) whether or not the person has previously refused or failed to do that act or thing; and
  - (c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.
- (8) Where ASIC applies to the Court for the grant of an injunction under this section, the Court must not require the applicant or any other person, as a condition of granting an interim injunction, to give an undertaking as to damages.
- (9) In proceedings under this section against a person the Court may make an order under section 1323 in respect of the person.
- (10) Where the Court has power under this section to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do a particular act or thing, the Court may, either in addition to or in substitution for the grant of the injunction, order that person to pay damages to any other person.

**1324A Provisions relating to prosecutions**

In the prosecution of a person for an offence in respect of a contravention of a provision of Chapter 5C, 6CA or 6D, Part 7.10 or Chapter 8B, the Court may do either or both of the following:

- (a) grant an injunction under section 1324 against the person in relation to:
  - (i) the conduct that constitutes, or is alleged to constitute, the offence; or
  - (ii) other conduct of that kind
- (b) make an order under section 1324B in respect of the person.

**1324B Order to disclose information or publish advertisements**

Without limiting section 1324, if, on the application of ASIC, the Court is satisfied that a person has engaged in conduct constituting a contravention of a provision of Chapter 5C, 6CA or 6D,

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subsection 798H(1), section 901E or 903D, subsection 908CF(1) or 981M(1), Part 7.10 or Chapter 8B, the Court may make either or both of the following orders against that person or a person involved in the contravention:

- (a) an order requiring the person to whom it is directed to disclose, in the manner specified in the order, to:
  - (i) the public; or
  - (ii) a particular person; or
  - (iii) a particular class of persons;the information, or information of a kind, that is specified in the order and is in the person's possession or to which the person has access;
- (b) an order requiring the person to whom it is directed to publish, at the person's own expense, in the manner and at times specified in the order, advertisements whose terms are specified in, or are to be determined in accordance with, the order.

### **1325 Other orders**

- (1) Where, in a proceeding instituted under, or for a contravention of, a section 1325 order provision the Court finds that a person who is a party to the proceeding has suffered, or is likely to suffer, loss or damage because of conduct of another person that was engaged in in contravention of a section 1325 order provision the Court may, whether or not it grants an injunction, or makes an order, under any other provision of this Act, make such order or orders as it thinks appropriate against the person who engaged in the conduct or a person who was involved in the contravention (including all or any of the orders mentioned in subsection (5)) if the Court considers that the order or orders concerned will compensate the first-mentioned person in whole or in part for the loss or damage or will prevent or reduce the loss or damage.
- (2) The Court may, on the application of a person who has suffered, or is likely to suffer, loss or damage because of conduct of another person that was engaged in in contravention of a section 1325



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order provision or on the application of ASIC in accordance with subsection (3) on behalf of such a person or 2 or more such persons, make such order or orders as the Court thinks appropriate against the person who engaged in the conduct or a person who was involved in the contravention (including all or any of the orders mentioned in subsection (5)) if the Court considers that the order or orders concerned will compensate the person who made the application, or the person or any of the persons on whose behalf the application was made, in whole or in part for the loss or damage, or will prevent or reduce the loss or damage suffered, or likely to be suffered, by such a person.

- (3) Where, in a proceeding instituted for a contravention of a section 1325 order provision or instituted by ASIC under section 1324, a person is found to have engaged in conduct in contravention of a section 1325 order provision, ASIC may make an application under subsection (2) on behalf of one or more persons identified in the application who have suffered, or are likely to suffer, loss or damage by the conduct, but ASIC must not make such an application except with the consent in writing given before the application is made by the person, or by each of the persons, on whose behalf the application is made.
- (4) An application under subsection (2) may be made within 6 years after the day on which the cause of action arose.
- (5) The orders referred to in subsections (1) and (2) are:
  - (a) an order declaring the whole or any part of a contract made between the person who suffered, or is likely to suffer, the loss or damage and the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct, or of a collateral arrangement relating to such a contract, to be void and, if the Court thinks fit, to have been void *ab initio* or at all times on and after a specified day before the order is made; and
  - (b) an order varying such a contract or arrangement in such manner as is specified in the order and, if the Court thinks fit, declaring the contract or arrangement to have had effect as so

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varied on and after a specified day before the order is made;  
and

- (c) an order refusing to enforce any or all of the provisions of such a contract; and
- (d) an order directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct to refund money or return property to the person who suffered the loss or damage; and
- (e) an order directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct to pay to the person who suffered the loss or damage the amount of the loss or damage; and
- (f) an order directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct, at the person's own expense, to supply specified services to the person who suffered, or is likely to suffer, the loss or damage.

(5A) Subsections (1) and (2) have effect subject to section 1044B.

Note: Section 1044B may limit the liability, under an order under subsection (1) or (2) of this section, of a person for his or her contravention of section 1041H (Misleading or deceptive conduct) or involvement in such a contravention.

(6) Where an application is made for an order under this section against a person, the Court may make an order under section 1323 in respect of the person.

(7) In this section:

***section 1325 order provision*** means:

- (a) subsection 201P(1); and
- (b) a provision of Chapter 5C; and
- (c) a provision of Chapter 6CA (other than sections 674 and 675); and
- (d) a provision of Chapter 6D; and
- (e) subsection 798H(1); and
- (f) subsection 908CF(1); and

- (g) a provision of Part 7.10; and
- (h) a provision of Chapter 8A; and
- (i) a provision of the Passport Rules for this jurisdiction; and
- (j) a provision of Chapter 8B.

### **1325A Orders if contravention of Chapter 6, 6A, 6B or 6C**

- (1) The Court may make any order or orders (including a remedial order) that it considers appropriate if a person:
- (a) contravenes a provision of Chapter 6, 6A, 6B or 6C; or
  - (b) contravenes a condition on a consent given by ASIC under section 652B; or
  - (c) states in a notice under section 672B about securities that they do not know particular information about:
    - (i) the securities; or
    - (ii) someone who has a relevant interest in, or has given instructions in relation to, the securities.

Note 1: Section 9 defines *remedial order*.

Note 2: Sections 659B and 659C deal with court proceedings during and after a takeover bid.

- (2) The Court may make any order or orders (including a remedial order) that it considers appropriate if:
- (a) the consideration offered under a takeover bid is or includes securities; and
  - (b) the offers under the bid or the bidder's statement states or implies that the securities will be able to be traded on a financial market (whether in Australia or elsewhere) and:
    - (i) an application for admission to quotation is not made within 7 days after the start of the bid period; or
    - (ii) permission for admission to quotation is not granted within 7 days after the end of the bid period.

Note: Section 9 defines *remedial order*.

- (3) An order under this section may be made on application by the following:

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- (a) ASIC;
- (b) the company, or the responsible entity of the registered scheme, whose securities are involved in the contravention;
- (c) a member or former member of that company or scheme;
- (d) a person from whom the relevant interest in the securities were acquired;
- (e) a person whose interests are affected by the contravention.

**1325B Court may order bidder to make offers**

- (1) If a bidder making a takeover bid for a class of securities contravenes section 631 by failing to make offers under the bid within time and ASIC applies for an order under this section, the Court may:
  - (a) order the bidder to send, to each holder of securities in that class, an offer to which the bidder's statement relates within a specified time; and
  - (b) make any ancillary orders it thinks appropriate including orders that the bidder:
    - (i) send notices setting out specified information with the offer; and
    - (ii) send copies of the notice within a specified period to the target and, if the target is listed, to the relevant market operator; and
    - (iii) lodge a copy of the notice with ASIC within a specified period.
- (2) Offers sent in accordance with an order under this section are taken to be made under a takeover bid.

**1325C Unfair or unconscionable agreements, payments or benefits**

- (1) The Court may make orders under subsection (2) if:
  - (a) a body corporate gives, or enters into an agreement to give, a director or secretary of the body corporate or a related body corporate a benefit (including a payment or an agreement to

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- employ them, or engage their services, for a fixed period);  
and
- (b) the agreement is entered into or the benefit is given:
    - (i) within 12 months after the start of the bid period for a takeover bid for the securities of the body corporate or a related body corporate; or
    - (ii) at a time when the directors of the body corporate have reason to believe that a takeover bid is to be made in respect of securities of the body corporate or a related body corporate; and
  - (c) the Court is satisfied that the agreement or benefit was unfair or unconscionable having regard to the interests of the body corporate.
- (2) The Court may:
- (a) declare the agreement, or any part of it, to be void or to have always been void; or
  - (b) direct a person to whom a benefit is given, or another specified person, to:
    - (i) make a payment or transfer property to the body corporate; or
    - (ii) do any other act for the benefit of the body corporate; or
  - (c) make any other order it considers appropriate.
- (3) This section does not apply to an agreement or benefit that has been approved by an ordinary resolution of the body corporate (whether before or after the agreement was entered into or the benefit given) with no vote being cast by the person who is to receive the benefit or their associates.
- (4) An order under this section may be made on application by:
- (a) the body corporate; or
  - (b) ASIC; or
  - (c) members who together hold shares carrying at least 10% of the votes attached to voting shares in the body corporate or a related body corporate;

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within 12 months, or any longer period that the Court thinks appropriate in the circumstances, after the agreement is entered into or the benefit given.

**1325D Contravention due to inadvertence etc.**

- (1) The Court may declare that any act, document or matter:
  - (a) is not invalid merely because a person has contravened a provision of Chapter 6, 6A, 6B or 6C; and
  - (b) has had effect at all times as if there had been no contravention;if the Court is satisfied that the contravention ought to be excused in all the circumstances.
- (2) An application for an order under subsection (1) may be made by any interested person.
- (3) If the Court is satisfied that in all the circumstances a contravention of a provision of Chapter 6, 6A, 6B or 6C ought to be excused, the Court must not make an order under section 1325A, 1325B or 1325C other than:
  - (a) an order restraining the exercise of voting or other rights attached to securities; or
  - (b) an order that an exercise of voting or other rights attached to securities be disregarded.
- (4) In determining whether or not a contravention of a provision by a person ought to be excused, have regard to the contravention being caused by any of the following:
  - (a) the person's inadvertence or mistake;
  - (b) the person not having been aware of a relevant fact or occurrence;
  - (c) circumstances beyond the control of the person.
- (5) This section applies notwithstanding anything contained in any other provision of this Chapter.

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**1325E Orders to secure compliance**

In order to secure compliance with an order under section 1325A, 1325B or 1325C, the Court may direct a person to:

- (a) do a specified act; or
- (b) refrain from doing a specified act.

**1326 Effect of sections 1323, 1324 and 1325**

Nothing in any of sections 1323, 1324, 1324A, 1324B, and 1325 limits the generality of anything else in any of those sections.

**1327 Power of Court to punish for contempt of Court**

Nothing in a provision of this Act that provides:

- (a) that a person must not contravene an order of the Court; or
  - (b) that a person who contravenes an order of the Court contravenes a provision of this Act or is guilty of an offence;
- affects the powers of the Court in relation to the punishment of contempts of the Court.

## Part 9.6—Proceedings

### 1330 ASIC's power to intervene in proceedings

- (1) ASIC may intervene in any proceeding relating to a matter arising under this Act.
- (2) Where ASIC intervenes in a proceeding referred to in subsection (1), ASIC is taken to be a party to the proceeding and, subject to this Act, has all the rights, duties and liabilities of such a party.
- (3) Without limiting the generality of subsection (2), ASIC may appear and be represented in any proceeding in which it wishes to intervene pursuant to subsection (1):
  - (a) by a staff member of ASIC; or
  - (b) by a natural person to whom, or by an officer or employee of a person or body to whom or to which, ASIC has delegated its functions and powers under this Act or such of those functions and powers as relate to a matter to which the proceeding relates; or
  - (c) by solicitor or counsel.

### 1331 Civil proceedings not to be stayed

No civil proceedings under this Act are to be stayed merely because the proceeding discloses, or arises out of, the commission of an offence.

### 1332 Standard of proof

Where, in proceedings other than proceedings for an offence, it is necessary to establish, or for the Court to be satisfied, for any purpose relating to a matter arising under this Act, that:

- (a) a person has contravened a provision of this Act; or



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- (b) default has been made in complying with a provision of this Act; or
- (c) an act or omission was unlawful by virtue of a provision of this Act; or
- (d) a person has been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to a contravention, or a default in complying with, a provision of this Act;

it is sufficient if the matter referred to in paragraph (a), (b), (c) or (d) is established, or the Court is so satisfied, as the case may be, on the balance of probabilities.

### **1333 Evidence of contravention**

For the purposes of this Act, a certificate that:

- (a) purports to be signed by the Registrar or other proper officer of an Australian court; and
- (b) states:
  - (i) that a person was convicted by that court on a specified day of a specified offence; or
  - (ii) that a person charged before that court with a specified offence was, on a specified day, found in that court to have committed the offence but that the court did not proceed to convict the person of the offence;

is, unless it is proved that the conviction was quashed or set aside, or that the finding was set aside or reversed, as the case may be, conclusive evidence:

- (c) if subparagraph (b)(i) applies—that the person was convicted of the offence on that day; and
- (d) if the offence was constituted by a contravention of a provision of a law—that the person contravened that provision.

### **1335 Costs**

- (1) Where a corporation is plaintiff in any action or other legal proceeding, the court having jurisdiction in the matter may, if it

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appears by credible testimony that there is reason to believe that the corporation will be unable to pay the costs of the defendant if successful in his, her or its defence, require sufficient security to be given for those costs and stay all proceedings until the security is given.

- (1A) Subsection (1) does not apply to a corporation that is an Aboriginal and Torres Strait Islander corporation.

Note: Similar provision is made in relation to Aboriginal and Torres Strait Islander corporations under section 581-20 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

- (2) The costs of any proceeding before a court under this Act are to be borne by such party to the proceeding as the court, in its discretion, directs.

### 1336 Vesting of property

- (1) Where an order is made by a court under this Act vesting property in a person:
- (a) subject to subsection (2), the property forthwith vests in the person named in the order without any conveyance, transfer or assignment; and
  - (b) the person who applied for the order must, within 7 days after the passing and entering of the order, lodge an office copy of the order with such person (if any) as is specified for the purpose in the order.
- (2) Where:
- (a) the property to which an order referred to in subsection (1) relates is property the transfer or transmission of which may be registered under a law of the Commonwealth, of a State or of a Territory; and
  - (b) that law enables the registration of such an order;
- the property, notwithstanding that it vests in equity in the person named in the order, does not vest in that person at law until the requirements of the law referred to in paragraph (a) have been complied with.

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- (3) Where:
- (a) property vests in a person by force of this Act; and
  - (b) the property is property the transfer or transmission of which may be registered under a law of the Commonwealth, of a State or of a Territory; and
  - (c) that law enables the person to be registered as the owner of that property;
- that property, notwithstanding that it vests in equity in that person by force of this Act, does not vest in that person at law until the requirements of the law referred to in paragraph (b) have been complied with.

## Part 9.6A—Jurisdiction and procedure of Courts

### Division 1—Civil jurisdiction

#### Subdivision A—Preliminary

#### 1337A Operation of Division

- (1) This Division deals with:
  - (a) the jurisdiction of courts in respect of civil matters arising under the Corporations legislation; and
  - (b) the jurisdiction of courts in respect of matters arising under the *Administrative Decisions (Judicial Review) Act 1977* involving or related to decisions made under the Corporations legislation by Commonwealth authorities and officers of the Commonwealth; and
  - (c) the jurisdiction of courts in civil matters in respect of decisions made by officers of the Commonwealth to prosecute persons for offences against the Corporations legislation and related criminal justice process decisions.
- (2) This Division operates to the exclusion of:
  - (a) the *Jurisdiction of Courts (Cross-vesting) Act 1987*; and
  - (b) section 39B of the *Judiciary Act 1903*.
- (3) This Division does not limit the operation of the provisions of the *Judiciary Act 1903* other than section 39B.
- (4) Without limiting subsection (3), this Division does not limit the operation of subsection 39(2) of the *Judiciary Act 1903* in relation to civil matters arising under the Corporations legislation.
- (5) Nothing in this Division affects any other jurisdiction of any court.

## **Subdivision B—Conferral of jurisdiction**

### **1337B Jurisdiction of Federal Court and State and Territory Supreme Courts**

- (1) Jurisdiction is conferred on the Federal Court of Australia with respect to civil matters arising under the Corporations legislation.
- (2) Subject to section 9 of the *Administrative Decisions (Judicial Review) Act 1977*, jurisdiction is conferred on each State or Territory Supreme Court with respect to civil matters arising under the Corporations legislation.
- (3) Despite section 9 of the *Administrative Decisions (Judicial Review) Act 1977*, jurisdiction is conferred on each State or Territory Supreme Court with respect to matters arising under that Act involving or related to decisions made, or proposed or required to be made, under the Corporations legislation by a Commonwealth authority or an officer of the Commonwealth.  

Note 1: The Federal Court also has jurisdiction with respect to these matters under that Act.

Note 2: A State or Territory Supreme Court may be required to transfer a proceeding with respect to such a matter to the Federal Court: see subsection 1337H(3).
- (4) Subsection (3) applies to a decision made, or proposed or required to be made:
  - (a) whether or not in the exercise of a discretion; and
  - (b) whether before or after that subsection commences.
- (5) The jurisdiction conferred on a Supreme Court by subsection (2) or (3) is not limited by any limits to which any other jurisdiction of that Supreme Court may be subject.
- (6) This section has effect subject to section 1337D.

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**1337C Jurisdiction of Federal Circuit and Family Court of Australia (Division 1) and State Family Courts**

- (1) Jurisdiction is conferred on the Federal Circuit and Family Court of Australia (Division 1) with respect to civil matters arising under the Corporations legislation.
- (2) Subject to section 9 of the *Administrative Decisions (Judicial Review) Act 1977*, jurisdiction is conferred on each State Family Court with respect to civil matters arising under the Corporations legislation.
- (3) The jurisdiction conferred on a State Family Court by subsection (2) is not limited by any limits to which any other jurisdiction of the State Family Court may be subject.
- (4) This section has effect subject to section 1337D.

**1337D Jurisdiction of courts (decisions to prosecute and related criminal justice process decisions made by Commonwealth officers)**

- (1) If a decision to prosecute a person for an offence against the Corporations legislation has been made by an officer or officers of the Commonwealth and the prosecution is proposed to be commenced in a State or Territory court:
  - (a) neither the Federal Court nor the Federal Circuit and Family Court of Australia (Division 1) has jurisdiction with respect to any matter in which a person seeks a writ of mandamus or prohibition or an injunction against the officer or officers in relation to that decision; and
  - (b) jurisdiction with respect to any such matter is conferred on the Supreme Court of the State or Territory in which the prosecution is proposed to be commenced.
- (2) Subject to subsection (3), at any time when:
  - (a) a prosecution for an offence against the Corporations legislation is before a State or Territory court; or

- (b) an appeal arising out of such a prosecution is before a State or Territory court;
- the following apply:
- (c) neither the Federal Court nor the Federal Circuit and Family Court of Australia (Division 1) has jurisdiction with respect to any matter in which the person who is or was the defendant in the prosecution seeks a writ of mandamus or prohibition or an injunction against an officer or officers of the Commonwealth in relation to a related criminal justice process decision;
- (d) jurisdiction with respect to any such matter is conferred on the Supreme Court of the State or Territory in which the prosecution or appeal is before a court.
- (3) Subsection (2) does not apply where a person has applied for a writ of mandamus or prohibition, or an injunction, against an officer or officers of the Commonwealth in relation to a related criminal justice process decision before the commencement of a prosecution for an offence against a law of the Commonwealth, or of a State or a Territory.
- (4) Where subsection (3) applies, the prosecutor may apply to the court for a permanent stay of the proceedings referred to in that subsection and the court may grant such a stay if the court determines that:
- (a) the matters that are the subject of the proceedings are more appropriately dealt with in the criminal justice process; and
- (b) a stay of proceedings will not substantially prejudice the person.
- (5) Subsections (1), (2), (3) and (4) have effect despite anything in this Act or in any other law. In particular:
- (a) neither this Act, nor any other law, has the effect of giving the Federal Court or the Federal Circuit and Family Court of Australia (Division 1) jurisdiction contrary to subsection (1) or (2); and
- (b) neither section 9 of the *Administrative Decisions (Judicial Review) Act 1977*, nor any other law, has the effect of

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removing from a State or Territory Supreme Court the jurisdiction given to that Court by subsection (1) or (2).

(6) In this section:

***appeal*** includes an application for a new trial and a proceeding to review or call in question the proceedings, decision or jurisdiction of a court or judge.

***related criminal justice process decision***, in relation to an offence, means a decision (other than a decision to prosecute) made in the criminal justice process in relation to the offence, including:

- (a) a decision in connection with the investigation, committal for trial or prosecution of the defendant; and
- (b) a decision in connection with the appointment of investigators or inspectors for the purposes of such an investigation; and
- (c) a decision in connection with the issue of a warrant, including a search warrant or a seizure warrant; and
- (d) a decision requiring the production of documents, the giving of information or the summoning of persons as witnesses; and
- (e) a decision in connection with an appeal arising out of the prosecution.

**1337E Jurisdiction of lower courts**

- (1) Subject to section 9 of the *Administrative Decisions (Judicial Review) Act 1977*, jurisdiction is conferred on each State or Territory court that is a lower court with respect to civil matters (other than superior court matters) arising under the Corporations legislation.
- (2) The jurisdiction conferred on a lower court by subsection (1):
  - (a) is subject to the court's general jurisdictional limits, so far as they relate to:
    - (i) the amounts; or
    - (ii) the value of property;



- with which the court may deal; but  
(b) is not subject to the court's other jurisdictional limits.

### **1337F Appeals**

- (1) An appeal may not be instituted from a decision of the Federal Court to:
  - (a) a State or Territory court; or
  - (b) the Federal Circuit and Family Court of Australia (Division 1).
- (2) An appeal may not be instituted from a decision of a court of the Australian Capital Territory or from the Supreme Court of Norfolk Island to:
  - (a) a court of a State or a court of another Territory; or
  - (b) the Federal Circuit and Family Court of Australia (Division 1).
- (3) An appeal may not be instituted from a decision of a court (not being a State Family Court) of a State or the Northern Territory to:
  - (a) the Federal Court; or
  - (b) a court of another State or Territory; or
  - (c) the Federal Circuit and Family Court of Australia (Division 1); or
  - (d) a State Family Court of that State.
- (4) An appeal may not be instituted from a decision of the Federal Circuit and Family Court of Australia (Division 1) to:
  - (a) the Federal Court; or
  - (b) a State or Territory court.
- (5) An appeal may not be instituted from a decision of a State Family Court of a State to:
  - (a) the Federal Court; or
  - (b) a court of another State or Territory; or

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- (c) except in accordance with the law of the State under which the State Family Court is constituted—the Supreme Court of that State.

**1337G Courts to act in aid of each other**

All courts having jurisdiction in:

- (a) civil matters arising under the Corporations legislation; or
- (b) matters referred to in subsection 1337B(3);

and the officers of, or under the control of, those courts must severally act in aid of, and be auxiliary to, each other in all those matters.

**Subdivision C—Transfer of proceedings**

**1337H Transfer of proceedings by the Federal Court and State and Territory Supreme Courts**

- (1) This section applies to a proceeding (the *relevant proceeding*) in a court (the *transferor court*) if:
  - (a) the relevant proceeding is:
    - (i) a proceeding with respect to a civil matter arising under the Corporations legislation; or
    - (ii) a subsection 1337B(3) proceeding; and
  - (b) the transferor court is:
    - (i) the Federal court; or
    - (ii) a State or Territory Supreme Court.
- (2) Subject to subsections (3), (4) and (5), if it appears to the transferor court that, having regard to the interests of justice, it is more appropriate for:
  - (a) the relevant proceeding; or
  - (b) an application in the relevant proceeding;to be determined by another court that has jurisdiction in the matters for determination in the relevant proceeding or application,

the transferor court may transfer the relevant proceeding or application to that other court.

- (3) If:
- (a) the relevant proceeding is a subsection 1337B(3) proceeding; and
  - (b) the transferor court is a State or Territory Supreme Court; the transferor court must transfer the relevant proceeding to the Federal Court unless the matter for determination in it arises out of, or relates to, another proceeding pending in any court of that State or Territory that:
    - (c) arises, or a substantial part of which arises, under the Corporations legislation; and
    - (d) is not a subsection 1337B(3) proceeding;regardless of which proceeding was commenced first.
- (4) Even if subsection (3) does not require a State or Territory Supreme Court to transfer a subsection 1337B(3) proceeding to the Federal Court, it may nevertheless do so if it considers that to be appropriate, having regard to the interests of justice, including the desirability of related proceedings being heard in the same State or Territory.
- (5) If:
- (a) the relevant proceeding is a subsection 1337B(3) proceeding in relation to a matter; and
  - (b) the transferor court is the Federal Court; the transferor court may only transfer the relevant proceeding, or an application in the relevant proceeding, to a State or Territory Supreme Court if:
    - (c) the matter arises out of, or relates to, another proceeding pending in any court of that State or Territory that:
      - (i) arises, or a substantial part of which arises, under the Corporations legislation; and
      - (ii) is not a subsection 1337B(3) proceeding;regardless of which proceeding was commenced first; and

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- (d) the transferor court considers the transfer to be appropriate, having regard to the interests of justice, including the desirability of related proceedings being heard in the same jurisdiction.
- (6) Nothing in this section confers on a court jurisdiction that the court would not otherwise have.
- (7) The fact that some references in this section to the interests of justice include the desirability of related proceedings being heard in the same jurisdiction does not of itself mean that other references to the interests of justice, in this section or elsewhere in this Act, do not include that matter.

**1337J Transfer of proceedings by Federal Circuit and Family Court of Australia (Division 1) and State Family Courts**

- (1) This section applies to a proceeding (the *relevant proceeding*) in a court (the *transferor court*) if:
  - (a) the relevant proceeding is with respect to a civil matter arising under the Corporations legislation; and
  - (b) the transferor court is:
    - (i) the Federal Circuit and Family Court of Australia (Division 1); or
    - (ii) a State Family Court.
- (2) If it appears to the transferor court:
  - (a) that the relevant proceeding arises out of, or is related to, another proceeding pending in:
    - (i) the Federal Court; or
    - (ii) another State or Territory court;and that the court in which the other proceeding is pending is the most appropriate court to determine the relevant proceeding; or
  - (b) that having regard to:
    - (i) whether, in the transferor court's opinion, apart from this Division, the relevant proceeding, or a substantial

- part of it, would have been incapable of being instituted in the transferor court; and
- (ii) the extent to which, in the transferor court's opinion, the matters for determination in the relevant proceeding are matters not within the transferor court's jurisdiction apart from this Division; and
  - (iii) the interests of justice;
- the Federal Court, or another State or Territory court, is the most appropriate court to determine the relevant proceeding; or
- (c) that it is otherwise in the interests of justice that the Federal Court, or another State or Territory court, determine the relevant proceeding;
- the transferor court must transfer the relevant proceeding to the Federal Court or to that other court.
- (3) Subject to subsection (2), if it appears to the transferor court:
- (a) that the relevant proceeding arises out of, or is related to, another proceeding pending in another court that is:
    - (i) the Federal Circuit and Family Court of Australia (Division 1); or
    - (ii) a State Family Court;and that has jurisdiction under section 1337C in the matters for determination in the relevant proceeding and that the other court is the most appropriate court to determine the relevant proceeding; or
  - (b) that it is otherwise in the interests of justice that the relevant proceeding be determined by another court that is:
    - (i) the Federal Circuit and Family Court of Australia (Division 1); or
    - (ii) a State Family Court;and that has jurisdiction under section 1337C in the matters for determination in the relevant proceeding;
- the transferor court must transfer the relevant proceeding to the other court.

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- (4) If:
- (a) the transferor court transfers the relevant proceeding to another court; and
  - (b) it appears to the transferor court that:
    - (i) there is another proceeding pending in the transferor court that arises out of, or is related to, the relevant proceeding; and
    - (ii) it is in the interests of justice that the other court also determine the other proceeding;
- the transferor court must also transfer the other proceeding to the other court.
- (5) Nothing in this section confers on a court jurisdiction that the court would not otherwise have.

**1337K Transfer of proceedings in lower courts**

- (1) This section applies to a proceeding (the *relevant proceeding*) in a court (the *transferor court*) if:
- (a) the relevant proceeding is with respect to a civil matter arising under the Corporations legislation; and
  - (b) the transferor court is a lower court of a State or Territory.
- (2) If it appears to the transferor court that, having regard to the interests of justice, it is more appropriate for:
- (a) the relevant proceeding; or
  - (b) an application in the relevant proceeding;
- to be determined by another court that has jurisdiction in the matters for determination in the relevant proceeding or application, the transferor court may take action under whichever of subsections (3) and (4) applies.
- (3) If the other court is also a lower court, the transferor court may transfer the relevant proceeding or application to the other court.
- (4) If the other court is a superior court, the transferor court may:
- (a) transfer the relevant proceeding or application to the relevant Supreme Court; and

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- (b) recommend that the relevant proceeding or application be transferred by the Supreme Court to the other court.
- (5) The relevant Supreme Court is not bound to comply with a recommendation under subsection (4) and it may instead decide:
  - (a) to deal with the relevant proceeding or application itself; or
  - (b) to transfer the relevant proceeding or application to some other court (which could be the transferor court).
- (6) Nothing in this section allows the relevant Supreme Court to transfer the relevant proceeding or application to another court otherwise than in accordance with section 1337H and the other requirements of this Division.
- (7) Nothing in this section confers on a court jurisdiction that the court would not otherwise have.
- (8) In this section:

*relevant Supreme Court* means the Supreme Court of the State or Territory of which the transferor court is a court.

**1337L Further matters for a court to consider when deciding whether to transfer a proceeding**

In deciding whether to transfer under section 1337H, 1337J or 1337K a proceeding or application, a court must have regard to:

- (a) the principal place of business of any body corporate concerned in the proceeding or application; and
- (b) the place or places where the events that are the subject of the proceeding or application took place; and
- (c) the other courts that have jurisdiction to deal with the proceeding or application.

**1337M Transfer may be made at any stage**

A court may transfer under section 1337H, 1337J or 1337K a proceeding or application:

- (a) on the application of a party made at any stage; or

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(b) of the court's own motion.

**1337N Transfer of documents**

If, under section 1337H, 1337J or 1337K, a court (the *transferor court*) transfers a proceeding, or an application in a proceeding, to another court:

- (a) the Registrar or other proper officer of the transferor court must transmit to the Registrar or other proper officer of the other court all documents filed in the transferor court in respect of the proceeding or application, as the case may be; and
- (b) the other court must proceed as if:
  - (i) the proceeding had been originally instituted in the other court; and
  - (ii) the same proceedings had been taken in the other court as were taken in the transferor court; and
  - (iii) in a case where an application is transferred—the application had been made in the other court.

**1337P Conduct of proceedings**

- (1) Subject to sections 1337S, 1337T and 1337U, if it appears to a court that, in determining a matter for determination in a proceeding, the court will, or will be likely to, be exercising relevant jurisdiction, the rules of evidence and procedure to be applied in dealing with that matter are to be the rules that:
  - (a) are applied in a superior court in Australia; and
  - (b) the court considers appropriate to be applied in the circumstances.
- (2) If a proceeding is transferred or removed to a court (the *transferee court*) from another court (the *transferor court*), the transferee court must deal with the proceeding as if, subject to any order of the transferee court, the steps that had been taken for the purposes of the proceeding in the transferor court (including the making of an order), or similar steps, had been taken in the transferee court.



(3) In this section:

*relevant jurisdiction* means:

- (a) jurisdiction conferred on the Federal Court of Australia or the Federal Circuit and Family Court of Australia (Division 1) with respect to civil matters arising under the Corporations Legislation; or
- (b) jurisdiction conferred on a court of a State or Territory with respect to matters referred to in subsection 1337B(3).

### **1337Q Rights of appearance**

- (1) This section applies if a proceeding (the *transferred proceeding*) in a court (the *transferor court*) is transferred to another court (the *transferee court*) under this Division.
- (2) A person who is entitled to practise as a barrister or a solicitor, or as both a barrister and a solicitor, in the transferor court has the same entitlements to practise in relation to:
  - (a) the transferred proceeding; and
  - (b) any other proceeding out of which the transferred proceeding arises or to which the transferred proceeding is related, being another proceeding that is to be determined together with the transferred proceeding;in the transferee court that the person would have if the transferee court were a federal court exercising federal jurisdiction.

### **1337R Limitation on appeals**

An appeal does not lie from a decision of a court:

- (a) in relation to the transfer of a proceeding under this Division; or
- (b) as to which rules of evidence and procedure are to be applied pursuant to subsection 1337P(1).

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**Subdivision D—Rules of court**

**1337S Rules of the Federal Court**

- (1) The power to make rules of court conferred by section 59 of the *Federal Court of Australia Act 1976* extends to making rules of court:
  - (a) with respect to proceedings, and the practice and procedure, of the Federal Court of Australia under the Corporations legislation; and
  - (b) with respect to any matter or thing that is:
    - (i) required or permitted by the Corporations legislation to be prescribed by rules within the meaning of the Corporations legislation; or
    - (ii) necessary or convenient to be prescribed by such rules for carrying out or giving effect to the Corporations legislation; and
  - (c) without limitation, with respect to costs, and with respect to rules about meetings ordered by the Federal Court of Australia.

- (2) In this section:

*Corporations legislation* does not include rules of court.

**1337T Rules of the Supreme Court**

- (1) The Judges of the Supreme Court of the Australian Capital Territory, or a majority of them, may make rules of court:
  - (a) with respect to proceedings, and the practice and procedure, of that court under the Corporations legislation; and
  - (b) with respect to any matter or thing that is:
    - (i) required or permitted by the Corporations legislation to be prescribed by rules within the meaning of the Corporations legislation; or

- (ii) necessary or convenient to be prescribed by such rules for carrying out or giving effect to the Corporations legislation; and
  - (c) without limitation, with respect to costs, and with respect to rules as to meetings ordered by that Court.
- (2) When a lower court of the Australian Capital Territory is exercising jurisdiction with respect to matters arising under the Corporations legislation, the court must apply the rules of court made under subsection (1), with such alterations as are necessary.
- (3) In this section:  
*Corporations legislation* does not include rules of court.

**1337U Rules of the Federal Circuit and Family Court of Australia (Division 1)**

- (1) The power to make Rules of Court under Chapter 3 of the *Federal Circuit and Family Court of Australia Act 2021* extends to making rules of court:
  - (a) with respect to proceedings, and the practice and procedure, of the Federal Circuit and Family Court of Australia (Division 1) under the Corporations legislation; and
  - (b) with respect to any matter or thing that is:
    - (i) required or permitted by the Corporations legislation to be prescribed by rules within the meaning of the Corporations legislation; or
    - (ii) necessary or convenient to be prescribed by such rules for carrying out or giving effect to the Corporations legislation; and
  - (c) without limitation, with respect to costs, and with respect to rules about meetings ordered by the Federal Circuit and Family Court of Australia (Division 1).
- (2) In this section:  
*Corporations legislation* does not include rules of court.

## Division 2—Criminal jurisdiction

### 1338A Operation of Division

- (1) This Division provides in relation to the jurisdiction of courts in respect of criminal matters arising under the Corporations legislation and so provides to the exclusion of sections 68, 70 and 70A of the *Judiciary Act 1903*.
- (2) This Division does not limit the operation of the provisions of the *Judiciary Act 1903* other than sections 68, 70 and 70A.
- (3) Without limiting subsection (2), this Division does not limit the operation of subsection 39(2) of the *Judiciary Act 1903* in relation to criminal matters arising under the Corporations legislation.

### 1338B Jurisdiction of courts

- (1) Subject to this section, a court of a State or Territory exercising jurisdiction:
  - (a) with respect to:
    - (i) the summary conviction; or
    - (ii) the examination and commitment for trial on indictment; or
    - (iii) the trial and conviction on indictment; of offenders or persons charged with offences against the laws of the State or Territory concerned, and with respect to:
      - (iv) their sentencing, punishment and release; or
      - (v) their liability to make reparation in connection with their offences; or
      - (vi) the forfeiture of property in connection with their offences; or
      - (vii) the proceeds of their crimes; and
  - (b) with respect to the hearing and determination of:
    - (i) proceedings connected with; or
    - (ii) appeals arising out of; or

- (iii) appeals arising out of proceedings connected with;  
any such trial or conviction or any matter of a kind referred  
to in subparagraph (a)(iv), (v), (vi) or (vii);  
has the equivalent jurisdiction with respect to offenders or persons  
charged with offences against the Corporations legislation.
- (2) The jurisdiction conferred by subsection (1) is not to be exercised  
with respect to the summary conviction, or examination and  
commitment for trial, of any person except by a magistrate.
- (3) The jurisdiction conferred by subsection (1) includes jurisdiction in  
accordance with provisions of a relevant law of the State or  
Territory concerned, and:
- (a) the reference in paragraph (1)(b) to “any such trial or  
conviction” includes a reference to any conviction or  
sentencing in accordance with the provisions of the relevant  
law; and
  - (b) unless the contrary intention appears, a reference to  
jurisdiction conferred by subsection (1) includes a reference  
to such included jurisdiction.
- (4) A person may be dealt with in accordance with a relevant law even  
if, apart from this section, the offence concerned:
- (a) would be required to be prosecuted on indictment; or
  - (b) would be required to be prosecuted either summarily or on  
indictment.
- (5) For the purposes of the application of a relevant law as provided by  
subsection (3):
- (a) a reference in that law to an indictable offence is taken to  
include a reference to an offence that may be prosecuted on  
indictment; and
  - (b) in order to determine the sentence that may be imposed on a  
person by a court pursuant to the relevant law, the person is  
taken to have been prosecuted and convicted on indictment in  
that court.

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- (6) Subject to subsection (8), the jurisdiction conferred on a State or Territory court by subsection (1) is conferred despite any limits as to locality of the jurisdiction of that court under the law of that State or Territory.
- (7) If:
- (a) jurisdiction is conferred on a State or Territory court in relation to the summary conviction of persons charged with offences against the Corporations legislation by subsection (1); and
  - (b) the court is satisfied that it is appropriate to do so, having regard to all the circumstances including the public interest; the court may decline to exercise that jurisdiction in relation to an offence committed in another State or Territory.
- (8) The jurisdiction conferred on a State or Territory court by subsection (1) in relation to:
- (a) the examination and commitment for trial on indictment; and
  - (b) the trial and conviction on indictment;
- of offenders or persons charged with offences against the Corporations legislation is conferred only in relation to:
- (c) offences committed outside Australia; and
  - (d) offences committed, begun or completed in the State or the Territory concerned.
- (9) In this section:

***appeal*** includes an application for a new trial and a proceeding to review or call in question the proceedings, decision or jurisdiction of a court or judge.

***Australia*** does not include the coastal sea.

***relevant law*** means a law providing that where, in proceedings before a court, a person pleads guilty to a charge for which he or she could be prosecuted on indictment, the person may be committed, to a court having jurisdiction to try offences on

indictment, to be sentenced or otherwise dealt with without being tried in that last-mentioned court.

**1338C Laws to be applied**

- (1) Subject to this Division, the laws of a State or Territory respecting:
- (a) the arrest and custody in the State or Territory of offenders or persons charged with offences; and
  - (b) criminal procedure in the State or Territory in relation to such persons; and
  - (c) the rules of evidence applied in criminal procedure in the State or Territory in relation to such persons;
- apply in the State or Territory, so far as they are applicable, to persons who are charged with offences against the Corporations legislation.

- (2) In this section:

*criminal procedure* means the procedure for:

- (a) the summary conviction; and
  - (b) the examination and commitment for trial on indictment; and
  - (c) the trial and conviction on indictment; and
  - (d) the hearing and determination of appeals arising out of any such trial or conviction or out of any related proceedings;
- of offenders or persons charged with offences, and includes the procedure for holding accused persons to bail.

## Part 9.7—Unclaimed property

### 1339 ASIC to deal with unclaimed property

- (1) Unclaimed property held by ASIC is to be dealt with in accordance with this Part.

Note: Unclaimed property is held by ASIC for and on behalf of the Commonwealth (see subsections 8(3) and (4) of the ASIC Act).

- (2) If property (other than money) becomes unclaimed property, ASIC must, on behalf of the Commonwealth, sell or dispose of the property as ASIC thinks fit.

### 1340 No liability to pay calls on shares etc.

Where unclaimed property is or includes shares in a body corporate, neither the Commonwealth nor ASIC is subject to any obligation:

- (a) to pay any calls; or
- (b) to make any contribution to the debts and liabilities of the body corporate; or
- (c) to discharge any other liability; or
- (d) to do any other act or thing;

in respect of the shares, whether the obligation arises before or after the shares become unclaimed property, but this section does not affect the right of a body corporate to forfeit a share.

### 1341 Entitlement to unclaimed property

- (1) If:
  - (a) unclaimed property is or was held by ASIC; and
  - (b) the unclaimed property is an amount of money; and
  - (c) a person claims to be entitled to that amount; and
  - (d) ASIC is satisfied that the person is entitled to that amount;ASIC must:



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- (e) pay the person an amount equal to that amount; and
  - (f) do so out of money appropriated by the Parliament for the purposes of this section.
- (2) If:
- (a) ASIC has, under subsection 1339(2), sold or disposed of unclaimed property; and
  - (b) the amount of the proceeds is or was held by ASIC; and
  - (c) a person claims to be entitled to that amount; and
  - (d) ASIC is satisfied that the person is entitled to that amount;
- ASIC must:
- (e) pay the person an amount equal to that amount; and
  - (f) do so out of money appropriated by the Parliament for the purposes of this section.
- (3) A person who is dissatisfied with the decision of ASIC in respect of a claim made by the person in accordance with subsection (1) or (2) may appeal to the Court and the Court may confirm, disallow or vary the decision of ASIC.
- (3A) If ASIC pays an amount to a person under subsection (1) or (2) on or after 1 July 2013, ASIC must:
- (a) also pay to the person the amount of interest (if any) worked out in accordance with the regulations; and
  - (b) do so out of money appropriated by the Parliament for the purposes of this section.
- (3B) Regulations made for the purposes of paragraph (3A)(a) may prescribe different rates for different periods over which the interest accrues. For this purpose, *rate* includes a nil rate.
- (3C) Interest under subsection (3A) does not accrue in relation to a period before 1 July 2013.
- (4) Where a person claims to be entitled to money that has been paid to another person in accordance with this section, neither the Commonwealth nor ASIC is under any liability to that first-mentioned person in respect of that money, but, if the

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first-mentioned person is entitled to that money, that person may recover that money from the other person.

### **1342 Commonwealth or ASIC not liable for loss or damage**

Neither the Commonwealth nor ASIC is liable for any loss or damage suffered by a person arising out of the exercise of, or the failure to exercise, any of the powers which are conferred on ASIC under this Part or which ASIC has in relation to unclaimed property.

### **1343 Disposal of securities if whereabouts of holder unknown**

Where a person has been shown in an appropriate register of a company as the holder of securities of the company for a period of at least 6 years and the company has, for a period of at least 6 years:

- (a) had reasonable grounds for believing that the person was not residing at the address shown in the register as the person's address; and
- (b) on each occasion during that last-mentioned period when, whether or not in accordance with a provision of this Act, it sought to communicate with the person, being unable after the exercise of reasonable diligence to do so;

the company may, by executing a transfer for and on behalf of the person, transfer to ASIC:

- (c) the securities; and
- (d) any rights in respect of the securities;

to be dealt with under this Part.

### **1343A Disposal of interests in registered scheme if whereabouts of member unknown**

If, during a period of at least 6 years while a person has been shown in the register of members of a registered scheme as the holder of interests in the scheme:

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- (a) the responsible entity has had reasonable grounds for believing that the person was not residing at the address shown in the register as their address; and
- (b) the responsible entity's attempts to communicate with the person have been made using reasonable diligence but have all been unsuccessful;

the responsible entity may, by executing a transfer for and on behalf of the person, transfer the interests and any rights in respect of them to ASIC to be dealt with under this Part.

## Part 9.9—Miscellaneous

### 1344 Use of ABN

Despite any provision in this Act or any other Act, in any case where:

- (a) the ACN of a company; or
- (b) the ARBN of a registered body; or
- (c) the ARSN of a registered scheme;

is required or permitted to be used under a law of the Commonwealth administered by ASIC, the ABN of the company, body or scheme may be used instead if the last 9 digits of the ABN are the same, and in the same order, as the last 9 digits of the ACN, ARBN or ARSN.

### 1345 Exceptional circumstances—giving documents

- (1) Subsections (2) to (4) apply in relation to a document that is required or permitted under this Act to be given by an entity to another entity (the *recipient*) if:
  - (a) the entity giving the document is specified, or is in a class of entities specified, in a determination under subsection (5); and
  - (b) the document is specified, or is in a class of documents specified, in the determination.

*Giving document by electronic communication etc.*

- (2) If the determination specifies that the document, or documents in that class, may be given in accordance with this subsection, then the document may be given:
  - (a) by means of an electronic communication; or
  - (b) by giving the recipient (by means of an electronic communication or otherwise) sufficient information to allow the recipient to access the document electronically.

- (3) However, electronic communication or electronic access may only be used if, at the time the electronic communication is used or information about the electronic access is given, it is reasonable to expect that the document would be readily accessible so as to be useable for subsequent reference.

*Giving document in physical form*

- (3A) If the determination specifies that the document, or documents in that class, may be given in accordance with this subsection, then the document may be given in physical form.

*Extension of time*

- (4) If the requirement or permission mentioned in subsection (1) is for the document to be given within a particular time, the document is taken to have been given within that time if:
- (a) the determination specifies a period of extension of that time that applies to the giving of the document by the entity to the recipient; and
  - (b) the specified period of extension starts after the determination is made; and
  - (c) the document is given by the entity to the recipient within the specified period of extension.

*ASIC may make determination*

- (5) ASIC may make a determination specifying:
- (a) an entity, or a class of entities; and
  - (b) a document, or a class of documents, required or permitted to be given under this Act (including a class that is any such document); and
  - (c) one or more matters mentioned in subsections (6), (6A) and (7).
- (6) ASIC may specify that the document, or documents in that class, may be given in accordance with subsection (2) (giving document by electronic communication etc.), if ASIC considers that it may be

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unreasonable to expect the specified entity, or entities in the specified class, to give the document, or documents in the specified class, in a physical form because of a situation that is beyond the control of the entity, or the entities in the class.

- (6A) ASIC may specify that the document, or documents in that class, may be given in accordance with subsection (3A) (giving document in physical form), if ASIC considers that it may be unreasonable to expect the specified entity, or entities in the specified class, to give the document, or documents in the specified class, in an electronic form because of a situation that is beyond the control of the entity, or the entities in the class.
- (7) To the extent that the document, or documents in that class, are required or permitted under the Act to be given by the entity, or the entities in the class, within a particular time (the *original time*), ASIC may specify a period of extension of that time applying in relation to the giving of the document or documents in that class, if ASIC considers that it may be unreasonable to expect the entity, or entities in the class, to give the document, or documents in the class, within the original time, because of a situation that is beyond the control of the entity, or the entities in the class.

*Other matters relating to determination*

- (8) A determination under subsection (5) is:
- (a) a notifiable instrument, if it specifies an entity; or
  - (b) a legislative instrument, if it specifies a class of entities.
- (9) The determination may be subject to specified conditions applying to the specified entity, or to entities in the specified class. An entity to which a condition specified in the determination applies must comply with the condition. The Court may order the entity to comply with the condition in a specified way.
- (10) Unless revoked earlier, the determination is repealed at the end of 12 months after the day on which it commences.

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- (11) This section has effect despite any election (however described) by an entity to be given a document in a particular form.
- (12) This section applies to a requirement or permission to give a document, whether the expression *give*, *send* or *serve*, or any other expression, is used.

**1345A Minister may delegate prescribed functions and powers under this Act**

- (1) The Minister may, by signed instrument, delegate to an officer of the Department all or any of the Minister's functions and powers under this Act that are prescribed by the regulations for the purposes of this subsection.
- (1AA) If:
  - (a) under subsection (1), the Minister delegates to an officer of the Department all of the Minister's functions and powers that are prescribed for the purposes of that subsection; and
  - (b) the regulations are amended to prescribe one or more additional functions or powers for the purposes of that subsection; and
  - (c) the delegation is in force immediately before the amendment takes effect;then, on and after the amendment taking effect, the delegation is taken to include the additional functions or powers.
- (1A) The Minister may, by signed instrument, delegate the function or power under subsection 147(2), 601DC(2) or 1213B(6) to:
  - (a) a member of ASIC (within the meaning of paragraph (a) of the definition of *member* in subsection 5(1) of the *Australian Securities and Investments Commission Act 2001*); or
  - (b) a staff member of ASIC who holds, or performs the duties of, a position not below an Executive Level 1 position or an equivalent position.
- (2) A delegate is, in the performance or exercise of a delegated function or power, subject to the Minister's directions.

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**1346 Non-application of rule against perpetuities to certain schemes**

- (1) The rules of law relating to perpetuities do not apply, and are taken never to have applied, to the trusts of any fund or scheme for the benefit of any employee of a corporation, whether the fund or scheme was established before, or is established after, the commencement of this section.
- (2) In this section:
  - (a) a reference to a corporation includes a reference to a body corporate or society incorporated or formed, or otherwise duly constituted, whether before, at or after the commencement of this section, by or under:
    - (i) a law of the Commonwealth, of a State or Territory, of an external Territory or of a country outside Australia and the external Territories; or
    - (ii) letters patent or a royal charter; and
  - (b) a reference to a fund or scheme includes a reference to a provident, superannuation, sick, accident, assurance, unemployment, pension or co-operative benefit fund, scheme, arrangement or provision or other like fund, scheme, arrangement or provision; and
  - (c) a reference to an employee of a corporation includes a reference to:
    - (i) a director of the corporation; and
    - (ii) a spouse, child, grandchild, parent or any dependant of an employee or of a director of the corporation.

**1348 Operation of Life Insurance Act**

Nothing in this Act is taken to affect any of the provisions of the *Life Insurance Act 1995*.

**1349 Privilege against exposure to penalty—disqualification etc.**

*Court or Tribunal proceeding*

- (1) In the case of:
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- (a) a civil or criminal proceeding under, or arising out of, this Act or the ASIC Act; or
  - (b) a proceeding before the Tribunal arising out of this Act or the ASIC Act;
- a person is not entitled to refuse or fail to comply with a requirement:
- (c) to answer a question or give information; or
  - (d) to produce a book or any other thing; or
  - (e) to do any other act whatever;
- on the ground that the answer or information, production of the book or other thing, or doing that other act, as the case may be, might tend to make the person liable to a penalty by way of:
- (f) a disqualification under Part 2D.6 of this Act; or
  - (g) a declaration under section 853C of this Act; or
  - (h) a suspension or cancellation under section 915B of this Act; or
  - (i) a suspension or cancellation under section 915C of this Act; or
  - (j) a banning order; or
  - (k) an order under section 921A of this Act; or
  - (l) a cancellation or suspension under Division 3 of Part 9.2 of this Act; or
  - (m) a requirement to give an undertaking under paragraph 1292(9)(b) or (c) of this Act; or
  - (n) a cancellation or suspension under Division 2 of Part 9.2A of this Act; or
  - (na) a direction under section 40-15 of Schedule 2; or
  - (nb) a decision of a kind mentioned in section 40-55 of Schedule 2; or
  - (nc) a cancellation or suspension under Division 40 of Schedule 2; or
  - (o) an order under section 12GLD of the ASIC Act.
- (2) Subsection (1) applies whether or not the person is a defendant in, or a party to, the proceeding or any other proceeding.

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*Statutory requirement*

- (3) A person is not entitled to refuse or fail to comply with a requirement under this Act or the ASIC Act:
- (a) to answer a question or give information; or
  - (b) to produce a book or any other thing; or
  - (c) to do any other act whatever;
- on the ground that the answer or information, production of the book or other thing, or doing that other act, as the case may be, might tend to make the person liable to a penalty by way of:
- (d) a disqualification under Part 2D.6 of this Act; or
  - (e) a declaration under section 853C of this Act; or
  - (f) a suspension or cancellation under section 915B of this Act; or
  - (g) a suspension or cancellation under section 915C of this Act; or
  - (h) a banning order; or
  - (i) an order under section 921A of this Act; or
  - (j) a cancellation or suspension under Division 3 of Part 9.2 of this Act; or
  - (k) a requirement to give an undertaking under paragraph 1292(9)(b) or (c) of this Act; or
  - (l) a cancellation or suspension under Division 2 of Part 9.2A of this Act; or
  - (la) a direction under section 40-15 of Schedule 2; or
  - (lb) a decision of a kind mentioned in section 40-55 of Schedule 2; or
  - (lc) a cancellation or suspension under Division 40 of Schedule 2; or
  - (m) an order under section 12GLD of the ASIC Act.

*Admissibility*

- (4) Paragraph 597(12A)(d) of this Act, and paragraph 68(3)(b) of the ASIC Act, do not apply to a proceeding for the imposition of a penalty by way of:

- (a) a disqualification under Part 2D.6 of this Act; or
- (b) a declaration under section 853C of this Act; or
- (c) a suspension or cancellation under section 915B of this Act;  
or
- (d) a suspension or cancellation under section 915C of this Act;  
or
- (e) a banning order; or
- (f) an order under section 921A of this Act; or
- (g) a cancellation or suspension under Division 3 of Part 9.2 of  
this Act; or
- (h) a requirement to give an undertaking under  
paragraph 1292(9)(b) or (c) of this Act; or
- (i) a cancellation or suspension under Division 2 of Part 9.2A of  
this Act; or
- (ia) a direction under section 40-15 of Schedule 2; or
- (ib) a decision of a kind mentioned in section 40-55 of  
Schedule 2; or
- (ic) a cancellation or suspension under Division 40 of  
Schedule 2; or
- (j) an order under section 12GLD of the ASIC Act.

*Other provisions*

- (5) Subsections (1) and (3) have effect despite anything in:
  - (a) section 1317L; or
  - (b) any other provision of this Act; or
  - (c) the ASIC Act; or
  - (d) the *Administrative Appeals Tribunal Act 1975*.

*Definition*

- (6) In this section:

**penalty** includes forfeiture.

Section 1350

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**1350 Compensation for compulsory acquisition**

- (1) If:
- (a) apart from this section, the operation of this Act would result in the acquisition of property from a person otherwise than on just terms; and
  - (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;
- the person who acquires the property is liable to pay compensation of a reasonable amount to the person from whom the property is acquired in respect of the acquisition.
- (2) If the 2 people do not agree on the amount of the compensation, the person to whom compensation is payable may institute proceedings in the Court for the recovery of such reasonable amount as the court determines from the other person.
- (3) Any damages or compensation recovered or other remedy given in a proceeding that is commenced otherwise than under this section is to be taken into account in assessing compensation payable in a proceeding that is commenced under this section and that arises out of the same event or transaction.
- (4) In this section:
- acquisition of property*** has the same meaning as in paragraph 51(xxxi) of the Constitution.
- just terms*** has the same meaning as in paragraph 51(xxxi) of the Constitution.

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## **Part 9.10—Fees imposed by the Corporations (Fees) Act 2001 and the Corporations (Review Fees) Act 2003**

### **1351 Fees are payable to the Commonwealth**

- (1) The fees imposed under the *Corporations (Fees) Act 2001* are payable to the Commonwealth.
- (2) The fees imposed under the *Corporations (Review Fees) Act 2003* are payable to the Commonwealth.
- (3) The date on which a fee imposed under the *Corporations (Review Fees) Act 2003* becomes due and payable is worked out under this table.

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<b>Due date for review fees</b>		
<b>Item</b>	<b>For a review fee imposed on...</b>	<b>The due date is...</b>
1	a company	2 months after the review date to which the fee relates
2	a registered scheme	2 months after the review date to which the fee relates
2A	a notified foreign passport fund	2 months after the review date to which the fee relates
3	a registered Australian body	the date prescribed by the regulations
4	a natural person registered as an auditor under Part 9.2	the date prescribed by the regulations
6	a person holding an Australian financial services licence under Part 7.6	the date prescribed by the regulations

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## Section 1354

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- (4) However, a fee imposed under the *Corporations (Review Fees) Act 2003* is not payable to the Commonwealth by a company in relation to a review date in a year if:
- (a) both of the following apply:
    - (i) ASIC has given notice of the proposed deregistration of the company in accordance with paragraph 601AA(4)(c), and published notice of the proposed deregistration of the company in accordance with paragraph 601AA(4)(d);
    - (ii) the review date for that year falls in the 2 month period before or after the publication of the notice published in accordance with paragraph 601AA(4)(d); or
  - (b) in the case of a company, a registered scheme, a notified foreign passport fund or a registered Australian body—the company, scheme, fund or body has, in a previous year, paid the fee in respect of the review date for that year in accordance with regulations made under the *Corporations (Review Fees) Act 2003* for the purposes of this section.

Note: Subsection (4) applies in relation to CCIVs with modifications: see section 1242G.

### **1354 Lodgment of document without payment of fee**

- (1) This section applies where:
- (a) a fee is payable under section 1351 for the lodgment of a document; and
  - (b) the document was submitted for lodgment without payment of the fee.
- (2) The document is not taken not to have been lodged merely because of non-payment of the fee.

### **1355 Doing act without payment of fee**

If a fee is payable under section 1351 for a matter involving the doing of an act by the Minister or ASIC, the Minister or ASIC may refuse to do that act until the fee is paid.

### **1356 Effect of sections 1354 and 1355**

Sections 1354 and 1355 have effect despite anything in another Part of this Act.

### **1359 Waiver and refund of fees**

Nothing in this Part, the *Corporations (Fees) Act 2001* or the *Corporations (Review Fees) Act 2003* prevents the Commonwealth from:

- (a) waiving or reducing, in a particular case or in particular classes of cases, fees that would otherwise be payable under this Act; or
- (b) refunding, in whole or in part, in a particular case or in particular classes of cases, fees paid under this Act.

### **1360 Debts due to the Commonwealth**

ASIC may, on behalf of the Commonwealth, recover a debt due under this Part.

### **1362 Payment of fee does not give right to inspect or search**

To avoid doubt, nothing in this Part, and nothing done under this Part:

- (a) imposes on ASIC a duty to allow the inspection or search of a register or document, or to make available information; or
- (b) confers a right to inspect or search a register or document or to have information made available;

except so far as such a duty or right would, but for the effect of section 1355, exist under a provision of another Part of this Act or under some other law.

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## Part 9.11—Coronavirus known as COVID-19

### 1362A Coronavirus known as COVID-19

- (1) If subsection (2) applies, the Minister may, by legislative instrument:
- (a) exempt classes of persons from the operation of specified provisions of this Act or the regulations; or
  - (b) modify the operation of specified provisions of this Act or the regulations in relation to classes of persons.

Note: The Minister may only make instruments during the 6 months beginning on the day this section commences (see subsection (5)). An instrument may be in force for a maximum of 6 months (see paragraph (4)(a)).

- (2) This subsection applies if the Minister is satisfied that:
- (a) it would not be reasonable to expect the persons in the class to comply with the provisions because of the impact of the coronavirus known as COVID-19; or
  - (b) the exemption or modification is otherwise necessary or appropriate in order to:
    - (i) facilitate continuation of business in circumstances relating to the coronavirus known as COVID-19; or
    - (ii) mitigate the economic impact of the coronavirus known as COVID-19.
- (3) A legislative instrument made under subsection (1) may exempt or modify generally or subject to specified conditions. A person to whom a condition applies must comply with the condition. The Court may, on application by ASIC, order the person to comply with the condition.
- (4) A legislative instrument made under subsection (1) ceases to be in force:
- (a) at the end of the period of 6 months beginning on the day after the instrument is made; or



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- (b) if the instrument specifies an earlier time—at the specified earlier time.
- (5) A legislative instrument must not be made under subsection (1) after the end of the period of 6 months beginning on the day this section commences. However, this does not prevent the Minister amending an instrument at any time before the instrument ceases to be in force in accordance with subsection (4).

## Part 9.12—Regulations

### 1363 Definitions

In this Part, unless the contrary intention appears:

*prescribed* means prescribed by the regulations.

*the regulations* means the regulations made under section 1364.

### 1364 Power to make regulations

- (1) The Governor-General may make regulations prescribing matters:
  - (a) required or permitted by this Act to be prescribed by regulations; or
  - (b) necessary or convenient to be prescribed by such regulations for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may make provision:
  - (c) for or in relation to the keeping of registers by ASIC, the lodging of documents with ASIC, the registration of documents by ASIC, the time and manner of lodging or registration, and the requirements with which documents lodged or to be lodged are to comply; and
  - (d) prescribing forms for the purposes of this Act and the method of verifying any information required by or in those forms; and
  - (e) prescribing the manner in which, the persons by whom, and the directions or requirements in accordance with which, the forms prescribed for the purposes of this Act, or any of them, are required or permitted to be signed, prepared, or completed, and generally regulating the signing, preparation and completion of those forms, or any of them; and
  - (f) for or in relation to the convening of, conduct of, and procedure and voting at, meetings of creditors, meetings of

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- eligible employee creditors, meetings of contributories and meetings of holders of debentures, and joint meetings of creditors and members of companies, the number of persons required to constitute a quorum at any such meeting, the sending of notices of meetings to persons entitled to attend at meetings, the lodging of copies of notices of, and of resolutions passed at, meetings, and generally regulating the conduct of, and procedure at, any such meeting; and
- (g) prescribing the persons by whom, and the circumstances and manner in which, proxies may be appointed and generally regulating the appointment and powers of proxies; and
  - (h) for or in relation to the proving of debts in the winding up of a company, the manner of proving debts and the time within which debts are required or permitted to be proved and generally regulating the proving of debts; and
  - (j) prescribing the manner in which a liquidator appointed by the Court may:
    - (i) exercise powers and perform functions under subsection 478(1); and
    - (ii) exercise any powers conferred, and perform any duties imposed, on the liquidator by regulations made for the purposes of subsection 488(1); and
  - (k) prescribing the manner in which a liquidator in a voluntary winding up may exercise powers and perform functions under section 506; and
  - (m) prescribing times for the lodging of any documents; and
  - (n) prescribing penalties for late payment of a review fee imposed by the *Corporations (Review Fees) Act 2003*; and
  - (o) prescribing that, in relation to the payment of a fee imposed by the *Corporations (Fees) Act 2001* or the *Corporations (Review Fees) Act 2003*, in the event that the fee is paid by electronic means, a refund of an amount or proportion of the fee is payable; and
  - (s) for or in relation to the giving to ASIC of information in addition to, or in variation of, the information contained in a prescribed form lodged with it; and
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- (t) for or in relation to the times within which information required to be given to ASIC under this Act must be so given; and
- (u) for or in relation to the manner in which:
  - (i) orders made under this Act may be served on persons affected by the orders; and
  - (ii) documents that are required or permitted by this Act to be served on a person may be so served; and
- (w) prescribing penalties not exceeding 50 penalty units for an individual or 500 penalty units for a body corporate for contraventions of the regulations.

Note: See also sections 1311B and 1311C in relation to the penalty applicable to an offence.

### **1365 Scope of particular regulations**

Except as otherwise expressly provided in this Act, the regulations may be of general or specially limited application or may differ according to differences in time, locality, place or circumstance.

### **1366 Verifying or certifying documents**

The regulations may:

- (a) where documents required by or under this Act to be lodged in accordance with this Act are required to be verified or certified and no manner of verification or certification is prescribed by or under this Act—require that the documents or any of them be verified or certified by statement in writing made by such persons as are prescribed by the regulations; and
- (b) where no express provision is made in this Act for verification or certification of documents—require that the documents be verified or certified by statement in writing by such persons as are prescribed.

### **1367 Documents lodged by an agent**

The regulations may provide, in such cases as are prescribed, that, if a document that is required by or under this Act to be lodged is signed or lodged on behalf of a person by an agent duly authorised by writing, there must be:

- (a) lodged with; or
- (b) endorsed on; or
- (c) annexed to;

that document, the original, or a verified copy, of the authority.

### **1367A Publication in the prescribed manner**

- (1) If a particular provision of this Act requires a person (other than ASIC) to:

- (a) publish a notice, or a copy of a notice, in the prescribed manner; or
- (b) cause a notice, or a copy of a notice, to be published in the prescribed manner;

the regulations may provide that:

- (c) the person is taken to have complied with that requirement if, and only if, the person lodges the notice or copy under subsection (2); and
  - (d) if the person lodges the notice or copy under subsection (2), ASIC must publish the notice or copy in the manner specified in the regulations.
- (2) A person may lodge a notice, or a copy of a notice, under this subsection if the notice or copy is covered by regulations made for the purposes of subsection (1).

### **1368 Exemptions from Chapter 6D or 7**

The regulations may provide that, subject to any prescribed terms and conditions, Chapter 6D or 7, or specified provisions of Chapter 6D or 7:

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- (a) do not have effect in relation to a specified person or class of persons; or
- (b) have effect in relation to a specified person or class of persons to such extent only as is prescribed; or
- (c) do not have effect in relation to a specified transaction or class of transactions; or
- (d) do not have effect in relation to a specified transaction or class of transactions entered into by a specified person or class of persons;

and may provide that a contravention of a prescribed term or condition is an offence against the regulations.

**1369 Penalty notices**

- (1) The regulations:
  - (a) may prescribe offences against this Act (not being offences the penalties applicable to which include a term of imprisonment or a pecuniary penalty that exceeds \$1,000), or offences against the regulations, for the purposes of Part 9.4AB; and
  - (b) must, in relation to each offence that is prescribed under this subsection:
    - (i) prescribe the particulars of that offence that are to be given in a notice served on a person under that section in relation to the offence; and
    - (ii) prescribe the amount of the penalty (being not more than half the amount of the penalty applicable to the offence) that is payable in respect of the offence under a notice served on a person under that section in relation to the offence.
- (2) In subsection (1), a reference to a penalty applicable to an offence is a reference to the penalty that is applicable to that offence because of any of the provisions of sections 1311B and 1311C.
- (3) The particulars of an offence required to be prescribed by subparagraph (1)(b)(i) may be prescribed by being set out in the

form prescribed for the purposes of Part 9.4AB in relation to the offence.

**1369A State termination of reference**

- (1) The regulations may make provision in relation to circumstances that arise because a State ceases to be a referring State.

Note: For example, the regulations may prevent companies that have their registered office or financial records in the State from committing offences and give them time to relocate their office or records.

- (2) Without limiting subsection (1), regulations made under that subsection may modify the operation of this Act in relation to the circumstances dealt with in the regulations.

## **Chapter 10—Transitional provisions**

### **Part 10.1—Transition from the old corporations legislation**

#### **Division 1—Preliminary**

##### **1370 Object of Part**

- (1) Subject to subsection (3), the object of this Part is to provide for a smooth transition from the regime provided for in the old corporations legislation of the States and Territories in this jurisdiction to the regime provided for in the new corporations legislation, so that individuals, bodies corporate and other bodies are, to the greatest extent possible, put in the same position immediately after the commencement as they would have been if:
  - (a) that old corporations legislation had, from time to time when it was in force, been valid Commonwealth legislation applying throughout those States and Territories; and
  - (b) the new corporations legislation (to the extent it contains provisions that correspond to provisions of the old corporations legislation as in force immediately before the commencement) were a continuation of that old corporations legislation as so applying.

Note: The new corporations legislation contains provisions that correspond to most of the provisions of the old corporations legislation. Generally, the only exceptions to this are provisions of the old corporations legislation that related to the fact that the Corporations Law operated separately in each of the States and Territories (rather than as a single national law).

- (2) In resolving any ambiguity as to the meaning of any of the other provisions of this Part, an interpretation that is consistent with the object of this Part is to be preferred to an interpretation that is not consistent with that object.



- (3) This Part does contain some provisions (for example, subsection 1400(4)) which apply or extend to matters under the old corporations legislation of any non-referring State.

### **1371 Definitions**

- (1) In this Part:

**carried over provision** of the old corporations legislation of a State or Territory in this jurisdiction means a provision of the old corporations legislation of that State or Territory that:

- (a) was in force immediately before the commencement; and
- (b) corresponds to a provision of the new corporations legislation.

**commencement** means the commencement of this Act.

**corresponds** has a meaning affected by subsections (2), (3) and (4).

**instrument** means:

- (a) any instrument of a legislative character (including an Act or regulations) or of an administrative character; or
- (b) any other document.

**liability** includes a duty or obligation.

**made** includes issued, given or published.

**new corporations legislation** means:

- (a) this Act; and
- (b) the new Corporations Regulations (as amended and in force from time to time) and any other regulations made under this Act; and
- (c) the laws of the Commonwealth referred to in paragraph (c) of the definition of **old corporations legislation**, being those laws as they apply after the commencement; and
- (d) the preserved instruments.

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***new Corporations Regulations*** means the regulations that, because of section 1380, have effect as if they were made under section 1364.

***old application Act*** for a State or Territory means:

- (a) in the case of New South Wales—the *Corporations (New South Wales) Act 1990* of New South Wales as in force from time to time before the commencement; or
- (b) in the case of Victoria—the *Corporations (Victoria) Act 1990* of Victoria as in force from time to time before the commencement; or
- (c) in the case of Queensland—the *Corporations (Queensland) Act 1990* of Queensland as in force from time to time before the commencement; or
- (d) in the case of Western Australia—the *Corporations (Western Australia) Act 1990* of Western Australia as in force from time to time before the commencement; or
- (e) in the case of South Australia—the *Corporations (South Australia) Act 1990* of South Australia as in force from time to time before the commencement; or
- (f) in the case of Tasmania—the *Corporations (Tasmania) Act 1990* of Tasmania as in force from time to time before the commencement; or
- (g) in the case of the Australian Capital Territory—the old Corporations Act; or
- (h) in the case of the Northern Territory—the *Corporations (Northern Territory) Act 1990* of the Northern Territory as in force from time to time before the commencement.

***old Corporations Act*** means the *Corporations Act 1989* as in force from time to time before the commencement.

***old Corporations Law*** means:

- (a) when used in relation to a particular State or Territory—the Corporations Law of that State or Territory, within the meaning of the old application Act for that State or Territory, as in force from time to time before the commencement; or

- (b) when used in general terms—the Corporations Law set out in section 82 of the old Corporations Act as in force from time to time before the commencement.

***old corporations legislation*** of a particular State or Territory means:

- (a) the old Corporations Law and old Corporations Regulations of that State or Territory, and any instruments made under that Law or those Regulations; and
- (b) the old application Act for that State or Territory, and any instruments made under that Act; and
- (c) either:
- (i) when used in relation to a State or the Northern Territory—the laws of the Commonwealth as applying in relation to the old Corporations Law and the old Corporations Regulations of the State or Territory from time to time before the commencement as laws of, or for the government of, that State or Territory because of Part 8 of the old Application Act for that State or Territory, and any instruments made under those laws as so applying; or
- (ii) when used in relation to the Australian Capital Territory—the laws of the Commonwealth referred to in subparagraph (i), but as applying of their own force in relation to the old Corporations Law and old Corporations Regulations of the Territory, and any instruments made under those laws as so applying.

***old Corporations Regulations*** means:

- (a) when used in relation to a particular State or Territory—the Corporations Regulations of that State or Territory, within the meaning of the old application Act for that State or Territory, as in force from time to time before the commencement; or
- (b) when used in general terms—the regulations made under section 22 of the old Corporations Act as in force from time to time before the commencement.

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**Part 10.1** Transition from the old corporations legislation

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**order**, in relation to a court, includes any judgment, conviction or sentence of the court.

**pre-commencement right or liability** has the meaning given by subsection 1400(1) or 1401(1).

**preserved instrument** means an instrument that, because of section 1399, has effect after the commencement as if it were made under a provision of the new corporations legislation.

**right** includes an interest or status.

**substituted right or liability** has the meaning given by subsection 1400(2) or 1401(3).

**this Part** includes regulations made for the purposes of any of the provisions of this Part.

- (2) Subject to subsection (4), for the purposes of this Part, a provision or part (the **old provision or part**) of the old corporations legislation of a State or Territory **corresponds** to a provision or part (the **new provision or part**) of the new corporations legislation (and vice versa) if:
- (a) the old provision or part and the new provision or part are substantially the same, unless the regulations specify that the 2 provisions or parts do not correspond; or
  - (b) the regulations specify that the 2 provisions or parts correspond.

Note: The range of provisions of the new corporations legislation that may be corresponding provisions for the purposes of this Part is affected by sections 1401 and 1408, which take certain provisions of the old corporations legislation to be included in the new corporations legislation.

- (3) For the purposes of paragraph (2)(a), differences of all or any of the following kinds are not sufficient to mean that 2 provisions or parts are not substantially the same:
- (a) differences in the numbering of the provisions or parts;

- (b) differences of a minor technical nature (for example, differences in punctuation, or differences that are attributable to the correction of incorrect cross references);
- (c) the fact that one of the provisions refers to a corresponding previous law and the other does not;
- (d) that fact that:
  - (i) the old provision or part allowed a court to exercise powers on its own motion but the new provision or part does not; or
  - (ii) the old provision or part required a court to apply a criterion of public interest but the new provision or part requires a court to apply a criterion of justice and equity; or
  - (iii) the new provision or part requires ASIC to take account of public interest but the old provision or part did not;
- (e) other differences that are attributable to the fact that the new corporations legislation applies as a Commonwealth law throughout this jurisdiction;
- (f) other differences of a kind prescribed by the regulations for the purposes of this paragraph.

This subsection is not intended to otherwise limit the circumstances in which 2 provisions or parts are, for the purposes of paragraph (2)(a), substantially the same.

- (4) The regulations may provide that a specified provision of the old corporations legislation of a State or Territory does, or does not, correspond to a specified provision of the new corporations legislation.

### **1372 Relationship of Part with State validation Acts**

- (1) This Part applies to an invalid administrative action of a Commonwealth authority or an officer of the Commonwealth (within the meaning of a State validation Act) as if the circumstances that made the authority's or officer's action an invalid administrative action had not made the action invalid.

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Note 1: So, for example, in determining whether the purported registration of a company is an action to which this Part (in particular Division 2) applies, the circumstances that made the action an invalid administrative action for the purposes of a State validation Act are to be disregarded.

Note 2: For the status and effect of invalid administrative actions in relation to times before the commencement, see the State validation Acts.

(2) However, if there are other circumstances that affect or may affect the validity of the action, neither this section, nor anything else in this Part, is taken to negate the effect of those other circumstances.

(3) If:

(a) a person would have had a right or liability under a provision (the **old provision**) of the old corporations legislation of a State if the circumstances that made the authority's or officer's action an invalid administrative action (within the meaning of the State validation Act of that State) had not made the action invalid; and

(b) the effect of that State validation Act in relation to that action is to declare that the person has, and is taken always to have had, the same rights and liabilities as they would have had under the old provision if the invalid administrative action had been taken, or purportedly taken, at the relevant time by a duly authorised State authority or officer of the State (within the meaning of that Act);

this Part applies as if:

(c) a reference to a right or liability arising under the old corporations legislation included a reference to the right or liability that the person is declared to have by the State validation Act; and

(d) that right or liability arose under the old provision.

(4) In this section:

**State validation Act** means an Act of a State in this jurisdiction under which certain administrative actions (within the meaning of that Act) taken, or purportedly taken, at or before the commencement by Commonwealth authorities or officers of the

Commonwealth (within the meaning of that Act) pursuant to functions or powers (the *relevant functions or powers*) conferred, or purportedly conferred, by or under laws that include the old application Act for that State have, and are deemed always to have had, the same force and effect for all purposes as they would have had if:

- (a) they had been taken, or purportedly taken by a State authority or officer of the State (within the meaning of that Act); and
- (b) the relevant functions or powers had been duly conferred on those authorities or officers.

### **1373 References to things taken or deemed to be the case etc.**

If:

- (a) a law of a State or Territory in this jurisdiction had effect before the commencement:
  - (i) to take or deem something to have happened or to be the case, or to have a particular effect, under or for the purposes of the old corporations legislation of that State or Territory (or a provision of that legislation); or
  - (ii) to give something an effect for the purposes of the old corporations legislation of that State or Territory (or a provision of that legislation) that it would not otherwise have had; and
- (b) that effect was continuing immediately before the commencement;

this Part applies as if that thing had actually happened or were actually the case, or as if that thing actually had that other effect.

Note: So, for example, if a provision of the old corporations legislation, or another law, of a State or Territory in this jurisdiction took a company to be registered under Part 2A.2 of the old Corporations Law of the State or Territory, this Part applies as if the company were actually registered under that Part.

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**1374 Existence of several versions of old corporations legislation does not result in this Part operating to take same thing to be done several times under new corporations legislation etc.**

If, apart from this section, a provision of this Part (the *transitional provision*) would, because each State or Territory in this jurisdiction had its own old corporations legislation (containing parallel provisions) before the commencement, operate so that:

- (a) a particular thing done before the commencement would be taken to be done, or have effect, 2 or more times by, under or for the purposes of, a provision of this Act; or
- (b) a right or liability would be created 2 or more times in respect of a particular event, circumstance or thing that happened before the commencement; or
- (c) a particular result or effect would be produced 2 or more times for the purposes of the new corporations legislation in relation to the same matter;

the transitional provision is taken to operate so that:

- (d) if paragraph (a) applies—the thing is taken to be done or have effect only once by, under, or for the purposes of, the provision of the new corporations legislation; or
- (e) if paragraph (b) applies—the right or liability is created only once in respect of the event, circumstance or thing; or
- (f) if paragraph (c) applies—the result or effect is produced only once in relation to the matter.

Note: So, for example, if a body (because of the operation of section 102A of the old Corporations Law) was registered under section 601CB of the old Corporations Law of several States and Territories and those registrations were still in force immediately before the commencement, section 1399 does not apply separately to each of those registrations.



**1375 Penalty units in respect of pre-commencement conduct remain at \$100**

- (1) If, because of this Part, an offence can be prosecuted after the commencement in respect of conduct that occurred solely before the commencement, the amount of a penalty unit in respect of that offence is \$100.
- (2) If, because of this Part, section 1314 of this Act applies to conduct that started before the commencement and that continued after the commencement, then, for the purposes of the application of that section to that conduct (including the post-commencement conduct), the amount of a penalty unit is \$100.
- (3) This section has effect despite section 4AA of the *Crimes Act 1914*.

**1376 Ceasing to be a referring State does not affect previous operation of this Part**

If, after the commencement, a State ceases to be a referring State, that does not undo or affect:

- (a) the effects that this Part has already had in relation to matters connected with that State; or
- (b) the ongoing effect of this Act as it operates because of the effects referred to in paragraph (a).

## **Division 2—Carrying over registration of companies**

### **1377 Division has effect subject to Division 7 regulations**

This Division has effect subject to regulations made for the purposes of Division 7.

### **1378 Existing registered companies continue to be registered**

- (1) If:
- (a) before the commencement, a company was registered under Part 2A.2 of the old Corporations Law of a State or Territory in this jurisdiction; and
  - (b) that registration was still in force immediately before the commencement;

the registration of the company has effect (and may be dealt with) after the commencement as if it were a registration of the company under Part 2A.2 of this Act as a company of whichever of the company types listed in subsection (2) corresponds to its previous class and type.

Note: The carrying over of other matters (for example, the registration of registered schemes and of registered bodies) is covered by the more general transitional provisions in Division 6.

- (2) The company types are as follows:
- (a) a proprietary company limited by shares;
  - (b) an unlimited proprietary company;
  - (c) a proprietary company limited both by shares and by guarantee;
  - (d) a public company limited by shares;
  - (e) an unlimited public company;
  - (f) a company limited by guarantee;
  - (g) a public company limited both by shares and by guarantee;
  - (h) a no liability company.

- (3) The application of subsection (1) in relation to the registration of a company does not have the effect of creating that company as a new legal entity. Rather, it has the effect of continuing the existence of the legal entity that is that company with the same characteristics and attributes as it had immediately before the commencement. The date of the company's first registration remains the same (see subsection 1402(2)), and a new certificate of registration does not need to be issued.

Note: The company will, for example, retain the same name, ACN, constitution and registered office as it had immediately before the commencement. Its certificate of registration will (because of section 1399) have effect as if it were issued under section 118 of this Act.

- (4) The State or Territory in which the company is taken to be registered is the State or Territory under whose old Corporations Law the company was registered immediately before commencement. This subsection has effect subject to subsection 119A(3).

Note: For the general provisions about jurisdiction of incorporation and jurisdiction of registration, see section 119A.

## **Division 3—Carrying over the old Corporations Regulations**

### **1379 Division has effect subject to Division 7 regulations**

This Division has effect subject to regulations made for the purposes of Division 7.

### **1380 Old Corporations Regulations continue to have effect**

The old Corporations Regulations that were made for the purposes of provisions of the old Corporations Law that correspond to provisions of this Act and that were in force immediately before the commencement continue to have effect (and may be dealt with) after the commencement as if:

- (a) they were regulations in force under section 1364 of this Act; and
- (b) they were made for the purposes of the corresponding provisions of this Act.

## **Division 4—Court proceedings and orders**

### **1381 Division has effect subject to Division 7 regulations**

This Division has effect subject to regulations made for the purposes of Division 7.

### **1382 Definitions**

(1) In this Division:

***appeal or review proceeding***, in relation to an order of a court, means a proceeding by way of appeal, or otherwise seeking review, of the order.

***enforcement proceeding***, in relation to an order made by a court, means:

- (a) a proceeding to enforce the order; or
- (b) any other proceeding in respect of a breach of the order.

***federal corporations proceeding*** means a proceeding of any of the following kinds that, immediately before the commencement, was before a court:

- (a) a proceeding in respect of a matter arising under the *Administrative Decisions (Judicial Review) Act 1977* involving or related to a decision made under a provision of the old corporations legislation of a State or Territory in this jurisdiction;
- (b) a proceeding for a writ of mandamus or prohibition, or an injunction, against an officer or officers of the Commonwealth (within the meaning of section 75 of the Constitution) in relation to a matter to which a provision of the old corporations legislation of a State or Territory in this jurisdiction applied;
- (ba) a proceeding that relates to a matter to which a provision of the *Corporations Act 1989* applied (other than a proceeding that relates to a matter to which a provision of the

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Corporations Law of the Australian Capital Territory applied);

- (bb) a proceeding in relation to a matter to which a provision of the old corporations legislation of a State or Territory in this jurisdiction applied:
  - (i) in which the Commonwealth was seeking an injunction or a declaration; or
  - (ii) to which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, was a party;
- (bc) any other proceeding in relation to a matter to which a provision of the old corporations legislation of a State in this jurisdiction applied that was in the exercise of federal jurisdiction;
- (bd) any other proceeding in relation to a matter to which a provision of the old corporations legislation of a Territory in this jurisdiction applied that would be covered by paragraph (bc) if the Territory had been a State;
- (c) a proceeding in the court's accrued federal jurisdiction in relation to a matter to which a provision of the old corporations legislation of a State or Territory in this jurisdiction applied.

***interlocutory application*** means an application that:

- (a) is made during the course of a proceeding; and
- (b) is for an order that is incidental to the principal object of that proceeding, including, for example:
  - (i) an order about the conduct of that proceeding; or
  - (ii) an order assisting a party to that proceeding to present their case in that proceeding; or
  - (iii) an order protecting or otherwise dealing with property that is the subject matter of that proceeding;but not including an order making a final determination of existing rights or liabilities.

***interlocutory order*** means:

- (a) an order made in relation to an interlocutory application; or

(b) an order or direction about the conduct of a proceeding.

***interlocutory proceeding*** means a proceeding:

- (a) dealing only with; or
  - (b) to the extent it deals with;
- an interlocutory application.

***primary proceeding*** means a proceeding other than an interlocutory proceeding.

***proceeding*** means a proceeding, whether criminal or civil, before a court.

- (2) For the purposes of this Part, if an interlocutory proceeding relates to a proceeding that is itself an interlocutory proceeding, the first-mentioned proceeding is taken to relate also to the primary proceeding to which the second-mentioned proceeding relates.

### **1383 Treatment of court proceedings under or related to the old corporations legislation—proceedings other than federal corporations proceedings**

- (1) This section applies to a proceeding, other than a federal corporations proceeding, in relation to which the following paragraphs are satisfied:
  - (a) the proceeding was started in a court before the commencement; and
  - (b) the proceeding was:
    - (i) under a provision of the old corporations legislation of a State or Territory in this jurisdiction; or
    - (ii) brought as, or connected with, a prosecution for an offence against a provision of the old corporations legislation of a State or Territory in this jurisdiction; and
  - (c) the proceeding was not an enforcement proceeding, or an appeal or review proceeding, in relation to an order of a court; and
  - (d) the proceeding had not been concluded or terminated before the commencement; and

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- (e) either:
- (i) if the proceeding is a primary proceeding—no final determination of any of the existing rights or liabilities at issue in the proceeding had been made before the commencement; or
  - (ii) if the proceeding is an interlocutory proceeding—this section applies to the primary proceeding to which the interlocutory proceeding relates.
- (2) In this section:
- (a) the proceeding to which this section applies is called the ***old proceeding***; and
  - (b) the provision of the old corporations legislation referred to in whichever of subparagraphs (1)(b)(i) and (ii) applies is called the ***relevant old provision***.
- (3) A proceeding (the ***new proceeding***) equivalent to the old proceeding is, on the commencement, taken to have been brought in the same court, exercising federal jurisdiction:
- (a) if subparagraph (1)(b)(i) applies—under the provision of the new corporations legislation that corresponds to the relevant old provision; or
  - (b) if subparagraph (1)(b)(ii) applies—as, or connected with, a prosecution for an offence against the provision of the new corporations legislation that corresponds to the relevant old provision.

To the extent that the old proceeding, before the commencement, related to pre-commencement rights or liabilities, the new proceeding relates to the substituted rights and liabilities in relation to those pre-commencement rights or liabilities

Note 1: See sections 1400 and 1401 for the creation of substituted rights and liabilities.

Note 2: In all cases, there will be a provision of the new corporations legislation that corresponds to the relevant old provision, either because:

- (a) the new corporations legislation actually contains a provision that corresponds to the relevant old provision; or



- (b) the new corporations legislation, because of section 1401 or 1408, is taken to include the relevant old provision (whether with or without modifications), in which case the provision so taken to be included will be the corresponding provision.
- (4) The following provisions apply in relation to the new proceeding:
- (a) the parties to the new proceeding are the same as the parties to the old proceeding;
  - (b) subject to subsections (5) and (6), and to any order to the contrary made by the court, the court must deal with the new proceeding as if the steps that had been taken for the purposes of the old proceeding before the commencement had been taken for the purposes of the new proceeding.
- (5) If:
- (a) an interlocutory order was made before the commencement for the purpose of, or in relation to, the old proceeding; and
  - (b) that interlocutory order was in force immediately before the commencement;
- the rights and liabilities of all persons (including rights and liabilities arising wholly or partly because of conduct occurring before the commencement) are declared to be, for all purposes, the same as if the interlocutory order had instead been made by the same court, in the exercise of federal jurisdiction, for the purpose of, or in relation to, the new proceeding.
- (6) The court may make orders doing all or any of the following:
- (a) cancelling or varying rights or liabilities that a person has because of subsection (5);
  - (b) substituting other rights or liabilities for rights or liabilities a person has because of subsection (5);
  - (c) adding rights or liabilities to the rights or liabilities a person has because of subsection (5);
  - (d) enforcing, or otherwise dealing with conduct contrary to, a right or liability a person has because of subsection (5) in the same way as it could enforce, or deal with, the right, liability or conduct if the right or liability had arisen under or because

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of an order made by the court in the exercise of federal jurisdiction under the new corporations legislation.

**1384 Treatment of court proceedings under or related to the old corporations legislation—federal corporations proceedings**

- (1) This section applies to a proceeding in relation to which the following paragraphs are satisfied:
  - (a) the proceeding was started in a court before the commencement; and
  - (b) the proceeding was a federal corporations proceeding that related to a matter to which a provision of the old corporations legislation of a State or Territory in this jurisdiction applied; and
  - (c) the proceeding had not been concluded or terminated before the commencement.
- (2) In this section:
  - (a) the proceeding to which this section applies is called the *continued proceeding*; and
  - (b) the provision of the old corporations legislation referred to in paragraph (1)(b) is called the *relevant old provision*.
- (3) Subject to subsection (4):
  - (a) the continued proceeding continues after the commencement in the same court as if it were, and always had been, a proceeding in relation to a matter to which the provision of the new corporations legislation that corresponds to the relevant old provision applies; and
  - (b) to the extent that the proceeding, before the commencement, related to pre-commencement rights or liabilities, the proceeding, as continued, relates, and as so continuing is taken always to have related, to the substituted rights and liabilities in relation to those pre-commencement rights or liabilities.

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Note 1: See sections 1400 and 1401 for the creation of substituted rights and liabilities.

Note 2: In all cases, there will be a provision of the new corporations legislation that corresponds to the relevant old provision, either because:

- (a) the new corporations legislation actually contains a provision that corresponds to the relevant old provision; or
  - (b) the new corporations legislation, because of section 1401 or 1408, is taken to include the relevant old provision (whether with or without modifications), in which case the provision so taken to be included will be the corresponding provision.
- (4) Subject to any order to the contrary made by the court, the court must deal with the continued proceeding as if:
- (a) the steps that had been taken for the purposes of the proceeding before the commencement had been taken for the purpose of the proceeding as continued by this section; and
  - (b) any orders made in relation to the proceeding before the commencement had been made in relation to the proceeding as continued by this section.

**1384A Appeals etc. in relation to some former federal corporations proceedings**

- (1) This section applies to a proceeding in relation to which all of the following paragraphs are satisfied:
- (a) the proceeding was started in a court before the commencement;
  - (b) the proceeding was a federal corporations proceeding that related to a matter to which a provision of the old corporations legislation of a State or Territory in this jurisdiction applied; and
  - (c) the proceeding had been concluded or terminated before the commencement.
- (2) A decision or order made in the proceeding may be appealed against, or otherwise reviewed, as if it had been made in a proceeding that related to a matter to which a provision of this Act applied.

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- (3) An order made in the proceeding may be enforced as if it had been made in a proceeding that related to a matter to which a provision of this Act applied.

**1384B Effect of decisions and orders made in federal corporations proceedings before commencement**

- (1) For the avoidance of doubt, if:
- (a) a proceeding was started in a court before the commencement; and
  - (b) the proceeding was a federal corporations proceeding that related to a matter to which a provision of the old corporations legislation of a State or Territory in this jurisdiction applied; and
  - (c) a decision was made or an order given in the proceeding before the commencement;
- the decision or order continues to have effect after the commencement despite the provision of the old corporations legislation ceasing to have effect.
- (2) This section does not limit the operation of section 1384 in relation to the decision or order.

**1385 References to proceedings and orders in the new corporations legislation**

- (1) Subject to subsection (5), a reference in the new corporations legislation to the taking of a proceeding, or a step in a proceeding, in a court under or in relation to a part or provision of the new corporations legislation includes a reference to the taking of a proceeding, or the equivalent step in a proceeding:
- (a) before the commencement under or in relation to the corresponding part or provision of the old corporations legislation of a State or Territory; or
  - (b) after the commencement under or in relation to the corresponding part or provision of the old corporations

legislation of a State or Territory in this jurisdiction, as that legislation continues to have effect after the commencement.

- (2) Subject to subsections (3), (4) and (5), a reference in the new corporations legislation to an order made by a court under or in relation to a part or provision of the new corporations legislation includes a reference to an order made:
- (a) before the commencement under or in relation to the corresponding part or provision of the old corporations legislation of a State or Territory; or
  - (b) after the commencement under or in relation to the corresponding part or provision of the old corporations legislation of a State or Territory in this jurisdiction, as that legislation continues to have effect after the commencement.
- (3) Nothing in subsection (2) is taken to produce a result that would:
- (a) make a person liable, under the new corporations legislation, to any penalty (whether civil or criminal) provided for in an order referred to in paragraph (2)(a) or (b); or
  - (b) enable an enforcement proceeding, or an appeal or review proceeding, in relation to such an order to be taken in a court under the new corporations legislation; or
  - (c) enable proceedings by way of appeal, or other review, of such an order to be taken in a court under the new corporations legislation.
- (4) If, after the commencement, an order referred to in paragraph (2)(a) or (b) is varied or set aside on appeal or review, subsection (2) applies, or is taken to have applied, from the time from which the variation or setting aside takes or took effect, as if:
- (a) if the order is varied—the order had been made as so varied; or
  - (b) if the order is set aside—the order had not been made.
- (5) The regulations may provide that subsection (1) or (2) does not apply in relation to a particular reference or class of references in the new corporations legislation.

## **Division 5—Other specific transitional provisions**

### **1386 Division has effect subject to Division 7 regulations**

This Division has effect subject to regulations made for the purposes of Division 7.

### **1387 Certain applications lapse on the commencement**

- (1) An application:
  - (a) under section 117 for the registration of a company; or
  - (b) under section 601BC for the registration of a body as a company;that was made by a person before the commencement, but that had not been dealt with by the commencement, lapses on the commencement.
- (2) Any fee that was paid in respect of the application must be returned to the person, unless it is, with the person's permission, credited against the fee payable in respect of another application the person makes under this Act after the commencement.

### **1388 Carrying over the Partnerships and Associations Application Order**

The application order in force immediately before the commencement for paragraph 115(b) of the old Corporations Law of each State and Territory in this jurisdiction continues to have effect (and may be dealt with) after the commencement as if it were a regulation in force under section 1364 of this Act made for the purposes of subsection 115(2) of this Act.

### **1389 Evidentiary certificates**

- (1) A certificate by ASIC (whether issued before or after the commencement) stating that a company was registered under the

old Corporations Law of a State or Territory in this jurisdiction is conclusive evidence that:

- (a) all requirements of that Law for the company's registration were complied with; and
  - (b) the company was duly registered as a company under that Law on the date (if any) specified in the certificate.
- (2) A certificate issued before the commencement under pre-Corporations Law legislation (see subsection (3)) by the authority responsible for administering that legislation stating that a body was registered as a company under that legislation or other pre-Corporations Law legislation is conclusive evidence that:
- (a) all requirements of that legislation for the company's registration were complied with; and
  - (b) the company was duly registered as a company under that legislation on the date (if any) specified in the certificate.
- (3) In subsection (2):

*pre-Corporations Law legislation* means legislation that was, for the purposes of the old Corporations Law of a State or Territory in this jurisdiction, a corresponding previous law in relation to that old Corporations Law.

### **1390 Preservation of nomination of body corporate as SEGC**

The nomination in force immediately before the commencement under section 67 of the old Corporations Act continues to have effect (and may be dealt with) after the commencement as if it were a nomination under section 890A of this Act.

### **1391 Preservation of identification of satisfactory records**

A notice in force immediately before the commencement under section 70 of the old Corporations Act continues to have effect (and may be dealt with) after the commencement as if it were a notice under subsection 147(5) of this Act.

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**1392 Retention of information obtained under old corporations legislation of non-referring State**

If a particular State is not a referring State on the commencement, that does not mean that ASIC must then remove from, or cease to retain in, a database or register it maintains information that ASIC obtained before the commencement under or because of (whether in whole or in part) the operation of the old corporations legislation of that State.

**1393 Transitional provisions relating to section 1351 fees**

(1) If:

(a) either:

- (i) before the commencement, a person paid an amount as required by section 1351 of the old Corporations Law of a State or Territory in respect of a particular matter; or
- (ii) after the commencement, a person pays an amount as required by subsection 9(2) of the *Corporations (Fees) Act 2001* in respect of a particular matter; and

(b) a fee is also payable under section 1351 of this Act in respect of the same matter;

the payment they made or make as mentioned in subparagraph (a)(i) or (ii) is taken to satisfy their liability to pay the fee referred to in paragraph (b).

(2) If:

- (a) before the commencement, a person paid a deposit as required by section 1357 of the old Corporations Law of a State or Territory in respect of a particular matter; and
- (b) a fee is payable under section 1351 of this Act in respect of the same matter;

the deposit must be applied against the liability to pay the fee.



**1394 Transitional provisions relating to securities exchange fidelity fund levies**

- (1) If:
- (a) before the commencement, a person paid an amount as required by subsection 902(1) of the old Corporations Law of a State or Territory in order to be admitted to:
    - (i) membership of a securities exchange; or
    - (ii) membership of a partnership in a member firm recognised by a securities exchange; and
  - (b) that person had not been so admitted by the commencement of this Act;
- the payment they made before the commencement is taken to satisfy their liability to pay the levy referred to in subsection 902(1) of this Act in respect of their admission after the commencement to that securities exchange or firm.
- (2) If:
- (a) either:
    - (i) before the commencement, a person paid an amount as required by subsection 902(2) of the old Corporations Law of a State or Territory to a securities exchange in respect of a year some or all of which occurs after the commencement of this Act; or
    - (ii) after the commencement, a person pays an amount as required by subsection 8(3) of the *Corporations (Securities Exchanges Levies) Act 2001* in respect of a year some or all of which occurs after the commencement of this Act; and
  - (b) a levy is also payable under subsection 902(2) of this Act in respect of the securities exchange and the year;
- the payment they made or make as mentioned in subparagraph (a)(i) or (ii) is taken to satisfy their liability to pay the levy referred to in paragraph (b).
- (3) If, before the commencement, a person paid an amount to a securities exchange as required by subsection 902(2) of the old

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Corporations Law of a State or Territory, that payment is to be counted, for the purposes of:

- (a) the reference in paragraph (a) of the definition of *relevant person* in subsection 903(1) of this Act; and
- (b) subsection 903(5) of this Act;

as if it were a payment of a kind referred to in that paragraph or that subsection, as the case requires.

**1395 Transitional provisions relating to National Guarantee Fund levies**

(1) If:

(a) either:

- (i) before the commencement, a person paid an amount as required by section 938 of the old Corporations Law of a State or Territory in respect of a particular transaction; or
- (ii) after the commencement, a person pays an amount of levy imposed by subsection 6(1) of the *Corporations (National Guarantee Fund Levies) Act 2001* in respect of a particular transaction; and

(b) a levy is also payable under section 938 of this Act in respect of the same transaction;

the payment they made or make as mentioned in subparagraph (a)(i) or (ii) is taken to satisfy their liability to pay the levy referred to in paragraph (b).

(2) Subject to subsection (3), a determination of a matter (other than a rate or rates, or an amount) in force immediately before the commencement for the purposes of section 938, 940 or 941 of the old Corporations Law of a State or Territory in this jurisdiction continues to have effect (and may be dealt with) after the commencement of this Act as if it were:

- (a) in the case of a determination for the purposes of section 938—a determination for the purposes of section 938 of this Act; or

- (b) in the case of a determination for the purposes of section 940—a determination for the purposes of section 940 of this Act; or
  - (c) in the case of a determination for the purposes of section 941—a determination for the purposes of section 941 of this Act.
- (3) Nothing in subsection (2) is taken to produce a result that a levy is payable by a person in respect of the same matter in respect of which levy is imposed on the person by subsection 6(1), (2) or (3) of the *Corporations (National Guarantee Fund Levies) Act 2001*.

### **1396 Transitional provisions relating to futures organisation fidelity fund levies**

- (1) If:
- (a) before the commencement, a person paid an amount as required by subsection 1234(1) of the old Corporations Law of a State or Territory in order to be admitted to membership of a futures organisation; and
  - (b) that person had not been so admitted by the commencement of this Act;
- the payment they made before the commencement is taken to satisfy their liability to pay the levy referred to in subsection 1234(1) of this Act in respect of their admission after the commencement to that futures organisation.
- (2) If:
- (a) either:
    - (i) before the commencement, a contributing member of a futures organisation paid an amount as required by subsection 1234(2) of the old Corporations Law of a State or Territory to a futures organisation in respect of a year some or all of which occurs after the commencement of this Act; or
    - (ii) after the commencement, a person pays an amount as required by subsection 6(1) of the *Corporations*

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*(Futures Organisations Levies) Act 2001* in respect of a year some or all of which occurs after the commencement of this Act; and

- (b) a levy is also payable under subsection 1234(2) of this Act in respect of the futures organisation and the year; the payment they made or make as mentioned in subparagraph (a)(i) or (ii) is taken to satisfy their liability to pay the levy referred to in paragraph (b).

## **Division 6—General transitional provisions relating to other things done etc. under the old corporations legislation**

### **1397 Limitations on scope of this Division**

- (1) This Division has effect subject to:
  - (a) the provisions of Divisions 2, 3, 4 and 5 (which deal with matters in more specific terms); and
  - (b) regulations made for the purposes of Division 7.
- (2) Nothing in this Division applies to:
  - (a) an order made by a court before the commencement; or
  - (b) a right or liability under an order made by a court before the commencement; or
  - (c) a right to:
    - (i) appeal to a court against an order made by a court before the commencement;
    - (ii) apply to a court for review of such an order; or
    - (iii) bring an appeal or review proceeding, or an enforcement proceeding, within the meaning of section 1382, in respect of such an order; or
  - (d) subject to subsection (3)—a proceeding taken (including an appeal, review or enforcement proceeding) in a court before the commencement, or a step in such a proceeding.

Note: Division 4 deals with court orders and proceedings made or begun before the commencement, and with related matters.

- (3) Despite paragraph (2)(d), sections 1400 and 1401 apply to any right or liability to which a proceeding to which section 1383 or 1384 applies relates.
- (4) Nothing in this Division applies to a liability under section 902, 904, 938, 940, 941, 1234, 1235 or 1351 of the old Corporations

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Law of a State or Territory in this jurisdiction to pay a contribution, levy or fee.

Note: These liabilities are preserved as taxes by provisions of the following Acts:

- (a) the *Corporations (Securities Exchanges Levies) Act 2001*;
  - (b) the *Corporations (National Guarantee Fund Levies) Act 2001*;
  - (c) the *Corporations (Futures Organisations Levies) Act 2001*;
  - (d) the *Corporations (Fees) Act 2001*.
- (5) Except as mentioned in subsections (1) to (4), nothing in Division 2, 3, 4 or 5, or in regulations made for the purposes of Division 7, is intended to limit the generality of the provisions in this Division.

**1398 Provisions of this Division may have an overlapping effect**

The provisions of this Division deal at a broad level with concepts and matters in a way that is intended to achieve the object of this Part as set out in section 1370. Some of the provisions of this Division will (depending on the situation) have an effect that overlaps or interacts to some extent with the effect of other provisions of this Division. This is intended, and the provisions of this Division should be not be regarded as dealing with mutually exclusive situations.

**1399 Things done by etc. carried over provisions continue to have effect**

- (1) Subject to this section, a thing that:
- (a) was done before the commencement by, under, or for the purposes of, a carried over provision of the old corporations legislation of a State or Territory in this jurisdiction; and
  - (b) had an ongoing significance (see subsections (4) and (5)) immediately before the commencement for the purposes of that legislation;
- has effect (and may be dealt with) after the commencement, for the purposes of the new corporations legislation, as if it were done by,

under, or for the purposes of, the corresponding provision of the new corporations legislation.

Note: This section covers all kinds of things done, including things of a coercive nature or done for coercive purposes.

- (2) Examples of things done include:
- (a) the making of an instrument or order (but not including the making of an order by a court); and
  - (b) the making of an application or claim (but not including the making of an application or claim to a court); and
  - (c) the granting of an application or claim (but not including the granting of an application or claim by a court); and
  - (d) the making of an appointment or delegation; and
  - (e) the commencement of a procedure or the taking of a step in a procedure (but not including the commencement of a proceeding in a court); and
  - (f) the establishment of a register or fund; and
  - (g) requiring a person to do, or not to do, something (but not including a requirement contained in an order made by a court); and
  - (h) the giving of a notice or document.
- (3) The examples in subsection (2) are not intended to limit the generality of the language of subsection (1).
- (4) Subject to subsection (5), for the purposes of this section, a thing done by, under, or for the purposes of, a carried over provision of the old corporations legislation of a State or Territory had an **ongoing significance** immediately before the commencement for the purposes of that legislation if:
- (a) if the thing done was the making of an instrument or order—the instrument or order was still in force immediately before the commencement; or
  - (b) if the thing done was the making of an application or claim—the application or claim had not been decided, and had not otherwise ceased to have effect, before the commencement; or

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- (c) if the thing done was the granting of an application or claim—the thing granted had not been revoked, and had not otherwise ceased to have effect, before the commencement; or
  - (d) if the thing done was the making of an appointment or delegation—the appointment or delegation had not been revoked, and had not otherwise ceased to have effect, before the commencement; or
  - (e) if the thing done was the commencement of a procedure or the taking of a step in a procedure—the procedure was still in progress immediately before the commencement or was otherwise still having an effect; or
  - (f) if the thing done was the establishment of a register or fund—the register or fund was still in existence immediately before the commencement; or
  - (g) if the thing done was requiring a person to do, or not to do something—the requirement was still in force immediately before the commencement; or
  - (h) if the thing done was the giving of a notice or document, or the doing of some other thing—the notice or document (or the giving of the notice or document), or the thing (or the doing of the thing), had an ongoing effect or significance immediately before the commencement for the purposes of the old corporations legislation of the State or Territory.
- (5) The regulations may provide that a specified thing done under, or for the purposes of, a carried over provision of the old corporations legislation of a State or Territory did, or did not, have an ongoing significance immediately before the commencement for the purposes of that legislation.



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**1400 Creation of equivalent rights and liabilities to those that existed before the commencement under carried over provisions of the old corporations legislation**

- (1) Subject to subsection (4), this section applies in relation to a right or liability (the *pre-commencement right or liability*), whether civil or criminal, that:
- (a) was:
    - (i) acquired, accrued or incurred under a carried over provision of the old corporations legislation of a State or Territory in this jurisdiction; and
    - (ii) in existence immediately before the commencement; or
  - (b) would have been:
    - (i) acquired, accrued or incurred under such a provision; and
    - (ii) in existence immediately before the commencement; if every agreement that was valid only because of section 249 of the ASIC Act had been a valid agreement without the application of that section.

However, this section does not apply to a right or liability under an order made by a court before the commencement.

- (2) On the commencement, the person acquires, accrues or incurs a right or liability (the *substituted right or liability*), equivalent to the pre-commencement right or liability, under the corresponding provision of the new corporations legislation (as if that provision applied to the conduct or circumstances that gave rise to the pre-commencement right or liability).

Note: If a time limit applied in relation to the pre-commencement right or liability under the old corporations legislation, that same time limit (calculated from the same starting point) will apply under the new corporations legislation to the substituted right or liability—see subsection 1402(3).

- (3) A procedure, proceeding or remedy in respect of the substituted right or liability may be instituted after the commencement under the new corporations legislation (as if that provision applied to the

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conduct or circumstances that gave rise to the pre-commencement right or liability).

Note: For pre-commencement proceedings in respect of substituted rights and liabilities, see sections 1383 and 1384.

- (4) If, immediately before the commencement, a person had an accrued right to make a claim under a provision of Part 7.10 of the old Corporations Law of a State that is not a referring State (and so is not in this jurisdiction), this section applies in relation to that right in the same way as it would have applied if the State had been a referring State.

Note: Except to the extent provided in this subsection, this Part does not create rights and liabilities that are equivalent to those that existed under the old corporations legislation of a non-referring State.

- (5) This section does not apply to a pre-commencement right or liability that:
- (a) existed under a law of the Commonwealth or of a State or Territory; and
  - (b) would not have existed if any agreement that is valid only because of section 249 of the ASIC Act had been a valid agreement without the application of that section.
- (6) Paragraph (1)(b) and subsection (5) have effect in relation to:
- (a) proceedings (whether original or appellate) that begin on or after the day the *Treasury Laws Amendment (2017 Measures No. 3) Act 2017* receives the Royal Assent; and
  - (b) proceedings that began before that day, if the proceedings (including any appeals) had not been finally determined as at that day.
- (7) Nothing in paragraph (1)(b) or subsection (5) or (6) limits the operation of section 249 of the ASIC Act.

**1401 Creation of equivalent rights and liabilities to those that existed before the commencement under repealed provisions of the old corporations legislation**

- (1) This section applies in relation to a right or liability (the *pre-commencement right or liability*), whether civil or criminal, that:
- (a) was:
    - (i) acquired, accrued or incurred under a provision of the old corporations legislation of a State or Territory in this jurisdiction that was no longer in force immediately before the commencement; and
    - (ii) in existence immediately before the commencement; or
  - (b) would have been:
    - (i) acquired, accrued or incurred under such a provision; and
    - (ii) in existence immediately before the commencement; if every agreement that was valid only because of section 249 of the ASIC Act had been a valid agreement without the application of that section.
- However, this section does not apply to a right or liability under an order made by a court before the commencement.
- (2) For the purposes of subsections (3) and (4), the new corporations legislation is taken to include:
- (a) the provision of the old corporations legislation (with such modifications (if any) as are necessary) under which the pre-commencement right or liability was acquired, accrued or incurred; and
  - (b) the other provisions of the old corporations legislation (with such modifications (if any) as are necessary) that applied in relation to the pre-commencement right or liability.
- (3) On the commencement, the person acquires, accrues or incurs a right or liability (the *substituted right or liability*), equivalent to the pre-commencement right or liability, under the provision taken to be included in the new corporations legislation by

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paragraph (2)(a) (as if that provision applied to the conduct or circumstances that gave rise to the pre-commencement right or liability).

Note: If a time limit applied in relation to the pre-commencement right or liability under the old corporations legislation, that same time limit (calculated from the same starting point) will apply under the new corporations legislation to the substituted right or liability—see subsection 1402(3).

- (4) A procedure, proceeding or remedy in respect of the substituted right or liability may be instituted after the commencement under the provisions taken to be included in the new corporations legislation by subsection (2) (as if those provisions applied to the conduct or circumstances that gave rise to the pre-commencement right or liability).

Note: For pre-commencement proceedings in respect of substituted rights and liabilities, see sections 1383 and 1384.

- (5) This section does not apply to a pre-commencement right or liability that:
- (a) existed under a law of the Commonwealth or of a State or Territory; and
  - (b) would not have existed if any agreement that is valid only because of section 249 of the ASIC Act had been a valid agreement without the application of that section.
- (6) Paragraph (1)(b) and subsection (5) have effect in relation to:
- (a) proceedings (whether original or appellate) that begin on or after the day the *Treasury Laws Amendment (2017 Measures No. 3) Act 2017* receives the Royal Assent; and
  - (b) proceedings that began before that day, if the proceedings (including any appeals) had not been finally determined as at that day.
- (7) Nothing in paragraph (1)(b) or subsection (5) or (6) limits the operation of section 249 of the ASIC Act.

**1402 Old corporations legislation time limits etc.**

- (1) An old corporations legislation time limit (see subsection (4)):
  - (a) the starting point of which:
    - (i) was known or had been determined before the commencement (whether that starting point occurred or would occur before, on or after the commencement); or
    - (ii) would have become known, or have been determined, after the commencement if the old corporations legislation of the relevant State or Territory had continued to apply (whether that starting point would have occurred before, on or after the commencement); and
  - (b) that had not ended at or before the commencement; continues to run, or starts or started to run, as if that same time limit (starting from the same starting point) were applicable under the new corporations legislation.
- (2) If:
  - (a) under the old corporations legislation, a process (for example, the winding up of a company), a status of a person or body (for example, a body's registration as a company or a person's status as a registered liquidator), or an instrument, commenced from a particular time before the commencement; and
  - (b) that process, status or instrument is continued after the commencement for the purposes of the new corporations legislation by a provision of this Part; that process, status or instrument as so continued is still taken to have commenced from the time referred to in paragraph (a).
- (3) If an old corporations legislation time limit related to a pre-commencement right or liability, the same time limit applies in relation to the substituted right or liability.
- (4) In this section:

***old corporations legislation time limit*** includes:

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- (a) a period for the doing of a thing specified or determined under a provision of the old corporations legislation of a State or Territory; or
- (b) a period specified or determined under a provision of the old corporations legislation of a State or Territory as the duration of a particular instrument or status.

**1403 Preservation of significance etc. of events or circumstances**

- (1) An event, circumstance or other thing:
  - (a) that occurred or arose before the commencement under or as mentioned in a provision of the old corporations legislation of a State or Territory in this jurisdiction; and
  - (b) that had a particular significance, status or effect for the purposes of a carried over provision of that legislation (including because of an interpretive provision);has that same significance, status and effect after the commencement for the purposes of the provision of the new corporations legislation that corresponds to that carried over provision.

Note: So, for example:

- (a) if a company took action before the commencement that had the result for the purposes of section 200B of the old Corporations Law of making a superannuation fund a prescribed superannuation fund in relation to the company, that action has that same effect for the purposes of section 200B of this Act; and
  - (b) a delay that could have been taken into account for the purposes of subsection 874(1) of the old Corporations Law also counts for the purposes of subsection 874(1) of this Act.
- (2) Without limiting subsection (1), an event, circumstance or other thing had a particular significance for the purposes of a carried over provision of the old corporations legislation of a State or Territory in this jurisdiction if:
    - (a) the carried over provision created an obligation in respect of the event, circumstance or thing (whenever it arose); or
    - (b) the carried over provision provided for the event, circumstance or thing to be dealt with in a particular way; or

- (c) the carried over provision stated that the event, circumstance or thing (whenever it arose) was to be disregarded for the purposes of that provision or was not covered by that provision.

**1404 References in the new corporations legislation generally include references to events, circumstances or things that happened or arose before the commencement**

- (1) Subject to this section, a reference in the new corporations legislation to an event, circumstance or thing of a particular kind that happens or arises, or that has happened or arisen, is taken to include a reference to an event, circumstance or thing of that kind that happened or arose at a time before the commencement, unless a contrary intention is expressed. The fact that the provision uses only the present tense in referring to an event, circumstance or thing is not, of itself, to be regarded as an expression of a contrary intention.

Note: So, for example, if a provision of the new corporations legislation refers to a person who consents to a course of action, that reference (in the absence of an express provision to the contrary) will not be limited to consents given after the commencement and will cover a consent given before the commencement.

- (2) Nothing in subsection (1) is taken to produce a result that a right or liability exists under a provision of the new corporations legislation that relates solely to events, circumstances or things that occurred before the commencement.

Note: Instead, an equivalent right or liability will be created by section 1400 or 1401.

- (3) The regulations may provide that subsection (1) does not apply in relation to a particular reference or class of references in the new corporations legislation.

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**1405 References in the new corporations legislation to that legislation or the new ASIC legislation generally include references to corresponding provisions of the old corporations legislation or old ASIC legislation**

- (1) Subject to subsection (4), a reference in the new corporations legislation to:
- (a) an Act, or regulations or another instrument that is part of the new corporations legislation; or
  - (b) a provision or group of provisions of such an Act, regulations or other instrument;

is taken, in relation to events, circumstances or things that happened or arose at a time before the commencement when the old corporations legislation was in force, to include (in the absence of an express provision to the contrary) a reference to the corresponding part, provision or provisions of the old corporations legislation of the States and Territories in this jurisdiction.

- (2) Subject to subsection (4), a reference in the new corporations legislation to:
- (a) an Act, or regulations or some other instrument that is part of the new ASIC legislation; or
  - (b) a provision or group of provisions of such an Act, regulations or other instrument;

is taken, in relation to events, circumstances or things that happened or arose at a time before the commencement when the old corporations legislation was in force, to include (in the absence of an express provision to the contrary) a reference to the corresponding part, provision or provisions of the old ASIC legislation of the Commonwealth, of the States in this jurisdiction and of the Northern Territory.

- (3) In subsection (2):
- (a) **new ASIC legislation** and **old ASIC legislation** have the same meanings as they have in Part 16 of the *Australian Securities and Investments Commission Act 2001*; and



- (b) the question whether a provision or part of the old ASIC legislation corresponds to a provision of part of the new ASIC legislation is to be determined in the same way as it is determined for the purposes of Part 16 of the *Australian Securities and Investments Commission Act 2001*.
- (4) The regulations may provide that subsection (1) or (2) does not apply in relation to a particular reference or class of references in the new corporations legislation.

### **1406 Carrying over references to corresponding previous laws**

- (1) If a carried over provision of the old corporations legislation of a State or Territory in this jurisdiction contained a reference (whether in its own terms or by operation of another provision) to:
  - (a) a corresponding previous law (as defined for the purposes of that provision or provisions including that provision); or
  - (b) a thing done by, under, or for the purposes of, such a law;the corresponding provision of the new corporations legislation is taken to contain an equivalent reference to that previous law, or to such a thing done by, under, or for the purposes of, that previous law.
- (2) The following references in the old corporations legislation of the States and Territories in this jurisdiction are covered by subsection (1) in the same way as they would be if they used the “corresponding previous law” form of words:
  - (a) the reference in subsection 1274AA(1) to a “previous Law”;
  - (b) the reference in subparagraph 1274AA(2)(b)(ii) to a “previous law of this jurisdiction before the commencement of this Part that corresponds”;
  - (c) any other references prescribed by the regulations for the purposes of this subsection.

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**1407 References to old corporations legislation in instruments**

- (1) Subject to subsection (2), a reference in, or taken immediately before the commencement to be in, an instrument, other than:
- (a) an Act of a State, the Australian Capital Territory, the Northern Territory or Norfolk Island; or
  - (b) an instrument made under such an Act;
- to:
- (c) an Act, or to regulations or some other instrument, that is part of the old corporations legislation (whether the reference is in general terms or in relation to a particular State or Territory in this jurisdiction); or
  - (d) to a provision or group of provisions of such an Act, regulations or other instrument;
- is taken, after the commencement, to include a reference to the corresponding part, provision or provisions of the new corporations legislation (unless there is no such corresponding part, provision or provisions).

Note: This section will, for example, apply to:

- (a) a reference in another Commonwealth Act to the Corporations Law; or
  - (b) a reference in the Corporations Regulations to the Corporations Law; or
  - (c) a reference in a company's constitution to a particular provision of the Corporations Law.
- (2) The regulations may do either or both of the following:
- (a) provide that subsection (1) does not apply in relation to prescribed references in prescribed instruments;
  - (b) provide that subsection (1) has effect in relation to prescribed references in prescribed instruments as if, in that subsection, the words "to be" were substituted for the words "to include".

**1408 Old transitional provisions continue to have their effect**

- (1) Subject to subsection (3), this Act has the same effect, after the commencement, as it would have if:
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- (a) the transitional provisions (see subsections (6) and (7)) of the old Corporations Laws of the States and Territories in this jurisdiction (as in force from time to time before the commencement) had been part of this Act; and
  - (b) those transitional provisions produced the same results or effects (to the greatest extent possible) for the purposes of this Act as they produced for the purposes of those old Corporations Laws.
- (2) Without limiting subsection (1) (but subject to subsection (3)), if a transitional provision of the old Corporations Law of a State or Territory in this jurisdiction could, if it had continued in force after the commencement, have operated to give rise to rights and liabilities (including civil or criminal liabilities) in relation to acts or omissions occurring after the commencement, this Act is taken to include that transitional provision (with such modifications (if any) as are necessary).

Note: In relation to acts or omissions that occurred before the commencement, equivalent rights and liabilities are created by sections 1400 and 1401.

- (3) The regulations may determine how a matter dealt with in a transitional provision of the old Corporations Law of a State or Territory in this jurisdiction is to be dealt with under or in relation to the new corporations legislation (including by creating offences). The regulations have effect despite subsections (1) and (2), but subject to subsection (5).

Note: In creating offences, the regulations are subject to the limitation imposed by section 1375.

- (4) For the purpose of determining whether the new corporations legislation includes a provision that corresponds to a provision of the old corporations legislation of a State or Territory, and for the purpose of any reference in this part to a corresponding provision of the new corporations legislation, this Act is taken to include the transitional provisions of the old corporations legislation of the States and Territories, as they have effect because of subsections (1) and (2).

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- (5) Nothing in subsection (1) or (2), or in regulations made for the purposes of subsection (3), is taken to produce a result that a right or liability exists under a transitional provision as it has effect because of subsection (1) or (2), or exists under regulations made for the purposes of subsection (3), that relates solely to events, circumstances or things that occurred before the commencement.

Note: Instead, an equivalent right or liability will be created by section 1400 or 1401.

- (6) Subject to subsection (7), for the purposes of this section, a **transitional provision** is any of the provisions of the old Corporations Laws of the States and Territories in this jurisdiction listed in the following table.

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<b>Transitional provisions of old Corporations Law</b>	
<b>Item</b>	<b>Provisions</b>
1	subsection 87(1A)
2	subsection 88(1A)
3	sections 109E to 109G and section 109T
4	section 268A
5	section 275
6	section 275A
8	section 601
9	subsection 774(7)
10	subsection 895(3)
11	subsection 977(4)
12	subsection 990(2)
13	section 993
14	subsection 1228(3)
15	subsections 1274(17) and (18)
16	subsections 1288(1), (2) and (6)
17	paragraph 1311(1A)(f) and subsection 1311(3A)
18	section 1336A

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**Transitional provisions of old Corporations Law**

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**Item      Provisions**

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19      Chapter 11, other than section 1416

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20      Schedule 4, other than the following provisions:

        (a) subclauses 7(3), 8(2) and 9(4);

        (b) clauses 11 to 16;

        (c) subclause 17(2);

        (d) clauses 18 and 19;

        (e) clauses 20, 25 and 27;

        (f) Parts 5, 6 and 7.

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- (7) The regulations may provide that certain provisions are to be taken to be included in, or omitted from, the table in subsection (6). The table then has effect as if the provisions were so included in it or omitted from it.

## Division 7—Regulations dealing with transitional matters

### 1409 Regulations may deal with transitional matters

- (1) The regulations may deal with matters of a transitional nature relating to the transition from the application of provisions of the old corporations legislation of the States and Territories in this jurisdiction to the application of provisions of the new corporations legislation. The regulations have effect despite anything else in this Part, other than section 1375.
- (2) Without limiting subsection (1), the regulations may provide for a matter to be dealt with, wholly or partly, in any of the following ways:
  - (a) by applying (with or without modifications) to the matter:
    - (i) provisions of the old corporations legislation of the States and Territories in this jurisdiction, as in force immediately before the commencement or at some earlier time; or
    - (ii) provisions of the new corporations legislation; or
    - (iii) a combination of provisions referred to in subparagraphs (i) and (ii);
  - (b) by otherwise specifying rules for dealing with the matter;
  - (c) by specifying a particular consequence of the matter, or of an outcome of the matter, for the purposes of the new corporations legislation.
- (3) The regulations may provide that certain provisions of this Part are taken to be modified as set out in the regulations. Those provisions then have effect as if they were so modified.
- (4) Despite subsection 12(2) of the *Legislative Instruments Act 2003*, regulations for the purposes of this section may be expressed to take effect from a date before the regulations are registered under that Act.
- (5) In this section:

*matters of a transitional nature* also includes matters of an application or saving nature.

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**Part 10.2** Transitional provisions relating to the Financial Services Reform Act 2001

**Division 1** Transitional provisions relating to the phasing-in of the new financial services regime

Section 1410

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**Part 10.2—Transitional provisions relating to the  
Financial Services Reform Act 2001**

**Division 1—Transitional provisions relating to the  
phasing-in of the new financial services regime**

**Subdivision A—Preliminary**

**1410 Definitions**

- (1) In this Division, unless the contrary intention appears:

*amended Corporations Act* means this Act as in force after the FSR commencement.

*associated provisions*, in relation to provisions (the *core provisions*) of a particular Act as in force at a particular time, include (but are not limited to):

- (a) any regulations or other instruments that are or were in force for the purposes of any of the core provisions at that time; and
- (b) any interpretation provisions that apply or applied in relation to any of the core provisions at that time (whether or not they also apply or applied for other purposes); and
- (c) any provisions relating to liability (civil or criminal) that apply or applied in relation to any of the core provisions at that time (whether or not they also apply or applied for other purposes); and
- (d) any provisions that limit or limited, or that otherwise affect or affected, the operation of any of the core provisions at that time (whether or not they also limit or limited, or affect or affected, the operation of other provisions).

*class*, in relation to financial products, has a meaning affected by regulations made for the purposes of subsection (2).



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***FSR commencement*** means the commencement of item 1 of Schedule 1 to the *Financial Services Reform Act 2001*.

***old Corporations Act*** means this Act as in force immediately before the FSR commencement.

***regulated activities***, in relation to a regulated principal, has the meaning given by section 1430.

***regulated principal*** has the meaning given by section 1430.

***relevant old legislation***, in relation to a regulated principal, has the meaning given by section 1430.

***transition period:***

- (a) in relation to a market to which section 1414, 1418, 1420, 1421 or 1422 applies—has the meaning given by subsection (2) of that section; and
  - (b) in relation to a market to which section 1417 applies and the additional products referred to in that section—has the meaning given by subsection 1417(2); and
  - (c) in relation to a clearing and settlement facility to which section 1426 or 1429 applies—has the meaning given by subsection (2) of that section; and
  - (d) in relation to a clearing and settlement facility to which section 1428 applies and the additional products referred to in that section—has the meaning given by subsection 1428(2); and
  - (e) in relation to a regulated principal—has the meaning given by subsection 1431(1); and
  - (f) in relation to a financial product to which section 1438 applies—has the meaning given by subsection (3) of that section.
- (1A) Other expressions used in this Part that are defined in Division 2 of Part 7.1 have the same meanings as they are given by that Division. This has effect subject to:
- (a) any contrary intention in a provision of this Part; or

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- (b) regulations made for the purposes of this paragraph.
- (2) The regulations may include provisions identifying, or providing for the identification of, what constitutes a *class* of financial products for the purposes of a provision or provisions of this Division.
- (3) If a provision of this Division (the *transitional provision*) provides for a provision of this or another Act (the *preserved provision*), as in force immediately before the FSR commencement, to continue to apply to or in relation to a person, thing or matter:
- (a) the preserved provision so continues to apply only to the extent (if any) to which it is expressed in terms that cover the person, thing or matter; and
  - (b) the transitional provision is not taken to extend the scope of the preserved provision (otherwise than by giving it a continued operation).

**Subdivision B—Treatment of existing markets**

**1411 When is a market being operated immediately before the FSR commencement?**

Subject to section 1412, in this Subdivision, a reference to a market *being operated immediately before the FSR commencement* is a reference to a market that had not permanently ceased to operate before the FSR commencement, even if trading on the market was not actually occurring immediately before the FSR commencement (for example, because of a routine temporary closure of the market).

**1412 Treatment of proposed markets that have not started to operate by the FSR commencement**

- (1) This section applies in relation to the following proposed markets, other than any such market that starts to operate before the FSR commencement:

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- (a) a market proposed to be operated by Bendigo Stock Exchange Ltd, or by ASX Futures Exchange Pty Limited, that is identified in writing by the Minister as being a proposed market to which this section applies;
- (b) any other proposed market identified in, or in accordance with, regulations made for the purposes of this paragraph.

For this purpose, a **proposed market** is a market that a person has, before the FSR commencement, indicated an intention that they propose to operate.

- (2) This Subdivision applies in relation to a proposed market to which this section applies subject to the following paragraphs:
  - (a) subject to paragraphs (b), (c) and (d), this Subdivision applies in relation to the proposed market as if the market, as proposed to be operated, were in fact being operated immediately before the FSR commencement;
  - (b) if, taking account of the effect of paragraph (a), section 1413 applies in relation to the proposed market, that section applies in relation to the proposed market:
    - (i) as if the Minister's obligation to grant a licence, and impose conditions, under subsection 1413(2) in relation to the market does not arise unless and until the market operator lodges with ASIC a notice in relation to the market under subsection (3) of this section, and does not arise at all if no such notice is given to ASIC by the end of 6 months after the FSR commencement; and
    - (ii) as if subsection 1413(3) provided for a licence so granted under subsection 1413(2) in relation to the market, and the conditions subject to which it is granted, to be taken to have had effect from the day (the **start day**) specified in the subsection (3) notice as the day on which the market started to operate; and
    - (iii) as if subsection 1413(6) were omitted; and
    - (iv) as if the references in subsection 1413(8) to the FSR commencement were instead references to the start day;
  - (c) if:

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- (i) taking account of the effect of paragraph (a), section 1418, 1420, 1421 or 1422 applies to the proposed market; and
- (ii) the market operator does not lodge with ASIC a notice in relation to the market under subsection (3) of this section by the end of 6 months after the FSR commencement;

that section ceases to apply in relation to the proposed market at the end of that period;

- (d) if a provision of this Subdivision provides for a provision of the old Corporations Act to continue to apply in relation to the proposed market, then (without limiting the generality of subsection 1410(3)), while the proposed market remains non-operational, the provision of the old Corporations Act only applies in relation to the proposed market to the extent (if any) to which it would, disregarding the effect of paragraph (a), apply in relation to the proposed market.
- (3) If a proposed market to which this section applies starts to operate on a day during the period of 6 months starting on the FSR commencement, the operator must, as soon as practicable, and in any event within 7 days, lodge with ASIC written notice of the fact that the market started to operate on that day.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

- (4) ASIC must, within a reasonable time, give the Minister a notice it receives under subsection (3).

**1413 Obligation of Minister to grant licences covering main existing markets**

- (1) This section applies to each market being operated immediately before the FSR commencement in relation to which any of the following paragraphs applies:
  - (a) the market was a stock market operated by the Australian Stock Exchange Limited;

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- (b) the market was a stock market operated by a body corporate covered by an approval in force under subsection 769(2) of the old Corporations Act;
  - (c) the market was a futures market operated by a body corporate covered by an approval in force under subsection 1126(2) of the old Corporations Act.
- (2) Subject to subsections (3) and (4), the Minister must, in relation to each market to which this section applies, grant the operator of the market a licence, and impose conditions on that licence, in accordance with the following requirements:
- (a) the licence must be described as an Australian market licence;
  - (b) the licence must be granted subject to the following conditions:
    - (i) a condition specifying the market as the market that the licence authorises the licensee to operate;
    - (ii) a condition specifying, as the classes of financial products that can be dealt with on the market, the classes that are appropriate for the market under subsection (5);
    - (iii) if the Minister considers that the licensee should have clearing and settlement arrangements for transactions effected through the market—a condition specifying the type of clearing and settlement arrangements that are adequate.
- (3) Subject to subsection (6), a licence that subsection (2) requires to be granted must be granted on, or as soon as practicable after, the FSR commencement. If it is granted after the FSR commencement, it, and the conditions subject to which it is granted, are taken to have had effect from that commencement.
- (4) Sections 795D (more than one licence in the same document) and 795E (more than one market covered by the same licence) of the amended Corporations Act apply in relation to the granting of licences, and licences granted, under this section as if the licences were, or were being, granted under section 795B of that Act. If,

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pursuant to section 795E, a single licence is granted under this section in respect of several separate markets, paragraph (2)(b) of this section must be complied with separately in the licence document in relation to each of those markets.

- (5) For the purposes of subparagraph (2)(b)(ii), the classes of financial products that are *appropriate* for a market to which this section applies are as follows:
- (a) for a market described in paragraph (1)(a) or (b)—securities, within the meaning of section 92 of the old Corporations Act as applying for the purposes of Part 7.2 of the old Corporations Act, and agreements of a kind to which section 92A of the old Corporations Act applied immediately before the FSR commencement (or would have applied after the FSR commencement if that section, and any associated provisions, had continued to have effect);
  - (b) for a market described in paragraph (1)(c)—futures contracts, within the meaning of section 72 of the old Corporations Act, and agreements of a kind to which section 72A of the old Corporations Act applied immediately before the FSR commencement (or would have applied after the FSR commencement if that section, and any associated provisions, had continued to have effect).
- (6) Despite anything in subsection (3), the Minister may, under this section, grant a licence, and impose conditions on the licence, at any time during the period starting on the commencement of this section and ending on the FSR commencement on the basis that matters known to the Minister in relation to the market concerned will continue to be the case up to the FSR commencement. If the Minister does so:
- (a) the licence and conditions come into effect on the FSR commencement, and not before; and
  - (b) the Minister may vary or revoke the licence, or any of the conditions, before the FSR commencement if the Minister considers it appropriate to do so having regard to the provisions of this section concerning the granting of licences and the imposition of conditions; and

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- (c) the licence and conditions do not come into effect on the FSR commencement if, immediately before the FSR commencement, the market is not a market to which this section applies.
- (7) If the Minister grants a licence under this section, the Minister must give the operator of the market written notice of:
  - (a) the grant of the licence, and the conditions imposed on the licence; and
  - (b) any subsequent revocation or variation under subsection (6) of the licence or conditions.
- (8) A notice advising of the grant of a licence under this section must contain a statement to the effect that the licence and conditions will not take effect until the FSR commencement, or will be taken to have had effect from the FSR commencement, as the case requires.

**1414 Section 1413 markets—effect of licences and conditions**

- (1) Subject to subsections (2) to (4):
    - (a) a licence granted under section 1413 that authorises the operation of a market is, for the purposes of the amended Corporations Act (other than this section), taken to have been granted (and to have been properly granted) under section 795B of the amended Corporations Act; and
    - (b) conditions imposed under section 1413 on the licence are, for the purposes of the amended Corporations Act (other than this section), taken to have been imposed (and to have been properly imposed) under section 796A of the amended Corporations Act.
- Note 1: Section 795C of the amended Corporations Act (publication of notice of licence grant) applies to the grant of the licence.
- Note 2: The conditions may be varied or revoked, and additional conditions may be imposed, under section 796A of the amended Corporations Act.
- (2) Subject to subsection (4), the relevant new legislation (see subsection (6)) does not apply in relation to the market during the

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period (the *transition period*) starting on the FSR commencement and ending on whichever of the following first occurs:

- (a) the end of the period of 2 years starting on the FSR commencement;
  - (b) conditions on the licence are varied or revoked, or additional conditions are imposed on the licence, pursuant to an application by the licensee under subsection 796A(2) of the amended Corporations Act;
  - (c) the licensee has lodged with ASIC notice in writing that it wants to take advantage of the compensation arrangements under Division 3 of Part 7.5 of the amended Corporations Act:
    - (i) from a specified date, being a date that is after the notice is given to ASIC and that is after compensation arrangements for the market have been approved under Division 3 of Part 7.5 of the amended Corporations Act (see also subsection (4)); or
    - (ii) from the end of a specified period, being a period that is described as starting when compensation arrangements for the market are approved under Division 3 of Part 7.5 of the amended Corporations Act (see also subsection (4)) and that ends after the notice is given to ASIC;and that date arrives or period ends.
- (3) A notice (the *original notice*) given for the purposes of paragraph (2)(c) may, before the date, or the end of the period, specified in the original notice as mentioned in that paragraph:
- (a) be varied to specify another date or period, being a date or period that would satisfy the requirements of subparagraph (2)(c)(i) or (ii) if the reference in that subparagraph to when the notice (being the original notice) is given to ASIC were instead a reference to when the notice of variation is given to ASIC under this subsection; or
  - (b) be revoked.
- The variation or revocation must be made by notice in writing lodged with ASIC.



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- (4) If the relevant new legislation in relation to a market includes Part 7.5 of the amended Corporations Act, then, despite subsection (2), Division 3 of that Part applies to the market during the transition period to the extent necessary for the operator to apply to have compensation arrangements for the market approved before the end of the transition period, and for that application to be determined. However, any approval of the arrangements under that Division does not take effect until immediately after the end of the transition period.
- (5) The annual report of the licensee (see section 792F of the amended Corporations Act) for a financial year in which part of the transition period occurs, other than a financial year in which the transition period ends, must include information about:
- (a) the steps taken in the year; and
  - (b) the steps proposed to be taken in the next year;
- to ensure that the relevant new legislation will be complied with by the time the transition period ends.
- (6) In this section:
- relevant new legislation*, in relation to a market, means:
- (a) section 793A of the amended Corporations Act; and
  - (b) unless the market is a market to which Division 4 of Part 7.5 of the amended Corporations Act applies—Part 7.5 of the amended Corporations Act.

**1415 Section 1413 markets—preservation of old Corporations Act provisions during transition period**

*Preservation of compensation regimes*

- (1) If, during the transition period in relation to a market the operation of which is authorised by a licence granted under section 1413, Part 7.5 of the amended Corporations Act does not apply in relation to the market (except as provided in subsection 1414(4)) because of subsection 1414(2), Part 7.9, or Part 8.6, as the case requires, of the old Corporations Act, and any associated

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provisions, continue to apply in relation to the market during the transition period.

*Preservation of certain ongoing requirements*

- (2) During the transition period in relation to a market:
- (a) the operation of which is authorised by a licence granted under section 1413; and
  - (b) that, immediately before the FSR commencement, was a securities exchange to which section 769A of the old Corporations Act applied;
- the following provisions continue to apply in relation to the market:
- (c) paragraphs 769A(1)(c) and (e) of the old Corporations Act, and any associated provisions;
  - (d) section 769B of the old Corporations Act (but only as applying in relation to paragraphs 769A(1)(c) and (e) of the old Corporations Act), and any associated provisions.

**1416 Section 1413 markets—powers for regulations to change how the old and new Corporations Act apply during the transition period**

- (1) The regulations may do all or any of the following in relation to a market the operation of which is authorised by a licence granted under section 1413:
- (a) provide that some or all of the provisions (the *relevant old legislation*) that would otherwise continue to apply in relation to the market because of section 1415 do not apply in relation to the market;
  - (b) provide that some or all of the relevant old legislation applies in relation to the market with specified modifications during some or all of the transition period for the market;
  - (c) provide that some or all of the relevant new legislation (within the meaning of section 1414) in relation to the market applies in relation to the market during some or all of the transition period for the market;

- (d) provide that specified provisions of the amended Corporations Act (including relevant new legislation), and any associated provisions, apply in relation to the market during some or all of the transition period for the market with specified modifications.
- (2) Regulations made for the purposes of subsection (1) have effect despite anything in sections 1414 and 1415.
- (3) Subsection (1) gives a full power to disapply, apply and modify provisions as mentioned in that subsection, including for reasons that do not have an express or implied connection with the transition to the relevant new legislation.

Note: So (for example), a change to the day-to-day operation of the relevant old legislation as continuing to apply may be achieved by a modification under paragraph (1)(b) (whether that change is to an existing rule, or is the addition of a new rule).

#### **1417 Section 1413 markets—additional provisions relating to previously unregulated services**

- (1) This section applies to a financial market in relation to which the following paragraphs are satisfied:
  - (a) a licence is granted under section 1413 to the operator of the market; and
  - (b) the conditions on the licence specify, as the classes of financial products that can be dealt with on the market, the classes of financial products specified in whichever of paragraphs 1413(5)(a) and (b) is applicable; and
  - (c) immediately before the commencement, other financial products (the **additional products**) were also dealt with on the market, and the fact that the market dealt with those products did not constitute a contravention of a provision of the old Corporations Act.
- (2) Subject to subsection (3), section 791A of the amended Corporations Act does not apply in relation to the market in so far as all or any of the additional products are dealt with on the market

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during the period (the *transition period*) starting on the FSR commencement and ending on whichever of the following first occurs:

- (a) the end of the period of 2 years starting on the FSR commencement;
  - (b) the licensee applies, under subsection 796A(2) of the amended Corporations Act, to have the conditions on the licence varied or revoked, or to have additional conditions imposed on the licence.
- (3) The regulations may, in relation to a market to which this section applies and the additional products, provide that specified provisions (including section 791A) of the amended Corporations Act, and any associated provisions, apply in relation to a market to which this section applies and the additional products during some or all of the transition period for the market and the products with specified modifications.

**1418 Treatment of exempt stock markets and exempt futures markets (other than markets with no identifiable single operator)**

- (1) This section applies to the following markets:
  - (a) stock markets being operated immediately before the FSR commencement that were, at that time, covered by a declaration (the *declaration of exemption*) in force immediately before the FSR commencement under subsection 771(1) of the old Corporations Act;
  - (b) futures markets being operated immediately before the FSR commencement that were, at that time, covered by a declaration (the *declaration of exemption*) in force immediately before the FSR commencement under subsection 1127(1) of the old Corporations Act.

However it does not apply to any market to which section 1419 applies.

- (2) Subject to subsection (5), section 791A of the amended Corporations Act does not apply in relation to a stock market or futures market to which this section applies during the period (the ***transition period***) starting on the FSR commencement and ending on whichever of the following first occurs:
    - (a) the end of the period of 2 years starting on the FSR commencement;
    - (b) the operator of the market is granted a licence under section 795B of the amended Corporations Act covering the operation of the market;
    - (c) the Minister makes an exemption under section 791C of the amended Corporations Act covering the market;
    - (d) the declaration of exemption is revoked.
  - (3) Subject to subsections (4) and (5), Part 7.2 (in the case of a stock market), or Part 8.2 (in the case of a futures market), and any associated provisions, (the ***relevant old legislation***) of the old Corporations Act continue to apply in relation to a stock market or futures market to which this section applies during the transition period for the market.
  - (4) The declaration of exemption (including any conditions specified in the declaration) for a stock market or futures market to which this section applies cannot be varied during the transition period for the market so as to cover the market providing services that were not covered by the declaration as in force immediately before the FSR commencement. However, it may be varied in other ways, or revoked, by the Minister in writing.
  - (5) The regulations may do all or any of the following:
    - (a) provide that some or all of the relevant old legislation does not apply in relation to a stock market or futures market to which this section applies during some or all of the transition period for the market;
    - (b) provide that some or all of the relevant old legislation applies in relation to a stock market or futures market to which this section applies with specified modifications during some or all of the transition period for the market;
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- (c) provide that specified provisions of the amended Corporations Act (including section 791A), and any associated provisions, apply in relation to a stock market or futures market to which this section applies during some or all of the transition period for the market with specified modifications.

**1419 Treatment of exempt stock markets and exempt futures markets that do not have a single identifiable operator**

- (1) This section applies to the following markets:
  - (a) stock markets being operated immediately before the FSR commencement:
    - (i) that were, at that time, covered by a declaration (the *declaration of exemption*) in force immediately before the FSR commencement under subsection 771(1) of the old Corporations Act; but
    - (ii) that did not have a single person who could be identified as the operator of the market;
  - (b) futures markets being operated immediately before the FSR commencement:
    - (i) that were, at that time, covered by a declaration (the *declaration of exemption*) in force immediately before the FSR commencement under subsection 1127(1) of the old Corporations Act; but
    - (ii) that did not have a single person who could be identified as the operator of the market.
- (2) In this section:
  - exempted participant*, in relation to a market to which this section applies, means a person:
    - (a) who is covered by the declaration of exemption (otherwise than in their capacity as a representative of another person who is covered by the declaration); and
    - (b) whose activities connected with the market after the FSR commencement are activities that, but for this section, would

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be required by section 911A of the amended Corporations Act to be covered by an Australian financial services licence.

- (3) Subject to subsections (4) and (5), Part 7.2 (in the case of a stock market), or Part 8.2 (in the case of a futures market), and any associated provisions, (the *relevant old legislation*) of the old Corporations Act continue to apply in relation to an exempted participant and a stock market or futures market to which this section applies during any period during which section 1431 provides that the relevant new legislation (within the meaning of subsection 1431(1)) does not apply in relation to the exempted participant's activities connected with the market.
- (4) The declaration of exemption (including any conditions specified in the declaration) for a stock market or futures market to which this section applies cannot:
- (a) be varied during the transition period for an exempted participant and the market so as to cover the market providing services that were not covered by the declaration as in force immediately before the FSR commencement; or
  - (b) be varied after the FSR commencement so as to cover a person or persons it did not cover immediately before the commencement.
- However, it may be varied in other ways, or revoked, by the Minister in writing.
- (5) The regulations may do either or both of the following:
- (a) provide that some or all of the relevant old legislation does not apply in relation to an exempted participant and a market to which this section applies during some or all of the transition period for the exempted participant and the market;
  - (b) provide that some or all of the relevant old legislation applies in relation to an exempted participant and a market to which this section applies with specified modifications during some or all of the transition period for the exempted participant and the market.

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**1420 Treatment of stock markets of approved securities organisations**

- (1) This section applies to each stock market being operated immediately before the FSR commencement by a body corporate covered by an approval (the *instrument of approval*) in force immediately before the FSR commencement under subsection 770(2) of the old Corporations Act, other than a stock market to which section 1413 applies.
- (2) Subject to subsections (3) and (5), section 791A of the amended Corporations Act does not apply in relation to a stock market to which this section applies during the period (the *transition period*) starting on the FSR commencement and ending on whichever of the following first occurs:
  - (a) the end of the period of 2 years starting on the FSR commencement;
  - (b) the operator of the market is granted a licence under section 795B of the amended Corporations Act covering the operation of the market;
  - (c) the Minister makes an exemption under section 791C of the amended Corporations Act covering the market;
  - (d) the instrument of approval is revoked.
- (3) Subject to subsections (4) and (5), Parts 7.2 and 7.9, and any associated provisions, (the *relevant old legislation*) of the old Corporations Act continue to apply in relation to a stock market to which this section applies during the transition period for the market.
- (4) The instrument of approval (including any conditions specified in the instrument) for a stock market to which this section applies cannot be varied during the transition period for the market so as to cover the market providing services that were not covered by the instrument as in force immediately before the FSR commencement. However it may be varied in other ways, or revoked, by the Minister in writing.



- (5) The regulations may do all or any of the following:
- (a) provide that some or all of the relevant old legislation does not apply in relation to a stock market to which this section applies during some or all of the transition period for the market;
  - (b) provide that some or all of the relevant old legislation applies in relation to a stock market to which this section applies with specified modifications during some or all of the transition period for the market;
  - (c) provide that specified provisions of the amended Corporations Act (including section 791A), and any associated provisions, apply in relation to a stock market to which this section applies during some or all of the transition period for the market with specified modifications.

#### **1421 Treatment of special stock markets for unquoted interests in a registered scheme**

- (1) This section applies to each stock market being operated before the FSR commencement by a body corporate covered by an approval (the *instrument of approval*) in force immediately before the FSR commencement under subsection 770A(2) of the old Corporations Act.
- (2) Subject to subsection (5), section 791A of the amended Corporations Act does not apply in relation to a stock market to which this section applies during the period (the *transition period*) starting on the FSR commencement and ending on whichever of the following first occurs:
  - (a) the end of the period of 2 years starting on the FSR commencement;
  - (b) the operator of the market is granted a licence under section 795B of the amended Corporations Act covering the operation of the market;
  - (c) the Minister makes an exemption under section 791C of the amended Corporations Act covering the market;
  - (d) the instrument of approval is revoked.

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- (3) Subject to subsections (4) and (5), Part 7.2, and any associated provisions, (the *relevant old legislation*) of the old Corporations Act continue to apply in relation to a stock market to which this section applies during the transition period for the market.
- (4) The instrument of approval (including any conditions specified in the instrument) for a stock market to which this section applies cannot be varied during the transition period for the market so as to cover the market providing services that were not covered by the instrument as in force immediately before the FSR commencement. However it may be varied in other ways, or revoked, by the Minister in writing.
- (5) The regulations may do all or any of the following:
  - (a) provide that some or all of the relevant old legislation does not apply in relation to a stock market to which this section applies during some or all of the transition period for the market;
  - (b) provide that some or all of the relevant old legislation applies in relation to a stock market to which this section applies during some or all of the transition period for the market with specified modifications;
  - (c) provide that specified provisions (including section 791A) of the amended Corporations Act, and any associated provisions, apply in relation to a stock market to which this section applies during some or all of the transition period for the market with specified modifications.

**1422 Treatment of other markets that were not unauthorised**

- (1) This section applies to each market in relation to which the following paragraphs are satisfied:
  - (a) the market is a financial market within the meaning of the amended Corporations Act;
  - (b) the market was being operated immediately before the FSR commencement;

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- (c) the market is not a market to which section 1413, 1418, 1419, 1420 or 1421 applies;
  - (d) the market was not an unauthorised stock market or an unauthorised futures market (as defined in section 9 of the old Corporations Act) immediately before the FSR commencement.
- (2) Subject to subsection (3), section 791A of the amended Corporations Act does not apply in relation to a market to which this section applies during the period (the *transition period*) starting on the FSR commencement and ending on whichever of the following first occurs:
- (a) the end of the period of 2 years starting on the FSR commencement;
  - (b) the operator of the market is granted a licence under section 795B of the amended Corporations Act covering the operation of the market;
  - (c) the Minister makes an exemption under section 791C of the amended Corporations Act covering the market;
  - (d) the market starts to provide services in respect of a class or classes of financial products in respect of which it did not provide services immediately before the commencement.
- (3) The regulations may, in relation to a market to which this section applies, provide that specified provisions (including section 791A) of the amended Corporations Act, and any associated provisions, apply in relation to the market during some or all of the transition period for the market with specified modifications.

### **Subdivision C—Treatment of existing clearing and settlement facilities**

#### **1423 When is a clearing and settlement facility being operated immediately before the FSR commencement?**

Subject to section 1424, in this Subdivision, a reference to a clearing and settlement facility *being operated immediately before*

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*the FSR commencement* is a reference to a clearing and settlement facility that had not permanently ceased to operate before the FSR commencement, even if the clearing and settlement of transactions by means of the facility was not actually occurring immediately before the FSR commencement (for example, because of a routine temporary closure of the facility).

**1424 Treatment of proposed clearing and settlement facilities that have not started to operate by the FSR commencement**

- (1) This section applies in relation to any proposed clearing and settlement facilities identified in, or in accordance with, regulations made for the purposes of this subsection. For this purpose, a *proposed clearing and settlement facility* is a clearing and settlement facility that a person has, before the FSR commencement, indicated an intention that they propose to operate.
- (2) This Subdivision applies in relation to a proposed clearing and settlement facility to which this section applies subject to the following paragraphs:
  - (a) subject to paragraphs (b), (c) and (d), this Subdivision applies in relation to the proposed facility as if the facility, as proposed to be operated, were in fact being operated immediately before the FSR commencement;
  - (b) if, taking account of the effect of paragraph (a), section 1425 applies in relation to the proposed facility, that section applies in relation to the proposed facility:
    - (i) as if the Minister's obligation to grant a licence, and impose conditions, under subsection 1425(2) in relation to the proposed facility does not arise unless and until the facility operator lodges with ASIC a notice in relation to the facility under subsection (3) of this section, and does not arise at all if no such notice is given to ASIC by the end of 6 months after the FSR commencement; and

- (ii) as if subsection 1425(3) provided for a licence so granted under subsection 1425(2) in relation to the facility, and the conditions subject to which it is granted, to be taken to have had effect from the day (the *start day*) specified in the subsection (3) notice as the day on which the facility started to operate; and
  - (iii) as if subsection 1425(6) were omitted; and
  - (iv) as if the references in subsection 1425(8) to the FSR commencement were instead references to the start day;
- (c) if:
- (i) taking account of the effect of paragraph (a), section 1429 applies to the proposed facility; and
  - (ii) the facility operator does not lodge with ASIC a notice in relation to the facility under subsection (3) of this section by the end of 6 months after the FSR commencement;
- that section ceases to apply in relation to the proposed facility at the end of that period;
- (d) if a provision of this Subdivision provides for a provision of the old Corporations Act to continue to apply in relation to the proposed facility, then (without limiting the generality of subsection 1410(3)), while the proposed facility remains non-operational, the provision of the old Corporations Act only applies in relation to the proposed facility to the extent (if any) to which it would, disregarding the effect of paragraph (a), apply in relation to the proposed facility.
- (3) If a proposed clearing and settlement facility to which this section applies starts to operate on a day during the period of 6 months starting on the FSR commencement, the operator must, as soon as practicable, and in any event within 7 days, lodge with ASIC written notice of the fact that the facility started to operate on that day.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

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- (4) ASIC must, within a reasonable time, give the Minister a notice it receives under subsection (3).

**1424A Treatment of unregulated clearing and settlement facilities operated by holders of old Corporations Act approvals**

- (1) This section applies in relation to a clearing and settlement facility if:
- (a) the facility was being operated immediately before the FSR commencement by a body corporate in relation to which an approval under section 1131 of the old Corporations Act was in force at that time; but
  - (b) the services provided by the facility as so operated were not such that section 1128 of the old Corporations Act required the operator to be so approved.
- (2) In this section:
- (a) a reference to the *unregulated services* is a reference to the services referred to in paragraph (1)(b); and
  - (b) a reference to *regulated services* is a reference to services that, if they had been provided by the facility immediately before the commencement, would have been services to which section 1128 of the old Corporations Act applied.
- (3) For the purposes of section 1425 (as it operates of its own force, rather than because of section 1424), the facility is not to be regarded as a facility that was being operated immediately before the FSR commencement.
- (4) If the operator has, before the FSR commencement, indicated an intention that they propose to extend the services provided by the facility so that they also cover regulated services:
- (a) regulations made for the purposes of subsection 1424(1) may identify the facility as a proposed clearing and settlement facility, but only in relation to those regulated services; and
  - (b) if they do so, section 1424, and section 1425 as it applies because of section 1424, apply in relation to the facility and

those regulated services as if the facility did not already provide the unregulated services.

### **1425 Obligation of Minister to grant licences covering main existing facilities**

- (1) This section applies to each clearing and settlement facility being operated immediately before the FSR commencement in relation to which either of the following paragraphs applies:
  - (a) the facility was being operated by the body corporate that was, for the purposes of the old Corporations Act, the securities clearing house;
  - (b) the facility was being operated by a body corporate in relation to which an approval (the *section 1131 approval*) under section 1131 of the old Corporations Act was in force at that time.
  
- (2) Subject to subsections (3) and (4), the Minister must, in relation to each clearing and settlement facility to which this section applies, grant the operator of the facility a licence, and impose conditions on that licence, in accordance with the following requirements:
  - (a) the licence must be described as an Australian CS facility licence;
  - (b) the licence must be granted subject to the following conditions:
    - (i) a condition specifying the facility as the facility that the licence authorises the licensee to operate;
    - (ii) a condition specifying, as the classes of financial products in respect of which the facility can provide services, the classes that are appropriate for the facility under subsection (5);
    - (iii) in the case of a facility to which paragraph (1)(b) applies—a condition to the effect that the licence only covers the facility providing services for the market or markets that were covered by the section 1131 approval.

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- (3) Subject to subsection (6), a licence that subsection (2) requires to be granted must be granted on, or as soon as practicable after, the FSR commencement. If it is granted after the FSR commencement, it, and the conditions subject to which it is granted, are taken to have had effect from that commencement.
- (4) Sections 824D (more than one licence in the same document) and 824E (more than one CS facility covered by the same licence) of the amended Corporations Act apply in relation to the granting of licences, and licences granted, under this section as if the licences were, or were being, granted under section 824B of that Act. If, pursuant to section 824E, a single licence is granted under this section in respect of several separate facilities, paragraph (2)(b) of this section must be complied with separately in the licence document in relation to each of those facilities.
- (5) For the purposes of subparagraph (2)(b)(ii), the classes of financial products that are *appropriate* for a facility to which this section applies are as follows:
  - (a) for a facility described in paragraph (1)(a)—securities, within the meaning of section 92 of the old Corporations Act as applying for the purposes of Part 7.2 of the old Corporations Act, and agreements of a kind to which section 92A of the old Corporations Act applied immediately before the FSR commencement (or would have applied after the FSR commencement if that section, and any associated provisions, had continued to have effect);
  - (b) for a facility described in paragraph (1)(b)—futures contracts, within the meaning of section 72 of the old Corporations Act, and agreements of a kind to which section 72A of the old Corporations Act applied immediately before the FSR commencement (or would have applied after the FSR commencement if that section, and any associated provisions, had continued to have effect).
- (6) Despite anything in subsection (3), the Minister may, under this section, grant a licence, and impose conditions on the licence, at any time during the period starting on the commencement of this



section and ending on the FSR commencement on the basis that matters known to the Minister in relation to the clearing and settlement facility concerned will continue to be the case up to the FSR commencement. If the Minister does so:

- (a) the licence and conditions come into effect on the FSR commencement, and not before; and
  - (b) the Minister may vary or revoke the licence, or any of the conditions, before the FSR commencement if the Minister considers it appropriate to do so having regard to the provisions of this section concerning the granting of licences and the imposition of conditions; and
  - (c) the licence and conditions do not come into effect on the FSR commencement if, immediately before the FSR commencement, the facility is not a clearing and settlement facility to which this section applies.
- (7) If the Minister grants a licence under this section, the Minister must give the operator of the clearing and settlement facility written notice of:
- (a) the grant of the licence, and the conditions imposed on the licence; and
  - (b) any subsequent revocation or variation under subsection (6) of the licence or conditions.
- (8) A notice advising of the grant of a licence under this section must contain a statement to the effect that the licence and conditions will not take effect until the FSR commencement, or will be taken to have had effect from the FSR commencement, as the case requires.

#### **1426 Section 1425 facilities—effect of licences and conditions**

- (1) Subject to subsections (2) to (4):
- (a) a licence granted under section 1425 that authorises the operation of a facility is, for the purposes of the amended Corporations Act (other than this section), taken to have been granted (and to have been properly granted) under section 824B of the amended Corporations Act; and

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(b) conditions imposed under section 1425 on the licence are, for the purposes of the amended Corporations Act (other than this section), taken to have been imposed (and to have been properly imposed) under section 825A of the amended Corporations Act.

Note 1: Section 824C of the amended Corporations Act (publication of notice of licence grant) applies to the grant of the licence.

Note 2: The conditions may be varied or revoked, and additional conditions may be imposed, under section 825A of the amended Corporations Act.

(2) Section 822A of the amended Corporations Act does not apply in relation to the facility during the period (the *transition period*) starting on the FSR commencement and ending on whichever of the following first occurs:

(a) the end of the period of 2 years starting on the FSR commencement;

(b) conditions on the licence are varied or revoked, or additional conditions are imposed on the licence, pursuant to an application by the licensee under subsection 825A(2) of the amended Corporations Act.

(3) The annual report of the licensee (see section 821E of the amended Corporations Act) for a financial year in which part of the transition period occurs, other than a financial year in which the transition period ends, must include information about:

(a) the steps taken in the year; and

(b) the steps proposed to be taken in the next year;

to ensure that section 822A of the amended Corporations Act will be complied with by the time the transition period ends.

**1427 Section 1425 facilities—powers for regulations to change how the old and new Corporations Act apply during the transition period**

- (1) The regulations may do either or both of the following in relation to a clearing and settlement facility the operation of which is authorised by a licence granted under section 1425:
  - (a) provide that section 822A of the amended Corporations Act, and any associated provisions, apply in relation to the facility during some or all the transition period for the facility;
  - (b) provide that specified provisions of the amended Corporations Act (including section 822A), and any associated provisions, apply in relation to the facility during some or all of the transition period for the facility with specified modifications.
- (2) Regulations made for the purposes of subsection (1) have effect despite anything in section 1426.

**1428 Section 1425 facilities—additional provisions relating to previously unregulated services**

- (1) This section applies to a clearing and settlement facility in relation to which the following paragraphs are satisfied:
  - (a) a licence is granted under section 1425 to the operator of the facility; and
  - (b) the conditions on the licence specify, as the classes of financial products in respect of which the facility can provide services, the classes of financial products specified in whichever of paragraphs 1425(5)(a) and (b) is applicable; and
  - (c) the facility also, immediately before the commencement, provided services in respect of one or more other classes of financial products (the *additional products*) and the fact that it did so did not constitute a contravention of a provision of the old Corporations Act.

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- (2) Subject to subsection (3), section 820A of the amended Corporations Act does not apply in relation to the facility in so far as it provides services in respect of all or any of the additional products during the period (the *transition period*) starting on the FSR commencement and ending on whichever of the following first occurs:
- (a) the end of the period of 2 years starting on the FSR commencement;
  - (b) conditions on the licence are varied or revoked, or additional conditions are imposed on the licence, pursuant to an application by the licensee under subsection 825A(2) of the amended Corporations Act.
- (3) The regulations may provide that specified provisions of the amended Corporations Act (including section 820A), and any associated provisions, apply in relation to a clearing and settlement facility to which this section applies, and its provision of services in respect of all or any of the additional products, during some or all of the transition period for the facility and the products with specified modifications.

**1429 Treatment of other clearing and settlement facilities**

- (1) This section applies to each clearing and settlement facility being operated immediately before the FSR commencement in relation to which both of the following paragraphs are satisfied:
- (a) the clearing and settlement facility is not a facility to which section 1425 applies;
  - (b) section 1128 of the old Corporations Act did not, immediately before the FSR commencement, require the operator of the facility to be a person approved under section 1131.
- (2) Subject to subsection (3), section 820A of the amended Corporations Act does not apply in relation to the facility during the period (the *transition period*) starting on the FSR commencement and ending on whichever of the following first occurs:
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- (a) the end of the period of 2 years starting on the FSR commencement;
  - (b) the operator of the facility is granted a licence under section 824B of the amended Corporations Act covering the facility;
  - (c) the Minister makes an exemption under section 820C of the amended Corporations Act covering the facility;
  - (d) the facility starts to provide services in respect of a class or classes of financial products in respect of which it did not provide services immediately before the FSR commencement.
- (3) The regulations may provide that specified provisions of the amended Corporations Act (including section 820A), and any associated provisions, apply in relation to a clearing and settlement facility to which this section applies during some or all of the transition period for the facility with specified modifications.

#### **Subdivision D—Treatment of people who carry on financial services businesses and their representatives**

##### **1430 Meaning of *regulated principal*, *regulated activities* and *relevant old legislation***

- (1) For the purposes of this Subdivision, a person is a ***regulated principal*** if, immediately before the FSR commencement, the person is a person described in column 2 of one of the items in the following table. The ***regulated activities*** of that person are as specified in column 3 of that item, and the ***relevant old legislation*** are as specified in column 4 of that item.

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**Regulated principals and regulated activities**

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<b>Item</b>	<b>These persons are regulated principals</b>	<b>These are the regulated principal's regulated activities</b>	<b>This is the relevant old legislation (if any)</b>
1	A holder of a dealers licence within the meaning of the old Corporations Act.	The activities that the licence (as in force immediately before the FSR commencement) authorised the person to carry on.	Parts 7.3, 7.4 (other than Division 2), 7.5, 7.6 and 7.7 of the old Corporations Act, and any associated provisions.
2	A holder of an investment advisers licence within the meaning of the old Corporations Act.	The activities that the licence (as in force immediately before the FSR commencement) authorised the person to carry on.	Parts 7.3, 7.4 (other than Division 2) and 7.7 of the old Corporations Act, and any associated provisions.
3	A holder of a futures brokers licence within the meaning of the old Corporations Act.	The activities that the licence (as in force immediately before the FSR commencement) authorised the person to carry on.	Parts 8.3, 8.4 (other than section 1210) and 8.5 of the old Corporations Act, and any associated provisions.
4	A holder of a futures advisers licence within the meaning of the old Corporations Act.	The activities that the licence (as in force immediately before the FSR commencement) authorised the person to carry on.	Parts 8.3 and 8.4 (other than section 1210) of the old Corporations Act, and any associated provisions.
5	A registered insurance broker within the meaning of the <i>Insurance (Agents and Brokers) Act 1984</i> as in force immediately before the FSR commencement.	The person's business as an insurance broker within the meaning of the <i>Insurance (Agents and Brokers) Act 1984</i> as in force immediately before the FSR commencement.	All the provisions of the <i>Insurance (Agents and Brokers) Act 1984</i> as in force immediately before the FSR commencement, and any associated provisions.

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<b>Regulated principals and regulated activities</b>			
<b>Item</b>	<b>These persons are regulated principals</b>	<b>These are the regulated principal's regulated activities</b>	<b>This is the relevant old legislation (if any)</b>
6	A body regulated by APRA carrying on activities that, if carried on after the FSR commencement, would (apart from this Subdivision) be required by the amended Corporations Act to be covered by an Australian financial services licence.	The class of activities carried on by the person immediately before the FSR commencement that, if carried on after the FSR commencement, would (apart from this Subdivision) be required by the amended Corporations Act to be covered by an Australian financial services licence.	For a body regulated by APRA that was an insurer within the meaning of the <i>Insurance (Agents and Brokers) Act 1984</i> as in force immediately before the FSR commencement—all the provisions of that Act as then in force, and any associated provisions.  In any other case—subject to any regulations made for the purposes of this item, there is no relevant old legislation.
7	A person who is a registered foreign insurance agent of an unauthorised foreign insurer within the meaning of the <i>Insurance (Agents and Brokers) Act 1984</i> as in force immediately before the FSR commencement.	The person's business as a foreign insurance agent.	All the provisions of the <i>Insurance (Agents and Brokers) Act 1984</i> as in force immediately before the FSR commencement, and any associated provisions.
8	A holder of a general authority under regulation 38A of the Banking (Foreign Exchange) Regulations as in force immediately before the FSR commencement.	The activities the authority authorises its holder to carry on.	Regulations 38A and 39 of the Banking (Foreign Exchange) Regulations as in force immediately before the FSR commencement.

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**Regulated principals and regulated activities**

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<b>Item</b>	<b>These persons are regulated principals</b>	<b>These are the regulated principal's regulated activities</b>	<b>This is the relevant old legislation (if any)</b>
9	A person included in a class of persons specified in regulations made for the purposes of this item.	For a person in a class so specified, the activities identified in, or in accordance with, the regulations as being the regulated activities of a person in that class.	The provisions (if any) identified in, or in accordance with, the regulations as being the relevant old legislation for a person in that class, and any associated provisions.
10	A person who carries on any other activities (that is, activities that are not regulated activities for the purposes of any of items 1 to 9) that, if carried on after the FSR commencement, would (apart from this Subdivision) be required by the amended Corporations Act to be covered by an Australian financial services licence, except to the extent that subsection (2) excludes this item from applying.	The class of activities so carried on by the person immediately before the FSR commencement that, if carried on after the FSR commencement, would (apart from this Subdivision) be required by the amended Corporations Act to be covered by an Australian financial services licence.	There is no relevant old legislation.

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- (2) Item 10 of the table in subsection (1) does not apply to a person and activities they carry on to the extent that the person's carrying on of any of those activities is in contravention of any of the provisions of the relevant old legislation for any of the other categories of regulated principals.
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- (3) If a person is a regulated principal of 2 or more different kinds, this Subdivision applies separately in relation to the person in their capacity as a regulated principal of each of those kinds.

Note: This may result (depending on what action the regulated principal takes) in a regulated principal having to comply with the relevant new legislation (within the meaning of subsection 1431(1)) in respect of their activities as a regulated principal of one kind, but, at the same time, having to comply with the relevant old legislation in respect of their activities as a regulated principal of another kind.

**1431 Parts 7.6, 7.7 and 7.8 of the amended Corporations Act generally do not apply to a regulated principal during the transition period**

- (1) Subject to subsections (2) and (3), Parts 7.6 (other than Subdivisions A and B of Division 4, and Division 5), 7.7 and 7.8 (other than section 992A) of the amended Corporations Act (the *relevant new legislation*) do not apply to a regulated principal and their regulated activities during the period (the *transition period*) starting on the FSR commencement and ending when the first of the following events occurs:
- (a) the period of 2 years starting on the FSR commencement ends;
  - (b) the regulated principal is granted a licence under section 913B of the amended Corporations Act that covers their regulated activities;
  - (c) the regulated principal starts to be covered by an exemption under subsection 911A(2) of the amended Corporations Act (or would start to be so covered if that subsection applied) in respect of their regulated activities;
  - (d) the regulated principal ceases (for whatever reason) to have the status that made them a regulated principal.

For the purposes of paragraph (d), *having a status* includes holding a licence, registration, approval or other similar thing, or carrying on particular activities.

Note 1: Because of section 1441, a regulated principal whose transition period has not ended (and so who is not required to comply with the relevant

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new legislation) may nonetheless be required to comply with obligations under Part 7.9 of the amended Corporations Act.

Note 2: For the treatment of representatives, see section 1436.

- (2) Division 5 of Part 7.6 of the amended Corporations Act has effect in relation to a regulated principal during the transition period subject to the following paragraphs:
- (a) the regulated principal may give and revoke authorisations under section 916A or consents under subsection 916B(3) as if the regulated principal were a financial services licensee, however, for the purposes of the provisions of the amended Corporations Act outside that Division, such an authorisation or consent is taken not to have effect unless and until the regulated principal is granted a licence under section 913B of the amended Corporations Act that covers the activities to which the authorisation or consent relates (whether or not it also covers other activities);
  - (b) a person authorised by a section 916A authorisation so made by the regulated principal may give and revoke authorisations under subsection 916B(3) as if they were an authorised representative and the regulated principal were the authorising financial services licensee, however, for the purposes of the provisions of the amended Corporations Act outside that Division, such an authorisation is taken not to have effect unless and until the regulated principal is granted a licence under section 913B of the amended Corporations Act that covers the activities to which the authorisation relates (whether or not it also covers other activities);
  - (c) the regulated principal may give and revoke consents under section 916C as if they were a financial service licensee, however, any such consent does not take effect unless and until the regulated principal is granted a licence under section 913B of the amended Corporations Act;
  - (d) section 916F applies in relation to an authorisation so made by the regulated principal during the transition period as if the period of 15 business days referred to in subsections 916F(1) and (1A) did not start unless and until

the regulated principal is granted a licence under section 913B of the amended Corporations Act that covers the activities to which the authorisation relates (whether or not it also covers other activities), and section 916F does not apply at all in relation to revocations so made during the transition period.

- (3) If, before paragraph (1)(a) or (d) occurs:
- (a) the regulated principal is granted a licence under section 913B of the amended Corporations Act that covers some only (the *relevant part*) of their regulated activities; or
  - (b) the regulated principal starts to be covered by an exemption under subsection 911A(2) of the amended Corporations Act in respect of some only (the *relevant part*) of their regulated activities;

the relevant new legislation starts applying, from that time, to the relevant part of the regulated principal's regulated activities, and subsection (1) continues to apply to the person as if the regulated principal's regulated activities did not include the relevant part.

- (4) Subsection (3) has effect subject to subsection 1430(3).

### **1432 Continued application of relevant old legislation**

- (1) Subject to subsection (2), during the transition period for a regulated principal, the relevant old legislation (if any) continues to apply, despite its repeal:
- (a) to, and in relation to, the regulated principal and their regulated activities; and
  - (b) to any other person to whom it is expressed to apply, but only in relation to matters related to the regulated principal and their regulated activities.

Note: So, for example, people may continue to be appointed as agents or representatives of the regulated principal (or to have those appointments varied or revoked) during the transition period under provisions of the relevant old legislation that deal with such matters.

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- (2) If, because of subsection 1431(2), the relevant new legislation (within the meaning of subsection 1431(1)) starts to apply to part of a person's regulated activities from a particular time, the relevant old legislation (if any) stops applying, from that time, in relation to that part of those activities.

**1433 Streamlined licensing procedure for certain regulated principals**

- (1) This section applies to the following regulated principals:
- (a) a regulated principal of a kind referred to in any of items 1 to 5 of the table in subsection 1430(1), but not including anyone who is:
    - (i) an exempted participant for the purposes of section 1419; or
    - (ii) in a class of persons specified in, or identified in accordance with, regulations made for the purposes of subsection (3);
  - (b) a regulated principal of a kind referred to in item 9 of that table who:
    - (i) is in a class of persons specified in regulations made for the purposes of this subparagraph; and
    - (ii) is not in a class of persons specified in, or identified in accordance with, regulations made for the purposes of subsection (3).
- (2) If:
- (a) a regulated principal to whom this section applies, before the end of their transition period, applies (in accordance with section 913A of the amended Corporations Act) for a licence covering some or all of their regulated activities (but no other activities); and
  - (b) their application includes a statement (in accordance with the requirements of the application form) to the effect that they will, if granted the licence, comply with their obligations as a financial services licensee;
- the following provisions apply:
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- (c) section 913B of the amended Corporations Act applies to their application as if paragraphs 913B(1)(b), (c), (ca) and (d), and subsections 913B(2) to (5), were omitted; and
- (d) the licence condition required by subsection 914A(6) of the amended Corporations Act in relation to a licence granted pursuant to their application must specify, as the financial services that the licensee is authorised to provide, financial services that equate (as closely as possible) to the regulated activities in respect of which the application was made.

Note 1: Paragraph (c) does not limit the matters that can be taken into account under section 915C (suspension or cancellation after offering a hearing) in relation to a licence that has been granted under section 913B as it applies because of this section.

Note 2: The condition referred to in paragraph (d), as with any other conditions imposed on the licence under section 914A of the amended Corporations Act, is subject to variation or revocation in accordance with that section.

- (3) The regulations may identify classes of persons, or provide for the identification of classes of persons, who are not to be covered by this section.

#### **1434 Special licences for insurance multi-agents during first 2 years after FSR commencement**

- (1) For the purposes of this section, a person is an ***insurance multi-agent*** at a particular time if, at that time:
  - (a) the person is an insurance intermediary (but not an insurance broker), within the meaning of the *Insurance (Agents and Brokers) Act 1984* as then in force; and
  - (b) the person has agreements with 2 or more different insurers under section 10 of that Act.
- (2) If:
  - (a) a person who, immediately before the FSR commencement, is an insurance multi-agent applies in accordance with section 913A of the amended Corporations Act for a licence,

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during the period of 2 years starting on the FSR commencement; and

- (b) the application is lodged at a time:
  - (i) when the person is still carrying on activities as agent for one or more of the insurers with whom, immediately before the FSR commencement, they had agreements as mentioned in paragraph (1)(b); or
  - (ii) that is not more than 6 months after the person ceased to so carry on activities as agent for any of those insurers; and
- (c) their application includes a statement (in accordance with the requirements of the application form) to the effect that they want this section to apply to their application;

the following provisions apply:

- (d) section 913B of the amended Corporations Act applies to their application as if the reference in paragraph 913B(1)(b) to section 912A did not include the obligations under paragraphs 912A(e) and (f);
  - (e) the licence condition required by subsection 914A(6) of the amended Corporations Act in relation to a licence granted pursuant to their application must specify, as the financial services that the licensee is authorised to provide:
    - (i) providing financial product advice in relation to risk insurance products and investment life insurance products; and
    - (ii) dealing in risk insurance products and investment life insurance products.
- (3) If the application is granted, then:
- (a) while the licence remains in force:
    - (i) paragraphs 912A(e) and (f) of the amended Corporations Act do not apply to the licensee and the financial services covered by the licence; and
    - (ii) sections 942B and 942C apply in relation to any Financial Services Guide provided by the licensee or an authorised representative of the licensee as if they

included a requirement to include in the Guide a statement that the licensee is not bound by the obligations in paragraphs 912A(e) and (f) and that sets out what those obligations are; and

- (b) the licence conditions cannot be varied so that the licence covers the licensee providing financial services other than those referred to in paragraph (2)(e); and
- (c) the licence ceases to be in force (unless earlier revoked) at the end of the period of 2 years starting on the FSR commencement.

**1435 Licensing decisions made within the first 2 years of the FSR commencement—regard may be had to conduct and experience of applicant or related body corporate that currently provides same or similar services**

- (1) This section applies:
  - (a) if a person applies, during the period of 2 years starting on the FSR commencement, under section 913A of the amended Corporations Act for the grant of a licence covering the provision of particular financial services (the *relevant financial services*); and
  - (b) ASIC is aware that:
    - (i) the applicant; or
    - (ii) if the applicant is a body corporate—a related body corporate of the applicant;is currently (as at the time the application is being considered by ASIC) providing services that are the same as, or similar to, all or any of the relevant financial services.
- (2) In considering the matters it is required by section 913B of the amended Corporations Act to consider in deciding whether to grant the licence, ASIC may (but is not required to) have regard to the conduct and experience (including conduct and experience before the FSR commencement) of the applicant, or the related body corporate, in providing services that are the same as, or similar to,

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all or any of the relevant financial services (so far as ASIC is aware of such conduct and experience).

- (3) Subsection (2) is not intended to limit, by implication, the matters that ASIC can take into account under section 913B of the amended Corporations Act when considering whether to grant a licence under that section (whether pursuant to an application to which this section applies or otherwise).

**1436 Treatment of representatives—general**

- (1) This section applies to a person who is a representative of a regulated principal. For this purpose, a *representative* includes, but is not limited to:
- (a) an agent (however described) of the regulated principal; and
  - (b) an employee or director of the regulated principal; and
  - (c) any other person who, in accordance with the regulated principal's relevant old legislation as it continues to have effect in relation to the regulated principal, is authorised to carry on activities for or on behalf of the regulated principal.
- (1A) However, if a person who, under subsection (1), would be the representative of another person is a financial services licensee in their own right, the licensee, when engaged in activities covered by their licence, is taken not to be acting as representative of that other person.
- (2) The following provisions apply in relation to a person who is a representative of a regulated principal:
- (a) during any period when, because of section 1431, the relevant new legislation (within the meaning of subsection 1431(1)) does not apply to the regulated principal and particular regulated activities, the relevant new legislation also does not apply to the representative when they are acting as a representative of the regulated principal in relation to any of those activities;
  - (b) during any period when, because of section 1432, relevant old legislation continues to apply to the regulated principal



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and particular regulated activities, that legislation also continues to apply to the representative when they are acting as a representative of the regulated principal in relation to any of those activities.

- Note 1: If a person is a representative of 2 persons, this may result in the person having to comply with the relevant new legislation in respect of what they do as a representative of one of those persons but, at the same time, having to comply with relevant old legislation in respect of what they do as a representative of the other of those persons.
- Note 2: If a person is a representative of another person who carries on 2 different sets of activities, being sets of activities in relation to which there are separate applications of this Subdivision because of subsection 1430(3), this may result in the person having to comply with the relevant new legislation in respect of what they do in relation to one of those sets of activities but, at the same time, having to comply with relevant old legislation in respect of what they do in relation to the other set of activities.
- Note 3: Because of section 1441, a representative who is not required to comply with the relevant new legislation may nonetheless be required to comply with obligations under Part 7.9 of the amended Corporations Act.

### **1436A Treatment of representatives—insurance agents**

- (1) This section has effect despite anything else in this Subdivision, including sections 1436 and 1437.
- (2) This section applies if, immediately before the FSR commencement, a person is an insurance intermediary (but not an insurance broker) within the meaning of the *Insurance (Agents and Brokers) Act 1984* as then in force because of an agreement they have with an insurer under section 10 of that Act. For the purposes of this section:
  - (a) the person is the **insurance agent**; and
  - (b) the agreement is the **authorising agreement**; and
  - (c) the matters dealt with in the provisions included in the agreement in compliance with section 10 of that Act, and any other matters included in the agreement that are related to those matters, are the **relevant matters**; and

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(d) the insurer is the *principal*.

If, immediately before the FSR commencement, the person has more than one such agreement, this section applies separately in relation to each of those agreements.

(3) For the purposes of this section, the *transition period* is the period starting on the FSR commencement and ending when the first of the following events occurs:

(a) the period of 2 years starting on the FSR commencement ends;

(b) the authorising agreement ceases to be in force;

(c) the insurance agent has lodged with ASIC notice in writing that the agent no longer wants to be covered by the *Insurance (Agents and Brokers) Act 1984*:

(i) from a specified date, being a date that is after the notice is given to ASIC; or

(ii) from the end of a specified period, being a period that ends after the notice is given to ASIC;

and that date arrives or period ends;

(d) the insurance agent is granted a licence under section 913B (including as it has effect because of section 1434) of the amended Corporations Act that covers the insurance agent engaging in (as licensee) the range of activities that they previously engaged in as agent under the authorising agreement.

(4) A notice (the *original notice*) given for the purposes of paragraph (3)(c) may before the date, or the end of the period, specified in the original notice as mentioned in that paragraph:

(a) be varied to specify another date or period, being a date or period that would satisfy the requirements of subparagraph (3)(c)(i) or (ii) if the reference in that subparagraph to when the notice (being the original notice) is given to ASIC were instead a reference to when the notice of variation is given to ASIC under this subsection; or

(b) be revoked.

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The variation or revocation must be made by notice in writing lodged with ASIC.

- (5) Subject to subsection (7), during the transition period, the *Insurance (Agents and Brokers) Act 1984* as in force immediately before the FSR commencement, and any associated provisions, (the **relevant old legislation**) continue to apply (despite the repeal of that Act) to, and in relation to, the insurance agent, the principal and the relevant matters.
- (6) Subject to subsection (7), during the transition period, the relevant new legislation (within the meaning of section 1431) does not apply to, or in relation to, the insurance agent, the principal and the relevant matters.
- (7) Regulations made for the purposes of this subsection may do either or both of the following:
  - (a) provide that specified provisions of the relevant old legislation apply (with or without specified modifications), or do not apply, to the insurance agent, the principal and some or all of the relevant matters;
  - (b) provide that specified provisions of the relevant new legislation apply (with or without specified modifications), or do not apply, to the insurance agent, the principal and some or all of the relevant matters.

The regulations may provide as mentioned in paragraph (a) or (b) even after the end of the transition period.

- (8) If:
  - (a) before the end of the transition period, or such longer period during which regulations made for the purposes of subsection (7) provide for the application of some or all of the relevant old legislation, the insurance agent engages in conduct that, under the authorising agreement as then in force, creates a right to brokerage, commission or other remuneration (which may be a present right, or a future right that is dependent on matters specified in the authorising agreement); and

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- (b) that right is still in existence immediately before the end of that period;
- the right is not taken to be brought to an end merely because of the repeal of the relevant old legislation or the enactment of the relevant new legislation, or because under this section the relevant old legislation ceases to apply and the relevant new legislation starts to apply.
- (9) Subsection (8) is not intended to affect, in any way, the determination of the question whether any other right (whether or not it is under an agreement under section 10 of the *Insurance (Agents and Brokers) Act 1984*) is in any way affected by the provisions of the *Financial Services Reform Act 2001* or the *Financial Services Reform (Consequential Provisions) Act 2001* (including the amendments made by those Acts).

**1437 Exemptions and modifications by ASIC**

- (1) This section applies to the following provisions:
- (a) the provisions of this Subdivision (other than section 1436A) and any associated provisions;
  - (b) the provisions of legislation that continues to apply because of subsection 1432(1) or 1436(3).
- (2) ASIC may:
- (a) exempt a person or a class of persons from some or all of the provisions to which this section applies; or
  - (b) declare that some or all of the provisions to which this section applies apply in relation to a person or a class of persons as if the provisions were modified or varied as specified in the declaration.
- (3) A declaration under paragraph (2)(b) may provide for the continued application (with or without modifications, and to the exclusion of provisions of the amended Corporations Act) of provisions referred to in paragraph (1)(b), even after the end of the period of 2 years starting on the FSR commencement.

- (4) An exemption may apply unconditionally or subject to specified conditions. A person to whom a condition specified in an exemption applies must comply with the condition. The Court may order the person to comply with the condition in a specified way. Only ASIC may apply to the Court for the order.
- (5) An exemption or declaration must be in writing and ASIC must publish notice of it in the *Gazette*.
- (6) If conduct (including an omission) of a person would not constitute an offence if a particular declaration under paragraph (2)(b) had not been made, that conduct does not constitute an offence unless, before the conduct occurred (in addition to complying with the gazettal requirement of subsection (5)):
  - (a) the text of the declaration was made available by ASIC on the internet; or
  - (b) ASIC gave written notice setting out the text of the declaration to the person.

In a prosecution for an offence to which this subsection applies, the prosecution must prove that paragraph (a) or (b) was complied with before the conduct occurred.

### **Subdivision E—Product disclosure requirements**

#### **1438 New product disclosure provisions do not apply to existing products during transition period**

- (1) This section applies to all financial products issued by a person, other than financial products in a class of products that are first issued by the person after the FSR commencement.
- (2) For the purposes of this section, the ***new product disclosure provisions*** in relation to a financial product to which this section applies are the provisions of Part 7.9 of the amended Corporations Act that, apart from this section, would apply in relation to the financial product (whether those provisions apply to the issuer of the product or to another person or persons), other than the following provisions:

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- (a) section 1017C (information for existing holders of superannuation products and RSA products);
  - (b) section 1017DA (trustees of superannuation entities—regulations may specify additional obligations to provide information), and regulations made for the purposes of that section;
  - (c) section 1017E (dealing with money received for financial product before the product is issued);
  - (d) section 1017F (confirming transactions);
  - (e) sections 1019A and 1019B (cooling-off period for return of financial product);
  - (ea) Division 5A (unsolicited offers to purchase financial products off-market);
  - (f) sections 1020B and 1020C (short selling of securities, managed investment products and certain other financial products);
  - (g) section 1020D (Part cannot be contracted out of).
- (3) Subject to subsection (4), the new product disclosure provisions do not apply in relation to a financial product to which this section applies during the period (the *transition period*) starting on the FSR commencement and ending on whichever of the following first occurs:
- (a) the end of the period of 2 years starting on the FSR commencement;
  - (b) the date specified in a notice lodged with ASIC by the issuer of the product that relates to the product, or a class of financial products that includes the product, and that satisfies the following requirements:
    - (i) the notice must indicate that the issuer of the product wants the new product disclosure provisions to apply in relation to the product from a date specified in the notice;
    - (ii) the date specified in the notice is the FSR commencement or a later date;

- (iii) the date specified in the notice is at least 28 days after the notice is lodged with ASIC.

Note 1: A notice under paragraph (b) may be lodged during the period between the commencement of this section and the FSR commencement, or it may be lodged after the FSR commencement.

Note 2: Subject to Division 2, the provisions covered by paragraphs (2)(a) to (f) apply from the FSR commencement in relation to all financial products to which they purport to apply.

- (4) If the date specified in a notice lodged with ASIC in accordance with paragraph (3)(b) is the FSR commencement, there is no transition period in relation to the financial product or products to which the notice relates.
- (5) A notice (the **first notice**) lodged with ASIC in accordance with paragraph (3)(b):
- (a) may, by a further notice lodged with ASIC, be varied to specify a different date (the **new date**), but only if:
    - (i) that further notice is lodged with ASIC at least 28 days before the date specified in the first notice; and
    - (ii) the new date is at least 28 days after that further notice is lodged with ASIC; and
  - (b) may, by a further notice lodged with ASIC, be revoked, but only if that further notice is lodged with ASIC at least 28 days before the date specified in the first notice.

A date that was specified in a notice before its variation or revocation in accordance with this subsection is to be disregarded for the purposes of the other provisions of this section.

- (6) If the issuer of a financial product lodges a notice with ASIC in accordance with paragraph (3)(b) that covers the product, the issuer must comply with any applicable requirements determined, by legislative instrument, by ASIC for the purposes of this subsection in relation to the following matters:
- (a) informing people about the notice and its significance; and
  - (b) informing people about any subsequent variation or revocation of the notice.

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Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

- (7) A determination by ASIC for the purposes of subsection (6):
  - (b) may cover all financial products or one or more classes of financial products; and
  - (c) may make different provision in relation to different classes of financial products.
- (8) Subject to the regulations, ASIC must take reasonable steps to ensure that, during the period of 2 years starting on the FSR commencement, information is available:
  - (a) on the internet; and
  - (b) at offices of ASIC;about notices that have been lodged in accordance with paragraph (3)(b). The information must be updated to take account of variations and revocations of such notices.

**1439 Offences against new product disclosure provisions—  
additional element for prosecution to prove if conduct  
occurs after opting-in and before the end of the first 2  
years**

- (1) If:
    - (a) conduct in relation to a financial product that would (apart from this section) constitute an offence against, or based on, any of the new product disclosure provisions occurred at a time:
      - (i) during the period of 2 years starting on the FSR commencement; and
      - (ii) after the date specified in a notice lodged in relation to the product in accordance with paragraph 1438(3)(b); and
    - (b) the new product disclosure provisions started to apply in relation to the product from the date specified in the notice; the conduct constitutes an offence against that provision only if (in addition to the other elements of the offence), either:
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- (c) the person knew that, or was reckless as to whether, the product issuer had lodged a notice under that paragraph that specified that date; or
  - (d) the person did not know that, and was not reckless as to whether, the product issuer had lodged a notice under that paragraph that specified that date, but the conduct would have contravened the provisions referred to in section 1440 that would have applied to and in relation to the product if those provisions had still applied when the conduct occurred.
- (2) In this section:

**conduct** means an act, an omission to perform an act or a state of affairs.

#### **1440 Continued application of certain provisions of old disclosure regimes during transition period**

During the transition period (if any) for a financial product, the following provisions continue to apply, despite their repeal or amendment, to and in relation to the financial product:

- (a) if the product is a managed investment product—all the provisions of Chapter 6D of the old Corporations Act, other than section 722 of that Act, and any associated provisions;
- (b) if the product is a derivative—section 1210 of the old Corporations Act, and any associated provisions;
- (c) if the product is a superannuation product—the following provisions, and any associated provisions:
  - (i) section 153, and all the provisions of Divisions 3 and 4 of Part 19, of the *Superannuation Industry (Supervision) Act 1993* as in force immediately before the FSR commencement;
  - (ii) the section 153A of that Act that was provided for in Modification Declaration no. 15 as in force immediately before the FSR commencement, being a declaration of modification made under section 332 of that Act;

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- (d) if the product is an RSA product—section 51, and all the provisions of Divisions 4 and 5 of Part 5, of the *Retirement Savings Accounts Act 1997* as in force immediately before the FSR commencement, and any associated provisions;
- (e) if the product is an insurance product—sections 71A and 73 of the *Insurance Contracts Act 1984* as in force immediately before the FSR commencement, and any associated provisions.

**1441 Certain persons who are not yet covered by Parts 7.6, 7.7 and 7.8 of the amended Corporations Act are required to comply with Part 7.9 obligations as if they were regulated persons**

From the time from which the new product disclosure provisions start to apply in relation to a particular financial product, the following persons must comply with those provisions in relation to that product, as if they were regulated persons as defined in section 1011B of the amended Corporations Act, even though they are not yet subject, or fully subject, to Parts 7.6, 7.7 and 7.8 of that Act:

- (a) a regulated principal;
- (b) a representative (as defined in section 1436) of a regulated principal; or
- (c) an insurance agent (as defined in section 1436A).

**1442 Exemptions and modifications by ASIC**

- (1) This section applies to the following provisions:
  - (a) the provisions of this Subdivision and any associated provisions;
  - (b) the provisions that continue to apply because of section 1440.
- (2) ASIC may:
  - (a) exempt a person or a class of persons, or a financial product or class of financial products, from some or all of the provisions to which this section applies; or

- (b) declare that some or all of the provisions to which this section applies apply in relation to a person or a class of persons, or a financial product or class of financial products, as if the provisions were modified or varied as specified in the declaration.
- (3) A declaration under paragraph (2)(b) may provide for the continued application (with or without modifications, and to the exclusion of provisions of the amended Corporations Act) of provisions referred to in paragraph (1)(b), even after the end of the period of 2 years starting on the FSR commencement.
- (4) An exemption may apply unconditionally or subject to specified conditions. A person to whom a condition specified in an exemption applies must comply with the condition. The Court may order the person to comply with the condition in a specified way. Only ASIC may apply to the Court for the order.
- (5) An exemption or declaration must be in writing and ASIC must publish notice of it in the *Gazette*.
- (6) If conduct (including an omission) of a person would not constitute an offence if a particular declaration under paragraph (2)(b) had not been made, that conduct does not constitute an offence unless, before the conduct occurred (in addition to complying with the gazettal requirement of subsection (5)):
- (a) the text of the declaration was made available by ASIC on the internet; or
  - (b) ASIC gave written notice setting out the text of the declaration to the person.

In a prosecution for an offence to which this subsection applies, the prosecution must prove that paragraph (a) or (b) was complied with before the conduct occurred.

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**Subdivision F—Certain other product-related requirements**

**1442A Deferred application of hawking prohibition**

- (1) For the purposes of this section, the *transition period* is the period starting on the FSR commencement and ending on whichever of the following first occurs:
  - (a) the day fixed by Proclamation for the purposes of this paragraph;
  - (b) the end of the period of 6 months starting on the FSR commencement.
- (2) Regulations made for the purposes of this section may provide for specified provisions of legislation that is repealed by the *Financial Services Reform Act 2001* or the *Financial Services Reform (Consequential Provisions) Act 2001*, being provisions that deal with the same or a similar matter as that dealt with in section 992A of the amended Corporations Act, to continue to apply (whether with or without specified modifications) during the transition period.
- (3) During the transition period, section 992A of the amended Corporations Act does not apply to any person, except to the extent (if any) provided for in regulations made for the purposes of this section.

**1442B Deferred application of confirmation of transaction and cooling-off provisions etc.**

- (1) This section applies to all financial products issued by a person, other than financial products in a class of products that are first issued by the person after the FSR commencement.
- (2) For the purposes of this section, the *transition period*, in relation to a financial product to which this section applies, is the period starting on the FSR commencement and ending on whichever of the following first occurs:

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- (a) the day fixed by Proclamation for the purposes of this paragraph;
  - (b) the end of the period of 6 months starting on the FSR commencement;
  - (c) the new product disclosure provisions (within the meaning of section 1438) start to apply in relation to the product.
- (3) Subject to subsection (5), the following provisions (the *preserved provisions*), to the extent they are relevant to a financial product to which this section applies, continue to apply, despite their repeal, in relation to the financial product during the transition period:
- (a) Division 6 of Part 19 of the *Superannuation Industry (Supervision) Act 1993*, and any associated provisions;
  - (b) Division 7 of Part 5 of the *Retirement Savings Accounts Act 1997*, and any associated provisions;
  - (c) sections 64 and 64A of the *Insurance Contracts Act 1984*, and any associated provisions;
  - (d) any other provisions specified in regulations made for the purposes of this paragraph, and any associated provisions in relation to provisions so specified.
- (4) Subject to subsection (5), during the transition period, the following provisions (the *deferred provisions*) of the amended Corporations Act do not apply in relation to a financial product to which this section applies:
- (a) section 1017F;
  - (b) sections 1019A and 1019B;
  - (c) any other provisions of Part 7.9 of the amended Corporations Act that are not part of the new product disclosure provisions (within the meaning of section 1438) and that are specified in regulations made for the purposes of this paragraph.
- (5) Regulations made for the purposes of this subsection may do either or both of the following:
- (a) provide that specified provisions of the preserved provisions apply (with or without specified modifications), or do not

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apply, in relation to a financial product to which this section applies;

- (b) provide that specified provisions of the deferred provisions apply (with or without specified modifications), or do not apply, in relation to a financial product to which this section applies.

The regulations may provide as mentioned in paragraph (a) or (b) even after the end of the transition period.

## Division 2—Other transitional provisions

### 1443 Definitions

(1) In this Division:

*amended Corporations Act* has the same meaning as in Division 1.

*class*, in relation to financial products, has a meaning affected by regulations made for the purposes of subsection (2).

*FSR commencement* has the same meaning as in Division 1.

*law of the Commonwealth* includes a reference to an instrument made under such a law.

*new legislation* means relevant legislation as in force after the FSR commencement.

*old legislation* means relevant legislation as in force immediately before the FSR commencement.

*relevant amendments* means the amendments made by:

- (a) the *Financial Services Reform Act 2001*; and
- (b) the *Financial Services Reform (Consequential Provisions) Act 2001*.

*relevant legislation* means the following legislation:

- (a) this Act;
  - (b) the Acts that are amended by the relevant amendments;
  - (c) regulations or other instruments made under Acts covered by paragraph (a) or (b);
  - (d) any other law of the Commonwealth, or instrument made under a law of the Commonwealth, identified in regulations made for the purposes of this paragraph.
- (2) The regulations may include provisions identifying, or providing for the identification of, what constitutes a *class* of financial

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products for the purposes of a provision or provisions of this Division.

**1444 Regulations may deal with transitional, saving or application matters**

- (1) The regulations may deal with matters of a transitional, saving or application nature relating to the relevant amendments and the transition from the application of the old legislation to the application of the new legislation. Regulations made for this purpose may make such provision as is necessary to take account of the fact that, because of Division 1, different provisions of the amended Corporations Act start applying (and different provisions of the old legislation stop applying) in relation to different people, things and matters at different times.
- (2) Regulations made for the purposes of this section are of no effect to the extent that they are inconsistent with:
  - (a) a provision of Division 1; or
  - (b) a regulation or determination made under a provision of Division 1, other than any such regulation or determination (the *other instrument*) that is expressed to have effect subject to anything in regulations made for the purposes of this section (in which case, the other instrument is of no effect, to the extent of the inconsistency).
- (3) Without limiting subsection (1), the regulations may provide for a matter to be dealt with, wholly or partly, in any of the following ways:
  - (a) by applying (with or without modifications) to the matter:
    - (i) provisions of a law of the Commonwealth; or
    - (ii) provisions of a repealed or amended law of the Commonwealth, in the form that those provisions took before the repeal or amendment; or
    - (iii) a combination of provisions referred to in subparagraphs (i) and (ii);
  - (b) by otherwise specifying rules for dealing with the matter;



- (c) by specifying a particular consequence of the matter, or of an outcome of the matter, for the purposes of a law of the Commonwealth.
- (4) Without limiting subsections (1) and (3), the regulations may provide for the continued effect after the FSR commencement, for the purposes of the new legislation, of a thing done or instrument made, or a class of things done or instruments made, before the FSR commencement, under or for the purposes of the old legislation. In the case of an instrument, or class of instruments, the regulations may (either when providing for the continued effect of the instrument or instruments or at a later time) provide for the instrument or instruments, as continuing to have effect, to have effect subject to modifications.
- (5) Without limiting subsection (4), regulations made for the purposes of that subsection may permit all or any of the following matters to be determined in writing by a specified person, or by a person included in a specified class of persons:
- (a) the identification of a thing done or instrument made, or a class of things done or instruments made, that is to continue to have effect;
  - (b) the purpose for which a thing done or instrument made, or a class of things done or instruments made, is to continue to have effect;
  - (c) any modifications subject to which an instrument made, or a class of instruments made, is to continue to have effect.
- (6) Despite subsections 12(2) and (3) of the *Legislative Instruments Act 2003*, regulations made for the purposes of this section:
- (a) may be expressed to take effect from a date before the regulations are registered under that Act; and
  - (b) may provide for a determination of a kind referred to in subsection (5) to take effect from a date before the determination is made (including a date before the regulations are registered under that Act).

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- (7) If a relevant amendment does not commence on the FSR commencement, this section applies in relation to that amendment as if references in the other provisions of this section, and in the definitions in section 1443, to “the FSR commencement” were instead references to the commencement of the relevant amendment.
- (8) In this section:
- matters of a transitional, saving or application nature* includes, but is not limited to, matters related to any of the following:
- (a) how a matter that arose or existed under the old legislation is to be dealt with under the new legislation;
  - (b) the significance for the purposes of the new legislation of a matter that arose or existed under the old legislation;
  - (c) how a process started but not completed under the old legislation is to be dealt with;
  - (d) the preservation of concessions or exemptions (however described) that existed under the old legislation;
  - (e) interpreting references to matters in terms of the new legislation so as to include references to matters in terms of the old legislation (including that legislation as it continues to have effect because of provisions of Division 1), and vice versa;
  - (f) any other matters that are prescribed by regulations made for the purposes of this paragraph.

**1445 ASIC determinations may deal with transitional, saving or application matters**

- (1) ASIC may, by legislative instrument, make a determination dealing with matters of a transitional, saving or application nature relating to the relevant amendments and the transition from the application of the old legislation to the application of the new legislation. Determinations for this purpose may make such provision as is necessary to take account of the fact that, because of Division 1, different provisions of the amended Corporations Act start applying (and different provisions of the old legislation stop

applying) in relation to different people, things and matters at different times.

- (2) A determination overrides any inconsistent regulations made for the purposes of section 1444, other than any such regulations that are expressed to have effect despite anything in a determination under this section (in which case, the determination is of no effect, to the extent of the inconsistency).
- (3) A determination is of no effect to the extent that it is inconsistent with:
  - (a) a provision of Division 1; or
  - (b) a regulation or determination made under a provision of Division 1, other than any such regulation or determination (the *other instrument*) that is expressed to have effect subject to anything in a determination under this section (in which case, the other instrument is of no effect, to the extent of the inconsistency).
- (4) Without limiting subsection (1), a determination may provide for a matter to be dealt with, wholly or partly, in any of the following ways:
  - (a) by applying (with or without modifications) to the matter:
    - (i) provisions of a law of the Commonwealth; or
    - (ii) provisions of a repealed or amended law of the Commonwealth, in the form that those provisions took before the repeal or amendment; or
    - (iii) a combination of provisions referred to in subparagraphs (i) and (ii);
  - (b) by otherwise specifying rules for dealing with the matter;
  - (c) by specifying a particular consequence of the matter, or of an outcome of the matter, for the purposes of a law of the Commonwealth.
- (5) Without limiting subsections (1) and (4), a determination may provide for the continued effect after the FSR commencement, for the purposes of the new legislation, of a thing done or instrument made, or a class of things done or instruments made, before the

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FSR commencement, under or for the purposes of the old legislation. In the case of an instrument, or class of instruments, a determination may (either when providing for the continued effect of the instrument or instruments or at a later time) provide for the instrument or instruments, as continuing to have effect, to have effect subject to modifications.

- (6) Without limiting subsection (5), a determination for the purposes of that subsection may permit all or any of the following matters to be determined in writing by a specified person, or by a person included in a specified class of persons:
- (a) the identification of a thing done or instrument made, or a class of things done or instruments made, that is to continue to have effect;
  - (b) the purpose for which a thing done or instrument made, or a class of things done or instruments made, is to continue to have effect;
  - (c) any modifications subject to which an instrument made, or a class of instruments made, is to continue to have effect.
- (7) If a relevant amendment does not commence on the FSR commencement, this section applies in relation to that amendment as if references in the other provisions of this section, and in the definitions in section 1443, to “the FSR commencement” were instead references to the commencement of the relevant amendment.
- (8) In this section:
- matters of a transitional, saving or application nature*** includes, but is not limited to, matters related to any of the following:
- (a) how a matter that arose or existed under the old legislation is to be dealt with under the new legislation;
  - (b) the significance for the purposes of the new legislation of a matter that arose or existed under the old legislation;
  - (c) how a process started but not completed under the old legislation is to be dealt with;

- (d) the preservation of concessions or exemptions (however described) that existed under the old legislation;
- (e) interpreting references to matters in terms of the new legislation so as to include references to matters in terms of the old legislation (including that legislation as it continues to have effect because of provisions of Division 1), and vice versa;
- (f) any other matters that are prescribed by regulations made for the purposes of this paragraph.

## **Part 10.3—Transitional provisions relating to the Corporations Legislation Amendment Act 2003**

### **1447 Application of sections 601AB and 601PB**

If a company or responsible entity had an obligation to lodge an annual return before the commencement of items 31 and 36 of Schedule 1 to the *Corporations Legislation Amendment Act 2003*, sections 601AB and 601PB continue to apply to the annual return, as if the amendments made by those items had not been made.

### **1448 Application of amendments made by Schedule 4 to the Corporations Legislation Amendment Act 2003**

If, at the time the amendments made by Schedule 4 to the *Corporations Legislation Amendment Act 2003* commence:

- (a) a company is required to lodge a notice under a provision amended by Schedule 4; and
- (b) the time within which the company must lodge the notice has not expired;

the amendments made by Schedule 4 apply to the company's requirement to lodge the notice.

## **Part 10.4—Transitional provisions relating to the Financial Services Reform Amendment Act 2003**

### **1449 Definition**

In this Part:

*amending Act* means the *Financial Services Reform Amendment Act 2003*.

### **1450 Application of Part 10.2 to Chapter 7 as amended by Schedule 2 to the amending Act**

- (1) Subject to subsection (2), the provisions of Division 1 of Part 10.2 (including regulations and determinations made for the purposes of that Division, and the powers given by that Division to deal with matters in regulations and determinations) also apply to the provisions of Chapter 7 as amended by Schedule 2 to the amending Act.

Note: Division 1 of Part 10.2 deals with the phasing-in of the new financial services regime.

- (2) However, subsection (1) does not produce the result that a provision of Chapter 7 as amended, added or inserted by an amendment in Schedule 2 to the amending Act applies in relation to a person, matter or circumstance:
  - (a) at a time that is before the commencement of the amendment;  
or
  - (b) contrary to section 1451.
- (3) The powers given by Division 2 of Part 10.2 to deal with matters in regulations and determinations apply in relation to the provisions of Chapter 7 as amended by Schedule 2 to the amending Act as if the amendments in Schedule 2 to the amending Act were *relevant*

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*amendments* for the purposes of that Division. However (in addition to subsections 1444(2) and 1445(3)) such regulations and determinations are of no effect to the extent that they are inconsistent with section 1451.

**1451 Provisions relating to the scope of the amendments of  
Chapter 7 made by Schedule 2**

*Application of amendments of section 916F*

- (1) The amendments made by items 37, 38 and 39 of Schedule 2 to the amending Act do not apply to authorisations made before the commencement of the amendment, unless the relevant 10 day period for notification has not ended by the commencement of the items.
- (2) The amendment made by item 40 of Schedule 2 to the amending Act applies to revocations made after the commencement of the item.

*Application of certain amendments of sections 952B and 953A*

- (2A) The amendments made by items 53A and 58A of Schedule 2 to the amending Act apply in relation to the giving of Financial Services Guides after the commencement of the items.

*Application of amendments of section 981H*

- (3) The amendments made by items 62 and 63 of Schedule 2 to the amending Act apply, after the commencement of those items, to money paid to a person before that commencement as mentioned in subsection 981H(1), even if an agreement referred to in subsection 981H(2) was in force in relation to the money immediately before that commencement.

*Application of certain amendments of section 1016A*

- (3A) The amendments made by items 77A, 77B and 78C of Schedule 2 to the amending Act apply in relation to applications for financial



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products, and applications to become a standard employer-sponsor, whether made before or after the commencement of the items.

*Application of amendments of sections 1016B to 1016E*

- (3B) The amendments made by items 78D to 78T of Schedule 2 to the amending Act apply in relation to Product Disclosure Statements whether prepared or given before or after the commencement of the items.

*Application of amendment of section 1017D*

- (4) The amendment made by item 88 of Schedule 2 to the amending Act does not apply to statements prepared before the commencement of the item.

*Application of amendments of section 1017E*

- (5) The amendments made by items 89 and 90 of Schedule 2 to the amending Act apply, after the commencement of those items, to money paid to a person before that commencement as mentioned in subsection 1017E(1), even if an agreement referred to in subsection 1017E(2B) was in force in relation to the money immediately before that commencement.

*Application of amendments of section 1020E*

- (6) The amendment made by item 91 of Schedule 2 to the amending Act does not apply to disclosure documents or statements prepared before the commencement of the item.
- (7) The amendments made by items 91A, 91B and 91C of Schedule 2 to the amending Act apply to disclosure documents or statements, and to advertisements or statements of a kind referred to in subsection 1018A(1) or (2), whether prepared, given or published before or after the commencement of the items.

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*Application of certain amendments of sections 1021B and 1022A*

- (8) The amendments made by items 95F and 96K of Schedule 2 to the amending Act apply in relation to the giving of Product Disclosure Statements after the commencement of the items.

**1452 Amendments of section 1274**

- (1) The amendment made by item 101 of Schedule 2 to the amending Act applies to documents even if they were lodged before the commencement of the item.
- (2) The amendment made by item 102 of Schedule 2 to the amending Act removes a reference to a repealed provision. However, the amendment does not produce the result that a document that was lodged under that provision when it was in force now becomes available for inspection under section 1274.

## **Part 10.5—Transitional provisions relating to the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004**

### **1453 Definitions**

In this Part:

**amending Act** means the *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004*.

**old Act** means this Act as in force immediately before the commencement day.

**Schedule 1 commencement** means the day on which Schedule 1 to the *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004* commences.

**Schedule 4 commencement** means the day on which Schedule 4 to the *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004* commences.

**Schedule 5 commencement** means the day on which Schedule 5 to the *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004* commences.

**Schedule 8 commencement** means the day on which Schedule 8 to the *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004* commences.

### **1454 Audit reforms in Schedule 1 to the amending Act (auditing standards and audit working papers retention rules)**

Sections 307A, 307B and 989CA apply to:

- (a) an audit of the financial report for a financial year; or

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- (b) an audit or review of the financial report for a half-year in a financial year;  
if the financial year begins on or after 1 July 2004.

**1455 Audit reforms in Schedule 1 to the amending Act (adoption of auditing standards made by accounting profession before commencement)**

- (1) The regulations may provide that a standard specified in the regulations (as in force from time to time) is to have effect, for the purposes of this Act, as if it had been made by the AUASB under section 336 on the day specified in the regulations.
- (2) The standard must be one made or issued by the Australian Accounting Research Foundation before the Schedule 1 commencement on behalf of CPA Australia and The Institute of Chartered Accountants in Australia.
- (3) The regulations may provide that the standard is to have effect as if it specified that it applies to periods ending, or starting, on or after a date specified in the standard.
- (4) Standards prescribed under subsection (1) do not have effect as auditing standards:
  - (a) in relation to financial reports for periods ending after 30 June 2006; or
  - (b) in relation to financial reports for periods ending after a later date specified by regulations made for the purposes of subsection (1) before 30 June 2006.
- (5) A person does not commit an offence based on a contravention of section 307A, subsection 308(3A) or 309(5A) or section 989CA because an audit or review is not conducted in accordance with, or does not include a statement or disclosure required by, an auditing standard prescribed under subsection (1) if the audit or review is conducted in relation to a financial report for a period ending before that standard ceases to have effect as an auditing standard.

Note: This subsection does not prevent, however, other action being taken on the basis of the failure to comply with the auditing standard (for example, the person's failure to comply with the standard being referred to the Companies Auditors and Liquidators Disciplinary Board).

**1456 Audit reforms in Schedule 1 to the amending Act (new competency standard provisions)**

If an application by a person for registration as a registered company auditor:

- (a) is lodged with ASIC before the Schedule 1 commencement; and
  - (b) has not been determined before that day;
- section 1280 of the old Act continues to apply to the application despite the amendments made by the amending Act.

**1457 Audit reforms in Schedule 1 to the amending Act (new annual statement requirements for auditors)**

- (1) The requirement under section 1287A for a registered company auditor to lodge an annual statement applies from the first anniversary of the auditor's registration that occurs on or after 1 January 2005.
- (2) The first annual statement lodged under section 1287A should cover the period commencing either:
  - (a) immediately after the period covered by the last triennial statement; or
  - (b) the day on which the auditor was registered;whichever is later, and ending on the first anniversary of registration occurring on or after 1 January 2005.

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**1458 Audit reforms in Schedule 1 to the amending Act (imposition of conditions on existing registration as company auditor)**

ASIC may impose conditions on a person's registration as a company auditor under section 1289A even if the registration took effect before the Schedule 1 commencement.

**1459 Audit reforms in Schedule 1 to the amending Act (application of items 62 and 63)**

The amendments made by items 62 and 63 of Schedule 1 to the amending Act apply to periods that start on or after 1 January 2005.

**1460 Audit reforms in Schedule 1 to the amending Act (non-audit services disclosure)**

Subsections 300(11B) to (11E) apply to an audit of the financial report for a financial year if the financial year begins on or after 1 July 2004.

**1461 Audit reforms in Schedule 1 to the amending Act (auditor appointment)**

- (1) Section 324AC applies to all appointments of firms as auditor (including an appointment that was made before the Schedule 1 commencement).
- (2) The appointment of a person as auditor of a company or registered scheme made before the Schedule 1 commencement under section 327 or 331AB of the old Act remains valid and effective despite the repeal of that section.
- (3) An approval by ASIC that is in force under subsection 324(12) of the old Act immediately before the Schedule 1 commencement has effect on and after the Schedule 1 commencement as if it had been given under section 324B.

**1462 Audit reforms in Schedule 1 to the amending Act (auditor independence)**

- (1) Section 307C applies to a financial report for financial years that start on or after 1 July 2004.
- (2) Division 3 of Part 2M.4 applies to:
  - (a) an audit of the financial report for a financial year; or
  - (b) an audit or review of the financial report for a half-year in a financial year;if the financial year begins on or after 1 July 2004.
- (2A) The following provisions of the old Act continue to apply to an audit of the financial report for a financial year, or an audit or review of the financial report for a half-year in a financial year, if the financial year begins before 1 July 2004:
  - (a) subsections 324(1) to (6) (inclusive) (other than paragraphs 324(1)(d) and (2)(d) and (e));
  - (b) subsection 324(11);
  - (c) subsection 327(4);
  - (d) section 331AA (other than paragraphs 331AA(1)(d) and (2)(d) and (e)).Subsection 331AA(4) of the old Act continues to apply as if the references in that subsection to subsections 324(7), (8), (9), (10) and (16) were omitted.
- (3) Division 3 of Part 2M.4 applies to all relationships that exist on or after the Schedule 1 commencement between an auditor and an audited body (including a relationship that exists because of circumstances that came into existence before the Schedule 1 commencement).
- (4) Without limiting subsection (3), the items in the table in subsection 324CH(1) apply to circumstances that exist on or after the Schedule 1 commencement (including circumstances that exist because of events that occurred before the Schedule 1 commencement).

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- (5) Item 9 of the table in subsection 324CE(5) applies to a person who ceases to be a professional employee of the individual auditor concerned on or after the Schedule 1 commencement.
- (6) Item 10 of the table in subsection 324CE(5) applies to a person who ceases to own the business of the individual auditor concerned on or after the Schedule 1 commencement.
- (7) Item 11 of the table in subsection 324CF(5) applies to a person who ceases to be a member of the audit firm concerned on or after the Schedule 1 commencement.
- (8) Item 12 of the table in subsection 324CF(5) applies to a person who ceases to be a professional employee of the auditor firm concerned on or after the Schedule 1 commencement.
- (9) Item 11 of the table in subsection 324CG(9) applies to a person who ceases to be an officer of the audit company concerned on or after the Schedule 1 commencement.
- (10) Item 12 of the table in subsection 324CG(9) applies to a person who ceases to be a professional employee of the audit company concerned on or after the Schedule 1 commencement.
- (11) Section 324CI applies only if the relevant departure time for the purposes of that section occurs on or after the Schedule 1 commencement.
- (12) Section 324CJ applies only if the relevant departure time for the purposes of that section occurs on or after the Schedule 1 commencement.
- (13) Section 324CK applies to a person only if:
  - (a) the person is on the Schedule 1 commencement, or becomes after the Schedule 1 commencement, a member of the audit firm concerned or a director of the audit company concerned; and
  - (b) becomes an officer of the audited body concerned on or after the Schedule 1 commencement.



**1463 Audit reforms in Schedule 1 to the amending Act (auditor rotation)**

Division 5 of Part 2M.4 applies to:

- (a) an audit of the financial report for a financial year; or
- (b) an audit or review of the financial report for a half-year in a financial year;

if the financial year begins on or after 1 July 2006.

**1464 Audit reforms in Schedule 1 to the amending Act (listed company AGMs)**

The amendments made by Part 5 of Schedule 1 to the amending Act apply to AGMs at which financial reports for financial years that commence on or after 1 July 2004 are considered.

**1465 Schedule 2 to the amending Act (financial reporting)**

- (1) The amendments made by Part 1 of Schedule 2 to the amending Act apply to directors' declarations in relation to financial reports for financial years that start on or after 1 July 2004.
- (2) The amendments made by Part 2 of Schedule 2 to the amending Act apply to directors' reports for financial years that start on or after 1 July 2004.
- (3) The amendments made by Part 3 of Schedule 2 apply to financial reports lodged with ASIC on or after 1 January 2004.

**1466A Schedule 2A to the amending Act (true and fair view)**

The amendments made by Schedule 2A to the amending Act apply to directors' reports for periods that start on or after 1 July 2004.

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**1466 Schedule 3 to the amending Act (proportionate liability)**

The amendments made to this Act and the *Trade Practices Act 1974* by Schedule 3 to the amending Act apply to causes of action that arise on or after the day on which that Schedule commences.

**1467 Schedule 4 to the amending Act (enforcement)**

- (1) The amendments made by Part 2 of Schedule 4 apply to all disclosures made on or after the day on which this Act receives the Royal Assent (including a disclosure of information about circumstances that arose before that day).
- (2) Section 206BA applies to disqualifications from managing corporations that occur because of convictions on or after the Schedule 4 commencement.
- (3) The amendments made by Part 4 of Schedule 4 to the amending Act apply in relation to a contravention of a financial services civil penalty provision that occurs on or after the day on which this Act receives the Royal Assent.

**1468 Schedule 5 to the amending Act (remuneration of directors and executives)**

- (1) Subject to subsections (2) and (3), the amendments made by Schedule 5 to the amending Act apply to financial years commencing on or after 1 July 2004.
- (2) The amendments made by items 4, 4A and 5 of Schedule 5 to the amending Act apply to an agreement only if the agreement is entered into on or after the Schedule 5 commencement.
- (3) The amendments made by items 6, 7 and 8 of Schedule 5 to the amending Act apply to remuneration reports for financial years that start on or after 1 July 2004.

**1469 Schedule 6 to the amending Act (continuous disclosure)**

- (1) The amendments made by Part 1 of Schedule 6 to the amending Act apply in relation to a contravention of subsection 674(2) or 675(2) that occurs on or after the day on which this Act receives the Royal Assent.
- (2) The amendments made by Part 2 of Schedule 6 to the amending Act apply in relation to a failure by a disclosing entity to comply with subsection 674(2) or 675(2) that occurs on or after the day on which this Act receives the Royal Assent.

**1470 Schedule 7 to the amending Act (disclosure rules)**

- (1) The amendments made by Part 1 of Schedule 7 to the amending Act apply to a disclosure document for an offer of securities if the disclosure document is lodged with ASIC on or after the day on which this Act receives the Royal Assent.
- (2) The amendments made by Part 2 of Schedule 7 to the amending Act apply to a Product Disclosure Statement that is required to be given on or after the day on which this Act receives the Royal Assent.
- (3) The amendment made by items 10 and 11 of Schedule 7 to the amending Act applies to an offer of debentures that is made on or after the day on which this Act receives the Royal Assent.
- (4) Section 708A applies to an offer of securities for sale that is made on or after the day on which this Act receives the Royal Assent.
- (5) Section 1012DA applies to:
  - (a) a recommendation situation if the relevant conduct (within the meaning of subsection 1012A(2)); and
  - (b) a sale situation if the relevant conduct (within the meaning of subsection 1012C(2));occurs on or after the day on which this Act receives the Royal Assent.

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**1471 Schedule 8 to the amending Act (shareholder participation and information)**

- (1) The amendments made by items 1 to 6, 13 and 17 of Schedule 8 to the amending Act apply to a notice of a meeting of a company's members that is given after 30 September 2004.
- (2) The amendments made by items 7 to 12 and 14 of Schedule 8 to the amending Act apply to an appointment of a proxy that is made on or after the Schedule 8 commencement.
- (2A) The amendment made by item 14A of Schedule 8 to the amending Act applies to reports for financial years that start on or after 1 July 2004.
- (3) The amendment made by item 15 of Schedule 8 to the amending Act applies to a directors' report for a financial year that starts on or after 1 July 2004.
- (4) The amendment made by item 16 of Schedule 8 to the amending Act applies to a report referred to in subsection 314(1) for a financial year that starts on or after 1 July 2004.

## **Part 10.8—Transitional provisions relating to the Corporations Amendment (Takeovers) Act 2007**

### **1478 Application of amendments of the takeovers provisions**

- (1) The amendments made by Schedule 1 to the *Corporations Amendment (Takeovers) Act 2007* apply in relation to an application under section 657C (including any review under section 657EA of the decision made on the application) if:
- (a) the application under section 657C is made on or after the commencement of that Schedule; or
  - (b) the application under section 657C was made before the commencement of that Schedule but the Panel has not finally disposed of the application before the commencement of that Schedule.

For the purposes of paragraph (b), the Panel does not finally dispose of an application under section 657C until the Panel has disposed of any review under section 657EA of the decision made on the application.

- (2) To avoid doubt, the amendments apply in relation to the application even if the circumstances to which the application relates arose before the commencement of Schedule 1 to the *Corporations Amendment (Takeovers) Act 2007*.

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**Part 10.9—Transitional provisions relating to the  
Corporations Amendment (Insolvency) Act  
2007**

**1479 Definition**

In this Part:

*amending Act* means the *Corporations Amendment (Insolvency) Act 2007*.

**1480 Schedule 1 to the amending Act (improving outcomes for  
creditors)**

- (1) The amendment made by item 4 of Schedule 1 to the amending Act, in so far as it relates to a company subject to a deed of company arrangement, applies if the administration that ended on the execution of the deed began on or after the day on which that item commences.
- (2) The amendments made by items 5 to 9 of Schedule 1 to the amending Act, in so far as they relate to the winding up of a company, apply if the relevant date is on or after the day on which those items commence.
- (3) The amendments made by items 6 to 9 of Schedule 1 to the amending Act, in so far as they relate to a company subject to a deed of company arrangement, apply if the administration that ended on the execution of the deed began on or after the day on which those items commence.
- (4) The amendments made by items 6 to 9 of Schedule 1 to the amending Act, in so far as they relate to a company to which section 433 applies, apply if the relevant date (within the meaning of that section) is on or after the day on which those items commence.

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- (5) The amendment made by item 20 of Schedule 1 to the amending Act applies in relation to a receiver appointed on or after the day on which that item commences.
- (6) The amendments made by items 21, 24, 25, 26 and 28 of Schedule 1 to the amending Act apply to the administrator of a company if the administrator is appointed on or after the day on which those items commence.
- (7) The amendments made by items 30, 31, 32, 33, 35, 36, 37, 38, 39 and 40 of Schedule 1 to the amending Act apply in relation to the liquidator of a company if the winding up of the company begins on or after the day on which those items commence.
- (8) The amendment made by item 52 of Schedule 1 to the amending Act applies in relation to a compromise or arrangement if an application relating to the compromise or arrangement was made under subsection 411(1) on or after the day on which that item commences.
- (9) The amendments made by items 53, 54, 55, 56 and 57 of Schedule 1 to the amending Act do not apply in relation to an account opened before the day on which that item commences.
- (10) The amendments made by items 59, 60, 61, 62 and 64 of Schedule 1 to the amending Act apply in relation to a managing controller of property of a corporation if:
  - (a) the managing controller is appointed on or after the day on which those items commence; or
  - (b) the managing controller enters into possession, or takes control, of property of the corporation on or after the day on which those items commence.
- (11) Despite the amendments made by items 65 and 66 of Schedule 1 to the amending Act:
  - (a) subsection 427(1) continues to apply, in relation to an order obtained, or an appointment made, before the day on which those items commence, as if those amendments had not been made; and

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- (b) subsection 427(1A) continues to apply, in relation to an appointment made before the day on which those items commence, as if those amendments had not been made; and
  - (c) subsection 427(1B) continues to apply, in relation to an entry into possession, or a taking of control, before the day on which those items commence, as if those amendments had not been made; and
  - (d) subsection 427(4) continues to apply, in relation to a cessation before the day on which those items commence, as if those amendments had not been made.
- (12) The amendments made by items 70, 71 and 72 of Schedule 1 to the amending Act, in so far as they relate to a company under administration, apply if the administration begins on or after the day on which those items commence.
  - (13) The amendment made by item 75 of Schedule 1 to the amending Act applies to a meeting if the meeting is convened on or after the day on which that item commences.
  - (14) The amendments made by items 87, 88, 92, 93 and 94 of Schedule 1 to the amending Act apply to a transfer or alteration that occurs on or after the day on which those items commence.
  - (15) The amendments made by items 91, 96, 97, 98, 99, 100, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111 and 112 of Schedule 1 to the amending Act apply in relation to a winding up of a company if the winding up begins on or after the day on which those items commence.
  - (16) Despite the repeal of subsection 506(4) by item 113 of Schedule 1 to the amending Act, that subsection continues to apply, in relation to the liquidators of a company where the winding up of the company began before the day on which that item commences, as if that repeal had not happened.
  - (17) Sections 434D, 434E, 434F and 434G apply in relation to persons appointed on or after the day on which those sections commence.



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- (18) Section 530 applies in relation to the liquidators of a company if the winding up of the company begins on or after the day on which that section commences.
- (19) Section 530AA applies to persons appointed on or after the day on which that section commences.
- (20) Subsections 571(1) and 579E(1) of the amended Act apply in relation to a group of 2 or more companies if the winding up of each company in the group begins on or after the day on which those subsections commence.

**1481 Schedule 2 to the amending Act (detering corporate misconduct)**

- (1) The amendment made by item 2 of Schedule 2 to the amending Act applies in relation to a compromise or arrangement if an application relating to the compromise or arrangement was made under subsection 411(1) on or after the day on which that item commences.
- (2) The amendment made by item 11 of Schedule 2 to the amending Act applies in relation to a matter that appears to a person:
  - (a) during the 6-month period ending when that item commences; or
  - (b) on or after the day on which that item commences;where the relevant date is on or after the day on which that item commences.
- (3) Section 489A applies in relation to a section 486B warrant if the warrant is issued on or after the day on which that section commences.

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**1482 Schedule 3 to the amending Act (improving regulation of insolvency practitioners)**

- (1) The amendment made by item 7 of Schedule 3 to the amending Act applies to an application for registration if the application was made on or after the day on which that item commences.
- (2) Despite the amendment made by item 9 of Schedule 3 to the amending Act, subsection 1288(3) continues to apply, in relation to a 3-year period ending before the day on which that item commences, as if that amendment had not been made.
- (3) Subsection 1288(3) as amended by item 9 of Schedule 3 to the amending Act applies as follows:
  - (a) in the case of a person whose first 12 months of registration ends on or after the day on which that item commences—that subsection applies in relation to:
    - (i) the person's first 12 months of registration; and
    - (ii) each subsequent period of 12 months;
  - (b) in the case of a person whose first 12 months of registration ended before the day on which that item commences—that subsection applies as if the reference in paragraph 1288(3)(a) to the day on which the person's registration begins (the **initial registration day**) were a reference to the last anniversary of the initial registration day that occurred before the day on which that item commences.

For this purpose, a person's **first 12 months of registration** is the period of 12 months beginning on the day on which the person's registration begins.
- (4) The amendment made by item 12 of Schedule 3 to the amending Act applies in relation to a decision made on or after the day on which that item commences.

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**1483 Schedule 4 to the amending Act (fine-tuning voluntary administration)**

- (1) The amendments made by items 1, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 39, 40, 45, 49, 51, 52, 53, 54, 55, 56, 57, 59, 60, 61 and 62 of Schedule 4 to the amending Act, in so far as they relate to a company under administration, apply if the administration begins on or after the day on which those items commence.
- (2) The amendments made by items 2, 3 and 4 of Schedule 4 to the amending Act apply to an appointment of an administrator if the appointment is made on or after the day on which those items commence.
- (3) The amendment made by item 8 of Schedule 4 to the amending Act applies to a transfer or alteration that occurs on or after the day on which that item commences.
- (4) The amendments made by items 23, 24, 25, 26 and 28 of Schedule 4 to the amending Act, in so far as they apply to a company that is, or is proposed to be, subject to a deed of company arrangement, apply if the administration that ends, or is to end, on the execution of the deed, began on or after the day on which those items commence.
- (5) The amendments made by items 27, 29, 30, 31, 32, 33, 34, 35, 36, 39, 40, 43, 44, 46, 55, 56 and 57 of Schedule 4 to the amending Act, in so far as they relate to a company subject to a deed of company arrangement, apply if the administration that ended on the execution of the deed began on or after the day on which those items commence.
- (6) Items 37 and 38 of Schedule 4 to the amending Act apply in relation to a company if the winding up of the company begins on or after the day on which those items commence.
- (7) The amendments made by items 41 and 42 of Schedule 4 to the amending Act apply in relation to a company subject to a deed arrangement if the administration that ended on the execution of

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the deed began on or after the day on which those items commence.

- (8) The amendments made by items 63, 65, 66, 67, 69 and 70 of Schedule 4 to the amending Act, in so far as they relate to the winding up of a company, apply if the relevant date is on or after the day on which those items commence.
- (9) Section 440BA, in so far as it relates to a company under administration, applies if the administration begins on or after the day on which that section commences.

Note: Section 440BA was repealed by the *Personal Property Securities (Corporations and Other Amendments) Act 2010*, and was replaced with a new section 440B incorporating the same substantive rules. Section 1507 preserves the operation of this subsection.

- (10) Section 440BB does not apply to distress for rent that began to be carried out before the day on which that section commences.

Note: Section 440BB was repealed by the *Personal Property Securities (Corporations and Other Amendments) Act 2010*, and was replaced with a new section 440B incorporating the same substantive rules. Section 1507 preserves the operation of this subsection.

- (11) Subsections 442C(7) and (8), in so far as they relate to a company under administration, apply if the administration begins on or after the day on which those subsections commence.
- (12) Subsections 442C(7) and (8), in so far as they relate to a company subject to a deed of company arrangement, apply if the administration that ended on the execution of the deed began on or after the day on which those subsections commence.
- (13) Section 446C applies in relation to a company as follows:
  - (a) if the company was under administration immediately before the liquidation time referred to in that section—the administration begins on or after the day on which that section commences;
  - (b) if the company was subject to a deed of company arrangement immediately before the liquidation time referred to in that section—the administration that ended on the

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execution of the deed began on or after the day on which that section commences.

- (14) Subsection 588FE(2A) applies in relation to a company if the administration referred to paragraph 588FE(2A)(b) begins on or after the day on which that subsection commences.
- (15) Subsection 588FE(2B) applies in relation to a company if the administration that ended on the execution of the deed of company arrangement referred to in paragraph 588FE(2B)(b) began on or after the day on which that subsection commences.

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**Part 10.10—Transitional provisions relating to the  
Corporations Amendment (Short Selling)  
Act 2008**

**1484 Declarations under paragraph 1020F(1)(c) relating to short  
selling**

- (1) To avoid doubt, an instrument mentioned in subsection (2) that was made at a particular time was validly made under paragraph 1020F(1)(c) at that time.
- (2) The instruments are as follows:
  - (a) ASIC Class Order [CO 08/751], registered on the Federal Register of Legislative Instruments on 22 September 2008;
  - (b) ASIC Class Order [CO 08/752], registered on the Federal Register of Legislative Instruments on 22 September 2008;
  - (c) ASIC Class Order [CO 08/753], registered on the Federal Register of Legislative Instruments on 22 September 2008;
  - (d) ASIC Class Order [CO 08/763], registered on the Federal Register of Legislative Instruments on 23 September 2008;
  - (e) ASIC Class Order [CO 08/801], registered on the Federal Register of Legislative Instruments on 24 October 2008.
- (3) To avoid doubt, an instrument (if any) that:
  - (a) was made at a time:
    - (i) after 24 October 2008; and
    - (ii) before the commencement of this section; and
  - (b) is of substantially the same nature as the instruments mentioned in subsection (2); and
  - (c) was registered on the Federal Register of Legislative Instruments:
    - (i) after 24 October 2008; and
    - (ii) before the commencement of this section;

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was validly made under paragraph 1020F(1)(c) at that time.

- (4) This section applies on and after 19 September 2008.
- (5) In this section:

***Federal Register of Legislative Instruments*** means the Federal Register of Legislative Instruments established under the *Legislative Instruments Act 2003*.

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**Part 10.11—Transitional provisions relating to the  
Corporations Amendment (No. 1) Act 2009**

**1485 Application of new subsection 206B(6)**

The amendments made by item 2 of Schedule 1 to the *Corporations Amendment (No. 1) Act 2009* apply to an order made by a court of a foreign jurisdiction on or after the commencement of that item.

**1486 Application of new section 206EAA**

The amendments made by item 3 of Schedule 1 to the *Corporations Amendment (No. 1) Act 2009* apply to a disqualification under a law of a foreign jurisdiction that arises on or after the commencement of that item.



## **Part 10.12—Transitional provisions relating to the Corporations Legislation Amendment (Financial Services Modernisation) Act 2009**

### **Division 1—Transitional provisions relating to Schedule 1 to the Corporations Legislation Amendment (Financial Services Modernisation) Act 2009**

#### **1487 Definitions**

- (1) In this Division:

*amended Corporations Act* means this Act as in force after commencement.

*amending Schedule* means Schedule 1 to the *Corporations Legislation Amendment (Financial Services Modernisation) Act 2009*.

*commencement* means the day on which the amending Schedule commences.

*margin lending financial service* has the meaning given by subsection 1488(2).

- (2) Terms that are used in this Division and that are defined in Division 2 of Part 7.1 have the same meanings as they are given by that Division.

#### **1488 Application of amendments—general**

- (1) The amendments made by the amending Schedule apply in relation to a margin lending financial service that is provided on or after the day that is 12 months after commencement.

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**Part 10.12** Transitional provisions relating to the Corporations Legislation Amendment (Financial Services Modernisation) Act 2009

**Division 1** Transitional provisions relating to Schedule 1 to the Corporations Legislation Amendment (Financial Services Modernisation) Act 2009

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- (2) A *margin lending financial service* is:
- (a) a dealing in a margin lending facility that was issued after commencement; or
  - (b) the provision of financial product advice in relation to a margin lending facility that was issued after commencement.

**1489 Applications of amendments—application for and grant of licences etc. authorising margin lending financial services**

- (1) Despite section 1488, during the period that:
- (a) starts at the start of the day that is one month after commencement; and
  - (b) ends at the end of the day before the day that is 12 months after commencement;
- subsections (2) and (3) apply.
- (2) A person may:
- (a) apply under section 913A of the amended Corporations Act for an Australian financial services licence that authorises the person to provide a margin lending financial service; and
  - (b) apply under section 914A of the amended Corporations Act for a variation of a condition of an Australian financial services licence to authorise the person to provide a margin lending financial service.
- (3) ASIC may:
- (a) grant an Australian financial services licence to a person under section 913B of the amended Corporations Act that authorises the person to provide a margin lending financial service, and otherwise deal with that licence (for example, by suspending or cancelling it) under Chapter 7; and
  - (b) impose or vary conditions on an Australian financial services licence under section 914A of the amended Corporations Act to authorise a person to provide a margin lending financial service, and otherwise deal with those conditions (for example, by revoking or varying them) under Chapter 7;
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but the Australian financial services licence, condition, or variation of a condition, does not take effect until the day that is 12 months after commencement.

**1490 Application of amendments—between 6 and 12 months after commencement**

- (1) Despite section 1488, the amendments made by the amending Schedule apply in relation to a margin lending financial service that is provided during the period that:
  - (a) starts at the start of the day that is 6 months after commencement; and
  - (b) ends at the end of the day before the day that is 12 months after commencement;but only if, at the time the margin lending financial service is provided, subsection (2) or (3) applies to:
  - (c) the person who provides the margin lending financial service; and
  - (d) if the margin lending financial service is provided on behalf of another person—the person on whose behalf the margin lending financial service is provided.
- (2) This subsection applies to a person if the person is an Australian financial services licensee and either:
  - (a) has not applied for a condition of the licence to be varied to authorise the person to provide the margin lending financial service; or
  - (b) has applied for a condition of the licence to be varied to authorise the person to provide the margin lending financial service, but has been notified by ASIC that the application has been refused.
- (3) This subsection applies to a person if the person is not an Australian financial services licensee and either:

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- (a) has not applied for an Australian financial services licence that authorises the person to provide the margin lending financial service; or
- (b) has applied for an Australian financial services licence that authorises the person to provide the margin lending financial service, but has been notified by ASIC that the application has been refused.

**1491 Acquisition of property**

- (1) Despite section 1350, a provision of this Division does not apply, and is taken never to have applied, to the extent that the operation of the provision would result in an acquisition of property from a person otherwise than on just terms.
- (2) In subsection (1), *acquisition of property* and *just terms* have the same meanings as in paragraph 51(xxxi) of the Constitution.

**1492 Regulations**

- (1) The regulations may make provisions of a transitional, application or saving nature relating to this Division and the amendments and repeals made by the amending Schedule.
- (2) Without limiting subsection (1), regulations made for the purpose of that subsection may modify provisions of this Act.

## **Division 2—Transitional provisions relating to Schedule 2 to the Corporations Legislation Amendment (Financial Services Modernisation) Act 2009**

### **1493 Definitions**

In this Division:

***amending Schedule*** means Schedule 2 to the *Corporations Legislation Amendment (Financial Services Modernisation) Act 2009*.

***commencement*** means the commencement of the amending Schedule.

***modify*** includes make additions, omissions and substitutions.

### **1494 Transitional provisions relating to limit on control of trustee companies**

- (1) This section applies in relation to a person and a trustee company if, immediately before the commencement of Part 5D.5, the percentage (the ***pre-commencement percentage***) of the person's voting power in the trustee company exceeded 15%.
- (2) Subject to subsection (3), Part 5D.5 applies in relation to the person and the trustee company as if paragraph 601VAA(a) specified the pre-commencement percentage (rather than 15%).
- (3) If, after the commencement of Part 5D.5, the percentage of the person's voting power in the trustee company is reduced, the following provisions have effect from the time of the reduction:
  - (a) if the reduced percentage exceeds 15%—Part 5D.5 applies in relation to the person and the trustee company as if paragraph 601VAA(a) specified the reduced percentage (rather than 15%);

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- (b) if the reduced percentage is 15% or less—this section ceases to apply, and never again applies, in relation to the person and the trustee company.

**1495 Transitional provisions relating to the amendments of Chapter 7**

- (1) This section applies to each company:
  - (a) that is a trustee company immediately after the commencement of the first regulations made for the purpose of paragraph 601RAB(1)(b); and
  - (b) that, at that time, holds an Australian financial services licence.
- (2) During the period of 6 months starting on the commencement of those regulations:
  - (a) the company's Australian financial services licence is taken to cover the provision by the company of traditional trustee company services; and
  - (b) section 601TAB does not apply in relation to the company; and
  - (c) Part 7.7 does not apply in relation to traditional trustee company services provided by the company.

Note: If the company wants to continue to provide traditional trustee company services after the end of the 6 month period, it will (before the end of that period) need to apply to ASIC to have the conditions of its licence varied to cover those services.

- (3) To avoid doubt, subsection (2) does not limit ASIC's powers under Part 7.6 (whether during or after the period of 6 months) in relation to the company's Australian financial services licence.

Note: For example, ASIC may (under Subdivision B of Division 4 of Part 7.6) impose or vary licence conditions, or may (under Subdivision C of Division 4 of Part 7.6) vary, cancel or suspend the licence.

**1496 General power for regulations to deal with transitional matters**

- (1) The regulations may make provisions of a transitional, application or saving nature in relation to any of the following:
  - (a) the transition from the regime provided for by laws of the States and Territories (as in force before commencement) relating to trustee companies to the regime provided for by this Act as amended by the amending Schedule;
  - (b) the amendments and repeals made to this Act by the amending Schedule.
- (2) Without limiting subsection (1), regulations made for the purpose of that subsection may modify provisions of this Act.

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**Part 10.12** Transitional provisions relating to the Corporations Legislation Amendment (Financial Services Modernisation) Act 2009

**Division 3** Transitional provisions relating to Schedule 3 to the Corporations Legislation Amendment (Financial Services Modernisation) Act 2009

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**Division 3—Transitional provisions relating to Schedule 3  
to the Corporations Legislation Amendment  
(Financial Services Modernisation) Act 2009**

**1497 Definitions**

In this Division:

*amending Schedule* means Schedule 3 to the *Corporations Legislation Amendment (Financial Services Modernisation) Act 2009*.

**1498 Application of amendments**

- (1) The amendment made by item 1 of the amending Schedule applies to promissory notes made after the commencement of that item.
- (2) The amendment made by item 2 of the amending Schedule applies to trustees appointed on or after the commencement of that item.



## **Part 10.13—Transitional provisions relating to the Personal Property Securities (Corporations and Other Amendments) Act 2010**

### **1499 Definitions**

In this Part:

**amending Act** means the *Personal Property Securities (Corporations and Other Amendments) Act 2010*.

**commencement time** means the time item 187 of Schedule 1 to the amending Act commences.

Note: Item 187 of Schedule 1 to the amending Act inserts sections 1499 to 1510. The item commences at the registration commencement time within the meaning of section 306 of the *Personal Property Securities Act 2009* (as provided by section 2 of the amending Act).

**registrable charge** means a charge created before the commencement time that was a registrable charge within the meaning of section 261 when it was created.

### **1500 Charges, liens and pledges—continuation of restriction of references**

- (1) This section applies despite the amendment of this Act made by item 10 of Schedule 1 to the amending Act if a reference to a charge in a provision of this Act, as in force immediately before the commencement time, did not include a reference to a lien or a pledge, or any other particular form of security over the property.

Note: Item 10 of Schedule 1 to the amending Act inserts the definition of **security interest** in section 51A.

- (2) In its application in relation to an interest in property created or arising before the commencement time, or under an agreement or instrument made before that time, the reference in that provision

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(as amended by the amending Act) to a security interest does not include a reference to a lien or a pledge, or that particular form of security over the property, as the case may be.

**1501 Charges, liens, pledges and third party property—application**

The amendments made by Part 1 (new concepts) of Schedule 1 to the amending Act apply:

- (a) in relation to charges, liens and pledges, whether created or arising before, at or after the commencement time; and
- (b) in relation to property owned, occupied or used by, or in the possession of, a corporation, whether the ownership, occupation, use or possession started before, at or after the commencement time.

**1501A References to the whole or substantially the whole of a company's property**

- (1) This section applies to a transitional security interest within the meaning of the *Personal Property Securities Act 2009*.

Note: For the meaning of *transitional security interest*, see section 308 of the *Personal Property Securities Act 2009*.

- (2) In working out for the purposes of this Act whether the security interest covers the whole, or substantially the whole, of the company's property at a time (the *later time*) that is at or after the commencement time, disregard any of the company's property that is PPSA retention of title property of the company at the later time.

Note: This Act gives certain powers to secured parties who hold security interests over the whole, or substantially the whole, of a company's property (for example, the power to appoint an administrator under section 436C).

**1501B Constructive notice of registrable charges**

Section 130 does not apply in relation to a document that has been lodged with ASIC to the extent that the document relates to a registrable charge.

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Note: Section 130 provides that a person is not taken to have information about a company merely because the information is available to the public from ASIC.

### **1502 Repeal of Chapter 2K (charges)—general**

- (1) For the period of 7 years after the commencement time, the amendments made by Part 2 of Schedule 1 to the amending Act do not apply in relation to registrable charges.

Note: The amendments made by Part 2 of Schedule 1 to the amending Act repeal Chapter 2K and make consequential amendments to other provisions.

- (2) This section applies subject to sections 1503 to 1506.

### **1503 Repeal of Chapter 2K (charges)—cessation of requirements in relation to documents or notices**

#### *Scope*

- (1) This section applies if, immediately before the commencement time, a document (however described) or notice is required to be lodged or given by a company or other person under one of the following provisions:
- (a) paragraph 263(1)(a), (b) or (c);
  - (b) paragraph 263(2)(b);
  - (c) subsection 263(3);
  - (d) paragraph 264(1)(a) or (b);
  - (e) paragraph 265(6)(b);
  - (f) paragraph 268(1)(a) or (b);
  - (g) subsection 268(2);
  - (h) subsection 269(1) or (2);
  - (i) subsection 270(4).

#### *Requirements that stop applying*

- (2) Whichever of the following requirements would otherwise apply stops applying at the commencement time:

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- (a) the requirement to lodge or give the document or notice;
- (b) the requirement for ASIC to enter or delete particulars in the Register in relation to the document or notice.

**1504 Repeal of Chapter 2K (charges)—application of section 266**

- (1) Subject to this section, section 266 stops applying at the commencement time in relation to registrable charges.
- (2) However, if a registrable charge is void under section 266 immediately before the commencement time, that section continues to apply in relation to the charge, subject to subsection (3) of this section.
- (3) The Court may, on such terms and conditions as seem to the Court just and expedient, by order, declare a registrable charge not to be, and never to have been, void under subsection 266(1) or (3), if:
  - (a) before the commencement time, the charge is void under subsection 266(1) or (3) (as the case requires); and
  - (b) either:
    - (i) an application is made to the Court under subsection 266(4) before the commencement time for an extension of the relevant period, and as at the commencement time, the Court had not made a decision in relation to the application; or
    - (ii) an application is made to the Court at or after the commencement time for an order under this subsection; and
  - (c) the Court is satisfied of the matters set out in subsection 266(4).

**1505 Repeal of Chapter 2K (charges)—cessation of company registration requirements**

The requirements in section 271 (company documentation and registration of charges) stop applying in relation to registrable charges at the commencement time.

**1506 Repeal of Chapter 2K (charges)—priority between registrable charges**

At and after the commencement time, registrable charges have the priority between themselves that they would have had under this Act as in force immediately before the commencement time, subject to Chapter 9 (Transitional provisions) of the *Personal Property Securities Act 2009*.

**1507 New section 440B (restrictions on third party property rights)**

The repeal of sections 440B, 440BA, 440BB and 440C by item 156 of Schedule 1 to the amending Act does not affect the operation of subsections 1483(9) and (10) in relation to:

- (a) the administration of a company that began at or after the start of the day section 440BA commenced, and before the commencement time within the meaning of section 1499; or
- (b) distress for rent that began to be carried out before the day section 440BB commenced.

Note: Sections 440BA and 440BB commenced on 31 December 2007.

**1508 New subsection 442CB(1) (administrator's duty of care)**

The amendment of this Act by item 135 of Schedule 1 to the amending Act does not apply in relation to the exercise of a power of sale if the power began to be exercised before the commencement time.

Note: Item 135 of Schedule 1 to the amending Act repealed subsection 442CB(1) and substituted a new subsection.

**1509 New section 588FP (security interests in favour of an officer of a company etc. void)**

Section 588FP does not apply in relation to a registrable charge.

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**1510 Winding up applied for before the commencement time**

Subject to this Part, the amendments made by the amending Act do not apply in relation to the winding up of a company under Part 5.4, Part 5.4A or Part 5.4B, or the subsequent liquidation of the company, if the application for winding up for the purposes of those Parts is made before the commencement time.

## **Part 10.14—Transitional provisions relating to the Corporations Amendment (Corporate Reporting Reform) Act 2010**

### **1510A Definition**

In this Part:

*amending Act* means the *Corporations Amendment (Corporate Reporting Reform) Act 2010*.

### **1510B Application of Part 1 of Schedule 1 to the amending Act**

- (1) The amendments made by items 1 to 4, items 11 to 16, items 18 to 23, items 29 and 30, items 32 to 42, items 45 to 47 and items 49 to 51 of Schedule 1 to the amending Act apply in relation to a company, registered scheme or disclosing entity for financial years of the company, registered scheme or disclosing entity ending on or after 30 June 2010.
- (1A) The amendment made by item 6 of Schedule 1 to the amending Act applies in relation to a company limited by guarantee incorporated on or after the commencement of that item.
- (2) The amendments made by items 7 and 48 of Schedule 1 to the amending Act apply in relation to dividends declared on or after the commencement of those items.
- (3) The amendments made by items 8, 9 and 10 of Schedule 1 to the amending Act apply in relation to cancellations of paid-up share capital that occur on or after the commencement of those items.
- (4) Despite the amendment made by item 17 of Schedule 1 to the amending Act, accounting standards made for the purposes of subsection 295(2) of this Act that were in force immediately before the commencement of that item continue in force, after that

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commencement, as if they were made for the purposes of subsection 295(2) of this Act as amended by that item.

- (5) The amendment made by item 17 of Schedule 1 to the amending Act applies to a report of a company, registered scheme or disclosing entity for financial years of the company, registered scheme or disclosing entity ending on or after 30 June 2010.
- (6) The amendments made by items 24 to 28 of Schedule 1 to the amending Act apply in relation to a company, registered scheme or disclosing entity for financial years of the company, registered scheme or disclosing entity ending on or after 30 June 2011.
- (7) Despite the amendment made by item 31 of Schedule 1 to the amending Act, accounting standards made for the purposes of subsection 303(2) of this Act that were in force immediately before the commencement of that item continue in force, after that commencement, as if they were made for the purposes of subsection 303(2) of this Act as amended by that item.
- (8) The amendment made by item 31 of Schedule 1 to the amending Act applies to a report of a disclosing entity for half-years of the disclosing entity ending on or after 30 June 2010.
- (9) The amendments made by items 43 and 44 of Schedule 1 to the amending Act apply where the previous financial year of the company, registered scheme or disclosing entity ends on or after 30 June 2010.



## **Part 10.15—Transitional provisions relating to the Corporations Amendment (Financial Market Supervision) Act 2010**

### **1511 Definition**

In this Part:

*amending Schedule* means Schedule 1 to the *Corporations Amendment (Financial Market Supervision) Act 2010*.

### **1512 Application of amendments**

- (1) The amendments made by items 2, 5 to 11, 14, 17 and 18 of the amending Schedule apply in relation to Australian market licences granted before, on or after the commencement of the amending Schedule.
- (2) The amendments made by items 12 and 13 of the amending Schedule apply in relation to applications for an Australian market licence:
  - (a) that were made but had not yet been decided before the day on which the amending Schedule commences; and
  - (b) that are made on or after the commencement of the amending Schedule.

### **1513 Regulations may deal with transitional matters**

- (1) The regulations may make provisions of a transitional, application or saving nature relating to the amendments and repeals made by the amending Schedule.
- (2) Without limiting subsection (1), regulations made for the purpose of that subsection may modify provisions of this Act.

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**Part 10.16—Transitional provisions relating to the  
Corporations Amendment (No. 1) Act 2010**

**1516 Application of amendments**

- (1) The amendments made by items 4 to 8 of Schedule 1 to the *Corporations Amendment (No. 1) Act 2010* apply in relation to requests made after the commencement of that Schedule to inspect, or receive a copy of, a register.
- (2) The amendment made by item 9 of that Schedule applies in relation to information obtained from a register before, at or after the commencement of that Schedule.
- (3) The amendments made by items 12 to 14 of that Schedule apply in relation to offers made after the commencement of that Schedule.

## **Part 10.17—Transitional provisions relating to the Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Act 2011**

### **1517 Application of Subdivision B of Division 1 of Part 2D.3**

Subdivision B of Division 1 of Part 2D.3 applies in relation to the setting of board limits on or after 1 July 2011.

### **1518 Application of sections 206J, 206K, 206L and 206M**

- (1) Section 206J applies to entry into arrangements on or after 1 July 2011, whether the remuneration was for services rendered before, on or after that day.
- (2) Section 206K applies to contracts entered into on or after 1 July 2011.
- (3) Sections 206L and 206M apply to recommendations made under contracts entered into on or after 1 July 2011.

### **1519 Application of subsection 249L(2)**

Subsection 249L(2) as substituted by the *Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Act 2011* applies in relation to AGMs held on or after 1 July 2011.

### **1520 Application of section 250BB**

Section 250BB applies to voting on or after 1 August 2011, whether the proxy was appointed before, on or after that day.

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**Part 10.17** Transitional provisions relating to the Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Act 2011

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**1521 Application of section 250BC**

Section 250BC applies to appointments of proxies made on or after 1 August 2011.

**1522 Application of section 250BD**

Section 250BD applies in relation to voting on or after 1 August 2011, whether the matter that is the subject of the resolution relates to a time before, on or after that day.

**1523 Application of subsections 250R(4) to (10)**

Subsections 250R(4), (5), (6), (7), (8), (9) and (10) apply in relation to voting on or after 1 August 2011, whether the remuneration report concerned relates to a financial year starting before, on or after that day.

**1524 Application of Division 9 of Part 2G.2**

Division 9 of Part 2G.2 applies in relation to AGMs held on or after 1 July 2011.

Note: This has the effect that the Division can apply in relation to a company only if both of its 2 most recent AGMs have been held on or after 1 July 2011.

**1525 Application of amendments of section 300A**

- (1) The amendments of section 300A made by the *Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Act 2011* apply in relation to remuneration reports for financial years starting on or after 1 July 2011.
- (2) Subsection (1) does not apply to the repeal of subsection 300A(1AAA).

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*Saving of regulations made for paragraph 300A(1)(f)*

- (3) The amendment of paragraph 300A(1)(f) made by the *Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Act 2011* does not affect the validity of any regulations in force for the purposes of that paragraph immediately before that amendment.

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**Part 10.18** Transitional and application provisions relating to the Future of Financial Advice Measures

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**Part 10.18—Transitional and application provisions relating to the Future of Financial Advice Measures**

**Division 1—Provisions relating to the Corporations Amendment (Further Future of Financial Advice Measures) Act 2012**

**1526 Definitions**

(1) In this Part:

*amending Act* means the *Corporations Amendment (Further Future of Financial Advice Measures) Act 2012*.

*custodial arrangement* has the same meaning as it has in subsection 1012IA(1), subject to subsection (2).

*platform operator* means the provider of a custodial arrangement, or custodial arrangements.

*provider*, in relation to a custodial arrangement, has the same meaning as in subsection 1012IA(1).

(2) The definition of *custodial arrangement* in subsection 1012IA(1) is to be read as if the reference in that definition to an instruction included a reference to:

- (a) a direction of the kind mentioned in paragraph 58(2)(d) or (da) of the *Superannuation Industry (Supervision) Act 1993* that will involve the acquisition of a particular financial product, or a financial product of a particular kind; and
- (b) a direction of the kind mentioned in subsection 52B(4) of the *Superannuation Industry (Supervision) Act 1993* that will involve the acquisition of a particular financial product, or a financial product of a particular kind.

### **1527 Application of best interests obligations**

- (1) The following apply in relation to the provision of personal advice to a person as a retail client on or after the application day (whether or not the advice was sought before that day):
  - (a) Division 2 of Part 7.7A, as inserted by item 23 of Schedule 1 to the amending Act;
  - (b) the amendments made by items 6, 7, 8, 9 and 34 of Schedule 1 to the amending Act.
- (2) In this section:

*application day*, in relation to a financial services licensee or a person acting as a representative of a financial services licensee, means:

- (a) if the financial services licensee has lodged notice with ASIC in accordance with subsection 967(1) that the obligations and prohibitions imposed under Part 7.7A are to apply to the licensee and persons acting as representatives of the licensee on and from the day specified in the notice—the day specified in the notice; or
- (b) if the person has not lodged such a notice—1 July 2013.

### **1528 Application of ban on conflicted remuneration**

- (1) Subject to subsections (1A) and (2), Division 4 of Part 7.7A, as inserted by item 24 of Schedule 1 to the amending Act, applies to a benefit given to a financial services licensee, or a representative of a financial services licensee, if:
  - (a) the benefit is given under an arrangement entered into on or after the application day; or
  - (b) the benefit is given by a platform operator.
- (1A) Subject to subsection (2), Division 4 of Part 7.7A, as inserted by item 24 of Schedule 1 to the amending Act, applies to a benefit given on or after 1 January 2021 to a financial services licensee, or a representative of a financial services licensee, if the benefit is

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given under an arrangement entered into before, on or after the application day.

- (2) The regulations may prescribe circumstances in which that Division applies, or does not apply, to a benefit given to a financial services licensee or a representative of a financial services licensee.
- (3) Section 1350 does not apply in relation to the operation of that Division in respect of a benefit given to a financial services licensee, or a representative of a financial services licensee.
- (4) In this section:

***application day:***

- (a) in relation to a financial services licensee or a person acting as a representative of a financial services licensee, means:
  - (i) if the financial services licensee has lodged notice with ASIC in accordance with subsection 967(1) that the obligations and prohibitions imposed under Part 7.7A are to apply to the licensee and persons acting as representatives of the licensee on and from a day specified in the notice—the day specified in the notice; or
  - (ii) in any other case—1 July 2013; and
- (b) in relation to any other person who would be subject to an obligation or prohibition under Division 4 of Part 7.7A if it applied, means:
  - (i) if a notice has been lodged with ASIC in accordance with subsection 967(3) that the obligations and prohibitions imposed under Part 7.7A are to apply to the person on and from a day specified in the notice—the day specified in the notice; or
  - (ii) in any other case—1 July 2013.



**1529 Application of ban on other remuneration—volume-based shelf-space fees**

- (1) Subject to subsections (1A) and (2), Subdivision A of Division 5 of Part 7.7A, as inserted by item 24 of Schedule 1 to the amending Act, applies to a benefit given to a financial services licensee, or an RSE licensee, under an arrangement entered into on or after the application day.
- (1A) Subject to subsection (2), Subdivision A of Division 5 of Part 7.7A, as inserted by item 24 of Schedule 1 to the amending Act, applies to a benefit given on or after 1 January 2021 to a financial services licensee, or an RSE licensee, under an arrangement entered into before, on or after the application day.
- (2) The regulations may prescribe circumstances in which that Subdivision applies to a benefit given to a financial services licensee, or an RSE licensee, under an arrangement entered into before the application day.
- (2A) Section 1350 does not apply in relation to the operation of that Subdivision in respect of a benefit given to a financial services licensee, or an RSE licensee.
- (3) In this section:  
*application day*:
  - (a) in relation to a financial services licensee or a person acting as a representative of a financial services licensee, means:
    - (i) if the financial services licensee has lodged notice with ASIC in accordance with subsection 967(1) that the obligations and prohibitions imposed under Part 7.7A are to apply to the licensee and persons acting as representatives of the licensee on and from a day specified in the notice—the day specified in the notice; or
    - (ii) in any other case—1 July 2013; and

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- (b) in relation to any other person who would be subject to an obligation or prohibition under Subdivision A of Division 5 of Part 7.7A if it applied, means:
  - (i) if a notice has been lodged with ASIC in accordance with subsection 967(3) that the obligations and prohibitions imposed under Part 7.7A are to apply to the person on and from the day specified in the notice—the day specified in the notice; or
  - (ii) in any other case—1 July 2013.

**1530 Section 1350 does not apply to regulations made for the purposes of subsection 1528(2) or 1529(2)**

Section 1350 does not apply in relation to regulations made for the purposes of subsection 1528(2) or 1529(2).

**1531 Application of ban on other remuneration—asset-based fees on borrowed amounts**

- (1) Subject to subsection (1A), Subdivision B of Division 5 of Part 7.7A, as inserted by item 24 of Schedule 1 to the amending Act, applies to asset-based fees charged on or after the application day on borrowed amounts, but only to the extent that those amounts are used or to be used to acquire financial products on or after that day.
- (1A) Subdivision B of Division 5 of Part 7.7A, as inserted by item 24 of Schedule 1 to the amending Act, applies to asset-based fees charged on or after 1 January 2021 on borrowed amounts, where those amounts have been used, are used or are to be used, to any extent, to acquire financial products before, on or after the application day.
- (2) Section 1350 does not apply in relation to the operation of that Subdivision in respect of an asset-based fee.
- (3) In this section:

*application day*, in relation to a financial services licensee or a person acting as a representative of a financial services licensee, means:

- (a) if the financial services licensee has lodged notice with ASIC in accordance with subsection 967(1) that the obligations and prohibitions imposed under Part 7.7A are to apply to the licensee and persons acting as representatives of the licensee on and from the day specified in the notice—the day specified in the notice; or
- (b) if the person has not lodged such a notice—1 July 2013.

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**Division 2—Provisions relating to the Corporations Amendment (Financial Advice Measures) Act 2016**

**1531A Definitions**

In this Division:

**commencement day** means the day on which Schedule 1 to the *Corporations Amendment (Financial Advice Measures) Act 2016* commences.

**1531B Best interests obligation**

The amendments made by items 12, 14A and 16 of Schedule 1 to the *Corporations Amendment (Financial Advice Measures) Act 2016* apply in relation to the provision of personal advice to a person as a retail client on or after the commencement day.

**1531C Renewal notices (opt-in requirement)**

- (1) The amendment made by item 21 of Schedule 1 to the *Corporations Amendment (Financial Advice Measures) Act 2016* applies in relation to an ongoing fee arrangement for those renewal notice days for the arrangement that occur on or after the commencement day.

- (2) In this item:

**renewal notice day** for an ongoing fee arrangement has the same meaning as it has in Part 7.7A, as in force immediately before the commencement day.

### **1531D Disclosure statements**

The amendments made by items 20A, 20B and 22 of Schedule 1 to the *Corporations Amendment (Financial Advice Measures) Act 2016* apply in relation to an ongoing fee arrangement for those disclosure days for the arrangement that occur on or after the commencement day.

### **1531E Conflicted remuneration**

The amendments made by items 23 to 35 of Schedule 1 to the *Corporations Amendment (Financial Advice Measures) Act 2016* apply in relation to a benefit if:

- (a) the benefit is one to which Division 4 of Part 7.7A applies under section 1528; and
- (b) the benefit is given on or after the commencement day.

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**Part 10.19—Transitional provisions relating to the  
Corporations Amendment (Phoenixing and  
Other Measures) Act 2012**

**1532 Definition**

In this Part:

*amending Act* means the *Corporations Amendment (Phoenixing and Other Measures) Act 2012*.

**1533 Part 1 of Schedule 1 to the amending Act (winding up by  
ASIC)**

- (1) Paragraph 489EA(1)(a) of the *Corporations Act 2001* as amended by the amending Act applies in relation to a return of particulars given to a company before, at or after the commencement of Schedule 1 to the amending Act.
- (2) Subsection 489EA(2) of the *Corporations Act 2001* as amended by the amending Act applies in relation to a review fee, if the due date for payment occurs before, on or after the day on which Schedule 1 to the amending Act commences.
- (3) Subsection 489EA(3) of the *Corporations Act 2001* as amended by the amending Act applies in relation to a reinstatement that occurs before, at or after the commencement of Schedule 1 to the amending Act.

**1534 Part 2 of Schedule 1 to the amending Act (publication  
requirements)**

- (1) The amendment of subsection 412(1) of the *Corporations Act 2001* made by Part 3 of Schedule 1 to the amending Act applies in relation to a notice published after the commencement of Schedule 1 to the amending Act.

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- (2) The amendment of subsection 436E(3) of the *Corporations Act 2001* made by Part 3 of Schedule 1 to the amending Act applies in relation to a meeting convened after the commencement of Schedule 1 to the amending Act.
  - (3) The amendment of subsection 439A(3) of the *Corporations Act 2001* made by Part 3 of Schedule 1 to the amending Act applies in relation to a meeting convened after the commencement of Schedule 1 to the amending Act.
  - (4) The amendment of subsection 446A(5) of the *Corporations Act 2001* made by Part 3 of Schedule 1 to the amending Act applies in relation to a resolution that is taken, because of section 446A of the *Corporations Act 2001*, to have been passed by a company after the commencement of Schedule 1 to the amending Act.
  - (5) The amendment of subsection 449C(5) of the *Corporations Act 2001* made by Part 3 of Schedule 1 to the amending Act applies in relation to a meeting convened after the commencement of Schedule 1 to the amending Act.
  - (6) The amendment of subsection 450A(1) of the *Corporations Act 2001* made by the amending Act applies in relation to an appointment of an administrator that occurs after the commencement of Schedule 1 to the amending Act.
  - (7) The amendment of section 465A of the *Corporations Act 2001* made by Part 3 of Schedule 1 to the amending Act applies in relation to an application made under section 459P, 462 or 464 of that Act after the commencement of Schedule 1 to the amending Act.
  - (8) The amendment of subsection 491(2) of the *Corporations Act 2001* made by Part 3 of Schedule 1 to the amending Act applies in relation to a resolution passed after the commencement of Schedule 1 to the amending Act.
  - (9) The amendment of subsection 497(2) of the *Corporations Act 2001* made by Part 3 of Schedule 1 to the amending Act applies in
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relation to a meeting convened after the commencement of Schedule 1 to the amending Act.

- (10) The amendment of subsection 498(3) of the *Corporations Act 2001* made by Part 3 of Schedule 1 to the amending Act applies in relation to an adjournment that occurs after the commencement of Schedule 1 to the amending Act.
- (11) The amendment of subsection 509(2) of the *Corporations Act 2001* made by Part 3 of Schedule 1 to the amending Act applies in relation to a meeting convened after the commencement of Schedule 1 to the amending Act.
- (12) The amendment of subsection 568A(2) of the *Corporations Act 2001* made by Part 3 of Schedule 1 to the amending Act applies in relation to a disclaimer of property, if the disclaimer occurs after the commencement of Schedule 1 to the amending Act.
- (13) Despite the amendments of sections 589, 601AA, 601AB and 1351 of the *Corporations Act 2001* made by Part 3 of Schedule 1 to the amending Act, if, before the commencement of Schedule 1 to the amending Act, ASIC gave notice of the proposed deregistration of a company in accordance with subsection 601AA(4) or 601AB(3) of the *Corporations Act 2001*, that Act continues to apply, in relation to the deregistration of the company, as if those amendments had not been made.

**1535 Part 3 of Schedule 1 to the amending Act (miscellaneous amendments)**

Section 600AA of the *Corporations Act 2001* as amended by the amending Act applies in relation to an appointment, if the appointment occurs after the commencement of Schedule 1 to the amending Act.



## **Part 10.20—Transitional provisions relating to the Corporations Legislation Amendment (Audit Enhancement) Act 2012**

### **1536 Definitions**

In this Part:

*amending Act* means the *Corporations Legislation Amendment (Audit Enhancement) Act 2012*.

*commencement* means the commencement of Schedule 1 to the amending Act.

### **1537 Application of amendments relating to annual transparency reports**

The amendments made by Part 2 of Schedule 1 to the amending Act apply in relation to annual transparency reports for:

- (a) the first transparency reporting year that ends after commencement (even if part of that year occurs before commencement); and
- (b) all later transparency reporting years.

Section 1538

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**Part 10.21—Transitional provision relating to the  
Corporations Legislation Amendment  
(Financial Reporting Panel) Act 2012**

**1538 Courts etc. may have regard to Financial Reporting Panel  
report**

Despite the repeal of section 323EM by the *Corporations Legislation Amendment (Financial Reporting Panel) Act 2012*, that section continues to apply, in relation to a report of the Financial Reporting Panel, as if that repeal had not happened.

**Part 10.21A—Transitional provisions relating to  
the Superannuation Legislation  
Amendment (Service Providers and Other  
Governance Measures) Act 2013**

**1538A Application of amendments relating to contributions to a  
fund or scheme**

The amendments made by items 1, 2 and 3 of Schedule 1 to the  
*Superannuation Legislation Amendment (Service Providers and  
Other Governance Measures) Act 2013* apply to contributions paid  
or payable on or after 1 July 2013.

**1538B Application of amendments relating to Statements of Advice**

The amendments made by items 7 and 8 of Schedule 1 to the  
*Superannuation Legislation Amendment (Service Providers and  
Other Governance Measures) Act 2013* apply in relation to  
personal advice given on or after the commencement of those  
items.

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**Part 10.22—Transitional provisions relating to the Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012**

**1539 Application of section 1017BA (Obligation to make product dashboard publicly available)**

Section 1017BA applies:

- (a) to the extent that it relates to MySuper products—on and after 1 July 2013; and
- (b) to the extent that it relates to choice products—on and after 1 July 2014.

**1540 Application of subsection 1017BB(1) (Obligation to make information relating to investment of assets of superannuation entities publicly available)**

Subsection 1017BB(1) applies in relation to the reporting day that is 31 December 2019 and to later reporting days.

**Part 10.22A—Transitional provisions relating to  
the Treasury Laws Amendment (Improving  
Accountability and Member Outcomes in  
Superannuation Measures No. 1) Act 2019**

**1541A Application of amendments relating to portfolio holdings  
disclosure**

The amendments of section 1017BB made by Schedule 6 to the  
*Treasury Laws Amendment (Improving Accountability and  
Member Outcomes in Superannuation Measures No. 1) Act 2019*  
apply in relation to the reporting day that is 31 December 2019 and  
to later reporting days.

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## **Part 10.23—Transitional provisions relating to the Clean Energy Legislation (Carbon Tax Repeal) Act 2014**

### **1542 Definition**

In this Part:

*designated carbon unit day* has the same meaning as in Part 3 of Schedule 1 to the *Clean Energy Legislation (Carbon Tax Repeal) Act 2014*.

### **1543 Transitional—carbon units issued before the designated carbon unit day**

Despite the amendments of this Act made by Schedule 1 to the *Clean Energy Legislation (Carbon Tax Repeal) Act 2014*, this Act continues to apply, in relation to carbon units issued before the designated carbon unit day, as if those amendments had not been made.

### **1544 Transitional—variation of conditions on Australian financial services licences**

*Scope*

- (1) This section applies if, as at the end of the designated carbon unit day, an Australian financial services licence is subject to a condition that authorises the financial services licensee to provide financial services in relation to financial products that are carbon units.

*Variation*

- (2) After that day, subsections 914A(3), (4) and (5) do not apply in relation to a variation of the condition, if the only effect of the variation is to remove the authorisation to provide financial services in relation to financial products that are carbon units.

**1545 Transitional—immediate cancellation of Australian financial services licences**

Section 915B applies, on and after the designated carbon unit day, as if the following subsection was added at the end of the section:

*Licence relating to carbon units*

- (5) ASIC may cancel an Australian financial services licence held by a person, by giving written notice to the person, if the licence only authorises the person to provide financial services that relate to financial products that are carbon units.

**1546 Transitional—statements of reasons for cancellation of Australian financial services licences**

Section 915G does not apply to a cancellation under subsection 915B(5) (as inserted by section 1545).

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**Division 1** Definitions

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**Part 10.23A—Transitional provisions relating to  
the Corporations Amendment (Professional  
Standards of Financial Advisers) Act 2017**

**Division 1—Definitions**

**1546A Definitions**

In this Part:

***amending Act*** means the *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017*.

***commencement*** means the start of the day Part 1 of Schedule 1 to the amending Act commences.

***education and training standards*** has the meaning given by section 921B.

***existing provider*** means:

- (a) a person who:
  - (i) is a relevant provider at any time between 1 January 2016 and 1 January 2019; and
  - (ii) is not banned or disqualified under Division 8 of Part 7.6 on 1 January 2019; and
  - (iii) is not, on that day, subject to an enforceable undertaking under section 93AA of the ASIC Act to not provide financial product advice or a financial service; or
- (b) a person who:
  - (i) at any time between 1 January 2016 and 1 January 2019, provides personal advice in a foreign country to retail clients in relation to relevant financial products; and
  - (ii) is not prohibited under the law of the foreign country from providing such advice on 1 January 2019.



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***foreign country*** includes a region, where:

- (a) the region is a colony, territory or protectorate of a foreign country; or
- (b) the region is part of a foreign country; or
- (c) the region is under the protection of a foreign country; or
- (d) a foreign country exercises jurisdiction or control over the region; or
- (e) a foreign country is responsible for the region's international relations.

***relevant financial products*** has the meaning given by section 910A.

***relevant provider*** has the meaning given by section 910A.

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**Part 10.23A** Transitional provisions relating to the Corporations Amendment  
(Professional Standards of Financial Advisers) Act 2017

**Division 2** Application and transitional provisions

Section 1546C

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**Division 2—Application and transitional provisions**

**1546C Application of limitation on authorisation to provide  
personal advice and offence**

*Limitation on authorisation to provide personal advice*

- (1) Section 921C, as inserted by the amending Act, applies in relation to:
- (a) any Australian financial services licence granted on or after 1 January 2019 to a person who is not an existing provider; and
  - (b) any authorisation given on or after that day to a person who is not an existing provider.

Note: Section 921C provides that a person cannot be granted a licence, or be authorised, to provide certain financial advice unless the person meets certain conditions.

*Restriction on use of terms “financial adviser” and “financial planner”*

- (5) The following provisions, as inserted by the amending Act, apply on and after 1 January 2019:
- (a) section 923C;
  - (b) items 269AAA and 269AAB of the table in Schedule 3.

Note: Those provisions relate to offences for using the terms “financial adviser” and “financial planner”.

**1546D Application of requirements relating to provisional relevant  
providers**

Section 921F, as inserted by the amending Act, applies in relation to any authorisation given on or after 1 January 2019 to a person who is not an existing provider.

Note: Section 921F sets out the requirements in relation to a person who is a provisional relevant provider.

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**1546E Application of continuing professional development standard for relevant providers**

- (1) Sections 921D and 922HA, as inserted by the amending Act, apply on and after 1 January 2019.

Note: Section 921D provides that certain relevant providers must meet the continuing professional development standard. Section 922HA requires ASIC to be notified of the day on which a financial services licensee's CPD year is to begin.

- (2) Sections 922HB and 922HC, as inserted by the amending Act, apply in relation to any CPD year of a financial services licensee that begins on or after 1 January 2019.

Note: Section 922HB requires ASIC to be notified if relevant providers do not comply with the continuing professional development standard. Section 922HC requires a financial services licensee to retain evidence of the continuing professional development of relevant providers.

- (3) Section 922N, as inserted by the amending Act, applies in relation to a request made of a person on or after 1 January 2019 for the purposes of subparagraph 922N(1)(c)(iii).

Note: Among other things, section 922N allows a financial services licensee to ask a person to provide information relating to whether the licensee must lodge a notice under section 922HB.

- (4) Subsection (5) applies if:

- (a) the first CPD year of a financial services licensee commences after 1 January 2019; and
- (b) before the start of the licensee's first CPD year:
  - (i) the licensee is a relevant provider; or
  - (ii) a relevant provider is authorised to provide personal advice to retail clients, on behalf of the licensee, in relation to relevant financial products.

- (5) Sections 922HB, 922HC and 922Q, as inserted by the amending Act, apply as if a reference in those sections to a financial services licensee's CPD year included a reference to the period:

- (a) beginning on the later of 1 January 2019 and:

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- (i) if subparagraph (4)(b)(i) applies—the day the licensee is granted an Australian financial services licence that covers the provision of personal advice to retail clients in relation to relevant financial products; and
  - (ii) if subparagraph (4)(b)(ii) applies—the first day the relevant provider is authorised to provide personal advice to retail clients, on behalf of the licensee, in relation to relevant financial products; and
- (b) ending on the day before the licensee’s first CPD year.

Note: Among other things, section 922Q requires failures of relevant providers to comply with the continuing education standard to be entered on the Register.

**1546F Application of Code of Ethics to relevant providers**

Sections 921E and 922HD, as inserted by the amending Act, apply on and after 1 January 2020.

Note: Section 921E requires a relevant provider to comply with the Code of Ethics. Section 922HD requires ASIC to be notified of failures to comply with the Code of Ethics.

**1546G Application of obligations in relation to compliance schemes**

- (1) Section 921H, as inserted by the amending Act, applies on and after 15 November 2019:
- (a) in relation to a person who becomes a financial services licensee on or after that day; and
  - (b) for a person who becomes a financial services licensee before that day:
    - (i) in relation to a person who becomes a relevant provider on or after that day; and
    - (ii) in relation to a person who becomes a relevant provider before that day as if subsection 921H(2) required the scheme to cover the relevant provider by 1 January 2020.

Note: Section 921H requires a financial services licensee to ensure that a compliance scheme covers each of its relevant providers.

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- (2) Section 921J, as inserted by the amending Act, applies on and after 15 November 2019.

Note: Section 921J sets out when a compliance scheme *covers* a relevant provider.

- (3) Sections 921K, 921Q, 921R and 921T, as inserted by the amending Act, apply on and after the day this section commences.

Note: Section 921K provides that a monitoring body for a compliance scheme may apply to ASIC for approval of the scheme. Section 921Q provides that ASIC may request information about a compliance scheme from the monitoring body for the scheme. Section 921R provides that a monitoring body may propose to modify a scheme in certain circumstances. Section 921T requires a monitoring body to notify ASIC of certain reductions in the body's resources or expertise.

- (4) Sections 921L, 921M, 921N, 921P and 921S, as inserted by the amending Act, apply on and after 1 January 2020.

Note: Sections 921L to 921N include provisions about investigations by monitoring bodies. Section 921P provides for compliance schemes to be made publicly available. Section 921S provides for the review of compliance schemes.

- (5) Paragraphs 922E(1)(i) and 922F(1)(n), as inserted by the amending Act, apply on and after 15 November 2019 in relation to notices lodged under section 922D on or after that day.

Note: Paragraphs 922E(1)(i) and 922F(1)(n) require notices lodged under section 922D in relation to a relevant provider to include the name of the compliance scheme that is to cover the relevant provider.

### **1546H Application of obligation for standards body to publish annual report**

- (1) Section 921ZC, as inserted by the amending Act, applies on and after 1 July 2017.

- (2) If the declaration of a body corporate to be the standards body under section 921X takes effect at a time during a financial year, the first annual report published by the standards body must cover the period beginning at that time and ending at the end of the next financial year as if that period were a financial year.

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**1546J Application of obligation to notify ASIC about a person who becomes a relevant provider**

Sections 922D, 922E and 922F, as inserted by the amending Act, apply (subject to subsection 1546G(5) and sections 1546K to 1546N) in relation to a person who becomes a relevant provider if:

- (a) the person becomes a relevant provider after commencement;  
or
- (b) both of the following apply:
  - (i) the person becomes a relevant provider before commencement;
  - (ii) immediately before commencement, a notice has not been lodged in accordance with section 922D, as notionally inserted into this Act by Schedule 8D to the *Corporations Regulations 2001*.

Note: Section 922D requires ASIC to be notified if a person becomes a relevant provider.

**1546K Application of requirements relating to information about relevant provider's principal place of business**

Paragraphs 922E(1)(b) and 922F(1)(b), as inserted by the amending Act, apply on and after 15 November 2019 in relation to notices lodged under section 922D on or after that day.

Note: Paragraphs 922E(1)(b) and 922F(1)(b) require notices lodged under section 922D in relation to a relevant provider to include the address of the relevant provider's principal place of business.

**1546L Application of requirements relating to information about membership of professional associations where relevant provider is licensee**

Section 922E, as inserted by the amending Act, applies until the start of 15 November 2019 as if paragraph 922E(1)(h) were replaced with the following:

- (h) information about both of the following:

- (i) the educational qualifications of, and any training courses completed by, the relevant provider;
  - (ii) the relevant provider's membership (if any) of professional bodies;
- to the extent that the qualifications, training courses or memberships are relevant to the provision of financial services (and if the relevant provider has more than 5 memberships, the 5 memberships that the person lodging the notice believes, on reasonable grounds, are most relevant to the provision of financial services);

**1546M Application of requirements relating to information about membership of professional associations where relevant provider is not licensee**

Section 922F, as inserted by the amending Act, applies until the start of 15 November 2019 as if paragraph 922F(1)(m) were replaced with the following:

- (m) information about both of the following:
  - (i) the educational qualifications of, and any training courses completed by, the relevant provider;
  - (ii) the relevant provider's membership (if any) of professional bodies;

to the extent that the qualifications, training courses or memberships are relevant to the provision of financial services (and if the relevant provider has more than 5 memberships, the 5 memberships that the person lodging the notice believes, on reasonable grounds, are most relevant to the provision of financial services);

**1546N Application of requirements relating to information about provisional relevant provider's work and training**

Paragraphs 922F(1)(f) and (g), as inserted by the amending Act, apply in relation to notices lodged under section 922D on or after 1 January 2019.

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**Division 2** Application and transitional provisions

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Note: Paragraphs 922F(1)(f) and (g) require notices lodged under section 922D to include information in relation to provisional relevant providers and their work and training.

**1546P Application of ongoing obligation to notify ASIC when there is a change in a matter for a relevant provider**

Paragraph 922H(1)(a), as inserted by the amending Act, applies in relation to a change in a matter if:

- (a) the change occurs after commencement; or
- (b) both of the following apply:
  - (i) the change occurs before commencement;
  - (ii) immediately before commencement, a notice has not been lodged in accordance with section 922H, as notionally inserted into this Act by Schedule 8D to the *Corporations Regulations 2001*.

**1546Q Application of obligation to notify ASIC about a person who starts to have control of a body corporate licensee**

Section 922J, as inserted by the amending Act, applies in relation to a person who starts to have control of a body corporate licensee if:

- (a) the person starts to have control of the licensee after commencement; or
- (b) both of the following apply:
  - (i) the person starts to have control of the licensee before commencement;
  - (ii) immediately before commencement, a notice has not been lodged in accordance with section 922J, as notionally inserted into this Act by Schedule 8D to the *Corporations Regulations 2001*.



**1546R Application of obligation to notify ASIC about a person who ceases to have control of a body corporate licensee**

Section 922K, as inserted by the amending Act, applies in relation to a person who ceases to have control of a body corporate licensee if:

- (a) the person ceases to have control of the licensee after commencement; or
- (b) both of the following apply:
  - (i) the person ceases to have control of the licensee before commencement;
  - (ii) immediately before commencement, a notice has not been lodged in accordance with section 922K, as notionally inserted into this Act by Schedule 8D to the *Corporations Regulations 2001*.

**1546S Application of obligation for relevant providers to provide information to financial services licensees**

Section 922N, as inserted by the amending Act, applies in relation to a request made of a person if:

- (a) both of the following apply:
  - (i) the request is made of the person for the purposes of subparagraph 922N(1)(c)(i) or (ii);
  - (ii) the request is made after commencement (whether the person becomes a relevant provider before or after commencement); or
- (b) both of the following apply:
  - (i) the request (as mentioned in paragraph 922N(1)(c), as notionally inserted into this Act by Schedule 8D to the *Corporations Regulations 2001*) is made before commencement;
  - (ii) immediately before commencement, the person has not provided the information requested.

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**1546T Application of requirements relating to Register of Relevant Providers**

- (1) Paragraphs 922Q(2)(b), (r), and (v), as inserted by the amending Act, apply on and after 1 January 2020.
- (2) Subparagraph 922Q(2)(j)(ii) and paragraph 922Q(2)(m), as inserted by the amending Act, apply on and after 1 January 2019.
- (3) Section 922Q, as inserted by the amending Act, applies until the start of 1 January 2020 as if subparagraph 922Q(2)(u)(ii) were replaced with the following:
  - (ii) the relevant provider's membership (if any) of professional associations, to the extent that the memberships are relevant to the provision of financial services;
- (4) Otherwise, sections 922Q and 922S, as inserted by the amending Act, apply on and after commencement.

**1546U Relevant provider numbers given before commencement**

For the purposes of this Act, a number given by ASIC to a person in accordance with regulation 7.6.06A of the *Corporations Regulations 2001* is taken to have been given in accordance with section 922R of this Act, as inserted by the amending Act.

**1546V Continuation of Register of Relevant Providers**

The repeal of regulation 7.6.06B of the *Corporations Regulations 2001* by the *Corporations Amendment (Professional Standards of Financial Advisers) Regulations 2017* does not affect the continuity of the register of relevant providers established under that regulation.

## **Division 3—Transitional notices**

### **1546W Obligation to notify ASIC of certain information**

- (1) A notice must be lodged under this section, in the prescribed form, if, before 15 November 2019, a notice was lodged in relation to a relevant provider under:
  - (a) section 922D, as inserted by the amending Act; or
  - (b) section 922D, as notionally inserted into this Act by Schedule 8D to the *Corporations Regulations 2001*.
- (2) The notice must include:
  - (a) the address of the relevant provider's principal place of business; and
  - (b) the name of the compliance scheme that is to cover the relevant provider.
- (3) The notice must be lodged before 1 January 2020 by:
  - (a) if the relevant provider is a financial services licensee—the licensee; or
  - (b) otherwise—the financial services licensee on whose behalf the relevant provider is authorised to provide personal advice to retail clients in relation to relevant financial products.
- (4) Subsection 921J(2) applies, subject to this section, as if the reference in that subsection to section 922D included a reference to this section.

### **1546X Obligation to notify ASIC of CPD year**

- (1) A notice must be lodged under this section, in the prescribed form, if, before 1 January 2019, ASIC granted an applicant an Australian financial services licence that covers the provision of personal advice to retail clients in relation to relevant financial products.
- (2) The notice must include the day of the year on which the relevant financial services licensee's CPD year begins.

**Chapter 10** Transitional provisions

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- (3) The notice must be lodged by the licensee before 1 January 2019.
- (4) Subsection 922HA(3) applies as if a reference in that subsection to subsection 922HA(1) or (3) included a reference to this section.

**1546ZA Offence for failing to lodge transitional notices**

Section 922M applies as if a reference in that section to a notice provision included a reference to a notice given under this Division.

Note: Section 922M provides that a person commits an offence if a person does not lodge certain notices.

## **Part 10.24—Transitional provisions relating to the Corporations Legislation Amendment (Deregulatory and Other Measures) Act 2014**

### **1547 Definitions**

In this Part:

*amending Act* means the *Corporations Legislation Amendment (Deregulatory and Other Measures) Act 2014*.

### **1548 Application of amendments relating to calling of general meetings**

The amendments of section 249D made by Schedule 1 to the amending Act do not apply in relation to a request made under that section before the commencement of that Schedule.

### **1549 Application of amendments relating to directors' reports for listed companies**

The amendments of section 300A made by Schedule 1 to the amending Act apply in relation to directors' reports for financial years ending on or after the commencement of that Schedule.

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**Part 10.24A—Transitional provisions relating to the Corporations Amendment (Life Insurance Remuneration Arrangements) Act 2017**

**1549A Definitions**

In this Part:

*amending Act* means the *Corporations Amendment (Life Insurance Remuneration Arrangements) Act 2017*.

*commencement day* means the day on which Schedule 1 to the amending Act commences.

**1549B Applications of amendments relating to life risk insurance products**

- (1) Subject to subsections (2), (3) and (4), the amendments made by Schedule 1 to the amending Act apply to a benefit given to a financial services licensee, or a representative of a financial services licensee, under an arrangement entered into before, on or after the commencement day.
- (2) The amendments made by Schedule 1 to the amending Act do not apply to a benefit given to a financial services licensee, or a representative of a financial services licensee, in relation to a life risk insurance product if:
  - (a) the life risk insurance product is issued before the commencement day; or
  - (b) the application for the issue of the life risk insurance product is made before the commencement day and the product is issued within 3 months after the commencement day.

Note: This means that if a benefit is given in relation to a group of life risk insurance products, some of which were issued before the

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commencement day and some after, the products issued before the commencement day, or in circumstances covered by paragraph (2)(b), would be ignored for the purposes of applying the amendments.

- (3) The regulations may prescribe circumstances in which the amendments made by Schedule 1 to the amending Act apply, or do not apply, to a benefit given to a financial services licensee or a representative of a financial services licensee.
- (4) Despite any other provision of this section or the regulations, the amendments made by Schedule 1 to the amending Act do not apply to a benefit given to a financial services licensee, or a representative of a financial services licensee, to the extent that the operation of those amendments would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph of the Constitution).

## **Part 10.25—Transitional provisions relating to the Insolvency Practice Schedule (Corporations)**

### **Division 1—Introduction**

#### **1550 Simplified outline of this Part**

This Part deals with the way this Act will apply when the provisions of the *Insolvency Law Reform Act 2016* begin to operate.

*Application of Part 2 of the Insolvency Practice Schedule  
(Corporations)*

A person registered as a liquidator before the commencement of Part 1 of Schedule 2 to the *Insolvency Law Reform Act 2016* will continue to be registered and must comply with the requirements and duties under Part 2 of the Insolvency Practice Schedule (Corporations).

*Application of Part 3 of the Insolvency Practice Schedule  
(Corporations)*

Part 3 of the Insolvency Practice Schedule (Corporations) will apply to an external administration that starts on or after the commencement of Part 1 of Schedule 2 to the *Insolvency Law Reform Act 2016* and to most ongoing administrations (but generally only in relation to new events).

*Proceedings before the Court or the Administrative Appeals  
Tribunal*



Proceedings already begun in the Court or the Administrative Appeals Tribunal before the commencement of the amendments made by Part 1 of Schedule 2 to the *Insolvency Law Reform Act 2016* will continue under the old Act. Orders of the Court under the old Act continue to have effect.

*Regulations*

Regulations may be made to deal with other transitional matters.

### 1551 Definitions

In this Part:

**commencement day** means the day on which Part 1 of Schedule 2 to the *Insolvency Law Reform Act 2016* commences.

**Insolvency Practice Schedule (Corporations)** means Schedule 2 to this Act, and includes rules made under section 105-1 of that Schedule.

**make**, in relation to an order that is a direction, includes give.

**new external administration** of a company means an external administration of a company that starts on or after the commencement day.

**old Act** means the *Corporations Act 2001*, as in force immediately before the commencement day and includes the old regulations.

**old Act registrant** has the meaning given by subsection 1553(4).

**old Act registration day**, in relation to a person, has the meaning given by subsection 1555(2).

**old regulations** means the *Corporations Regulations 2001*, as in force immediately before the commencement day.

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**Division 1** Introduction

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***ongoing external administration*** of a company means an external administration of a company that started before the commencement day and ends after that day.

***order*** includes a direction.

***registered***: a person is ***registered*** as a liquidator, or as a liquidator of a specified body corporate, at a particular time in the circumstances set out in subsection 1552(2).

***Register of Liquidators*** means the Register of Liquidators established and maintained under section 15-1 of the Insolvency Practice Schedule (Corporations).

## **Division 2—Application of Part 2 of the Insolvency Practice Schedule (Corporations) and related consequential amendments**

### **Subdivision A—Registering liquidators**

#### **1552 Applications for registration under the old Act**

- (1) If, before the commencement day:
  - (a) a person has applied for registration as a liquidator, or as a liquidator of a specified body corporate, under section 1279 of the old Act; and
  - (b) the person's application has not been refused; and
  - (c) the person is not registered before the commencement day as a liquidator, or as a liquidator of a specified body corporate;the application is taken never to have been made and ASIC must refund any fee paid in relation to the application.
- (2) A person is *registered* as a liquidator, or as a liquidator of a specified body corporate, at a particular time if:
  - (a) a certificate of registration as a liquidator or as a liquidator of a specified body corporate has been issued to the person under subsection 1282(6) of the old Act before that time; and
  - (b) the day specified in the certificate as the day on which the registration would begin occurs before the day on which that time occurs.

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**1553 Persons registered under the old Act continue to be registered under the Insolvency Practice Schedule (Corporations)**

*Person registered under the old Act immediately before the commencement day*

- (1) If a person is registered as a liquidator, or as a liquidator of a specified body corporate, immediately before the commencement day, on the commencement day the person is taken to be registered as a liquidator under Subdivision B of Division 20 of the Insolvency Practice Schedule (Corporations).

*Person registered but suspended under the old Act before the commencement day*

- (2) If:
- (a) a person is registered as a liquidator, or as a liquidator of a specified body corporate, before the commencement day; and
  - (b) that person's registration is suspended before the commencement day; and
  - (c) the period of the suspension does not expire before the commencement day;

the person is taken to be registered as a liquidator under Subdivision B of Division 20 of the Insolvency Practice Schedule (Corporations) on the commencement day, but the person's registration is taken to be suspended under the Insolvency Practice Schedule (Corporations) for a period that ends when the period of the suspension under the old Act would have ended.

Note: The old Act registrant could apply under Subdivision F of Division 40 of the Insolvency Practice Schedule (Corporations) to have the suspension lifted or shortened.

*Circumstances in which person not taken to be registered*

- (3) Despite subsections (1) and (2), a person mentioned in one of those subsections is not taken to be registered as a liquidator under Subdivision B of Division 20 of the Insolvency Practice Schedule
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(Corporations) on the commencement day if, at the beginning of that day:

- (a) the person is an insolvent under administration; or
- (b) the person is dead.

*Meaning of old Act registrant*

- (4) A person who is taken to be registered under Subdivision B of Division 20 of the Insolvency Practice Schedule (Corporations) because of this section is referred to as an ***old Act registrant***.

**1554 Old Act registrant's details**

- (1) ASIC must enter on the Register of Liquidators, in relation to each old Act registrant, the details prescribed under subsection 15-1(3) of the Insolvency Practice Schedule (Corporations) that relate to that old Act registrant.
- (2) If ASIC holds information in relation to an old Act registrant before the commencement day, ASIC may use and disclose the information for the purposes of establishing and maintaining the Register of Liquidators.

**1555 Period of old Act registrant's registration under the Insolvency Practice Schedule (Corporations)**

- (1) The registration of an old Act registrant under the Insolvency Practice Schedule (Corporations) is for a period ending on the first anniversary of the old Act registration day for that person that occurs on or after the commencement day.
- (2) The ***old Act registration day*** in relation to a person who was registered (or but for a suspension would have been registered) as a liquidator, or as a liquidator of a specified body corporate, immediately before the commencement day, is the day on which that registration began.

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- (3) To avoid doubt, the registration of an old Act registrant under the Insolvency Practice Schedule (Corporations) may be renewed in accordance with that Schedule.

**1556 Conditions for old Act registrants—conditions under the Insolvency Practice Schedule (Corporations)**

To avoid doubt, a condition may be imposed on an old Act registrant (or on a class that includes an old Act registrant) under the Insolvency Practice Schedule (Corporations) in accordance with that Schedule.

**1557 Current conditions for old Act registrants—undertakings under the old Act**

*Undertakings under the old Act*

- (1) If:
- (a) an old Act registrant was required to give an undertaking under paragraph 1292(9)(b) or (c) of the old Act; and
  - (b) that requirement is still in force immediately before the commencement day;
- it is a condition of the old Act registrant's registration under the Insolvency Practice Schedule (Corporations) that he or she gives and complies with the undertaking.
- (2) A condition imposed under subsection (1) is a **current condition** imposed on the old Act registrant.

*Varying etc. conditions of registration*

- (3) Subdivision C of Division 20 of the Insolvency Practice Schedule (Corporations) applies to a condition imposed under subsection (1) in the same way as it applies to a condition imposed by a committee under the Insolvency Practice Schedule (Corporations).

**1558 Current conditions for old Act registrants—undertakings under the ASIC Act**

*Undertakings under the ASIC Act*

- (1) If:
- (a) before the commencement day, an old Act registrant gives ASIC an undertaking under section 93AA of the ASIC Act to engage in, or refrain from engaging in, conduct as a liquidator, or as a liquidator of a specified body corporate; and
  - (b) that undertaking is in force immediately before the commencement day;
- it is a condition of the old Act registrant's registration under the Insolvency Practice Schedule (Corporations) that he or she comply with the undertaking.
- (2) A condition imposed under subsection (1) is a **current condition** imposed on the old Act registrant.

*Enforcement of undertaking under the ASIC Act not affected*

- (3) Nothing in this section affects the application of section 93AA of the ASIC Act in relation to a breach of an undertaking accepted under that section.

**1559 Old Act registrant registered as liquidator of a specified body corporate**

*Old Act registrant may not accept further appointments*

- (1) If an old Act registrant was registered as a liquidator of a specified body corporate immediately before the commencement day, it is a condition of the old Act registrant's registration under the Insolvency Practice Schedule (Corporations) that he or she must not accept any further appointments as external administrator of a company.

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- (2) That condition is a **current condition** imposed on the old Act registrant.

*Registration cancelled once current administrations completed*

- (3) On the day immediately after the external administration of the body corporate in relation to which the old Act registrant was registered ends:
- (a) the old Act registrant is taken to have lodged a request in the approved form in accordance with paragraph 40-30(1)(f) of the Insolvency Practice Schedule (Corporations) to have his or her registration as a liquidator cancelled; and
  - (b) ASIC is taken to have cancelled the registration under subsection 40-30(1) of the Insolvency Practice Schedule (Corporations).

*Old Act registrant applies for registration under section 20-5 of the Insolvency Practice Schedule (Corporations)*

- (4) To avoid doubt, if the old Act registrant applies under section 20-5 of the Insolvency Practice Schedule (Corporations) to be registered as a liquidator, and is registered in response to that application, this section does not affect that registration.

**1560 Old Act registrant chooses not to renew**

*Application of this section*

- (1) This section applies if an old Act registrant does not apply for renewal of his or her registration under the Insolvency Practice Schedule (Corporations) before his or her period of registration under subsection 1555(1) ends (the **expiry day**).



*Old Act registrant may not accept further appointments after registration expires*

- (2) The old Act registrant is taken to be registered as a liquidator under Subdivision B of Division 20 of the Insolvency Practice Schedule (Corporations) after the expiry day, subject to a condition that he or she must not accept any further appointments as external administrator of a company.
- (3) That condition is a **current condition** imposed on the old Act registrant.

*Registration cancelled once current administrations completed*

- (4) On the day immediately after all of the external administrations of companies that the old Act registrant is entitled to carry out in accordance with his or her current conditions ends:
  - (a) the old Act registrant is taken to have lodged a request in the approved form in accordance with paragraph 40-30(1)(f) of the Insolvency Practice Schedule (Corporations) to have his or her registration as a liquidator cancelled; and
  - (b) ASIC is taken to have cancelled the registration under subsection 40-30(1) of the Insolvency Practice Schedule (Corporations).

## **Subdivision B—Annual returns and statements**

### **1561 Application of obligation to lodge annual liquidator returns**

*Application of the Insolvency Practice Schedule (Corporations)*

- (1) Section 30-1 of the Insolvency Practice Schedule (Corporations) applies in relation to liquidator return years that begin on or after the commencement day.

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*Meaning of liquidator return year*

- (2) In working out the *liquidator return year* for an old Act registrant under subsection 30-1(2) of the Insolvency Practice Schedule (Corporations), “the day on which that registration first began”, means “the old Act registration day for that person (as defined for the purpose of Part 10.25 of this Act)”.

*Annual statements under the old Act*

- (3) The repeal of section 1288 by Schedule 2 to the *Insolvency Law Reform Act 2016* applies in relation to liquidator return years beginning on or after the commencement day.

**Subdivision C—Notice requirements**

**1562 Notice of significant events**

- (1) If:
- (a) within 2 years before the commencement day, an event of a kind mentioned in subsection 35-1(1) of the Insolvency Practice Schedule (Corporations) occurs in relation to an old Act registrant; and
  - (b) the old Act registrant has not already informed ASIC in writing of the event before the commencement day;
- the old Act registrant must lodge with ASIC a notice, in the approved form, relating to the event.
- (2) The notice must be lodged:
- (a) if the old Act registrant is or could reasonably be expected to be aware of the event on or before the commencement day—within one month after the commencement day; or
  - (b) if paragraph (a) is not satisfied, but the old Act registrant is or could reasonably be expected to be aware of the event after the commencement day—within one month after the first day on which the old Act registrant is or could reasonably be expected to be aware of the event.

- (3) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (1) within the period specified in subsection (2); and
  - (b) the person intentionally or recklessly fails to comply with the requirement within that period.

Penalty: 100 penalty units.

### **Subdivision D—Cancellation by ASIC under the old Act**

#### **1563 Request for cancellation made before the commencement day**

- (1) This section applies if:
- (a) before the commencement day, a person requests ASIC under section 1290 of the old Act to cancel the person's registration as a liquidator or as a liquidator of a specified body corporate; and
  - (b) no decision by ASIC to cancel that registration has come into effect before the commencement day.
- (2) ASIC may not cancel the registration under section 1290 of the old Act.
- (3) However, for the purposes of paragraph 40-30(1)(f) of the Insolvency Practice Schedule (Corporations), the person is taken to have lodged a request with ASIC in the approved form to have the person's registration as a liquidator under the Insolvency Practice Schedule (Corporations) cancelled.
- (4) The amendments of section 1290 made by Schedule 2 to the *Insolvency Law Reform Act 2016* apply in relation to requests made to ASIC under section 1290 on or after the commencement day.

#### **1564 Decision to cancel registration made before the commencement day**

- (1) This section applies if:
-

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- (a) before the commencement day, a decision is made by ASIC under section 1290A of the old Act to cancel the registration of a person as a liquidator, or as a liquidator of a specified body corporate; and
  - (b) the decision has not come into effect before the commencement day.
- (2) On the commencement day, ASIC is taken to have made a decision under section 40-30 of the Insolvency Practice Schedule (Corporations) to cancel the registration of the person as a liquidator.
- (3) Section 40-35 of the Insolvency Practice Schedule (Corporations) applies in relation to the decision as if the decision were made on the commencement day.

**Subdivision E—Disciplinary proceedings before the Board**

**1565 Matters not dealt with by the Board before the commencement day**

- (1) If:
- (a) an application has been made under section 1292 of the old Act in relation to a person before the commencement day; and
  - (b) the Board has not, before the commencement day:
    - (i) made an order in response to the application under subsection 1292(2), (3), (4), (5), (6) or (7) of the old Act; or
    - (ii) dealt with the person under subsection 1292(9) of the old Act in response to the application; or
    - (iii) held a conference in relation to the application under section 1294A;

the Board must cease its consideration of the matter on the commencement day without making such an order, dealing with

the person under subsection 1292(9) of the old Act or convening such a conference under section 1294A.

- (2) If:
  - (a) the Board has ceased to consider a matter because of subsection (1); and
  - (b) a conference has been convened in relation to the matter under subsection 1294A(1), but not yet held;  
the Chairperson of the Board need not give notice of the conference under subsection 1294A(3) and the conference need not be held.
- (3) The fact that the Board has ceased to consider the matter does not preclude the matter, or any aspect of the matter, from being dealt with under Division 40 of the Insolvency Practice Schedule (Corporations).
- (4) To avoid doubt, nothing in this section affects any right or obligation that any person has before the commencement day, including any right to review, in relation to the application or the consideration of the matter by the Board.

### **1566 Matters dealt with by the Board before the commencement day**

- (1) This section applies if:
    - (a) an application has been made under section 1292 of the old Act in relation to a person before the commencement day; and
    - (b) before the commencement day, the Board has:
      - (i) made an order in response to the application under subsection 1292(2), (3), (4), (5), (6) or (7); or
      - (ii) dealt with the person under subsection 1292(9) in response to the application; or
      - (iii) held a conference in relation to the application under section 1294A.
  - (2) The old Act continues to apply in relation to:
-

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- (a) the decision to:
    - (i) make the order under subsection 1292(2), (3), (4), (5), (6) or (7); or
    - (ii) deal with the matter under subsection 1292(9) in response to the application; or
    - (iii) convene the conference under section 1294A; and
  - (b) a decision made at the conference held under section 1294A; and
  - (c) any process ordered under subsection 1294A(4) at the conference held under that section; and
  - (d) the matter in relation to which the conference was held under section 1294A before the commencement day.
- (3) The same matter may not be dealt with under Division 40 of the Insolvency Practice Schedule (Corporations).

**1567 Matters which the Board refuses to deal with before the commencement day**

- (1) This section applies if:
- (a) an application has been made under section 1292 of the old Act in relation to a person before the commencement day; and
  - (b) before the commencement day, the Board has decided to refuse to:
    - (i) make an order in response to the application under subsection 1292(2), (3), (4), (5), (6) or (7); or
    - (ii) deal with the person under subsection 1292(9) in response to the application; or
    - (iii) convene a conference in relation to the application under section 1294A.
- (2) The old Act continues to apply in relation to the decision to refuse to make the order under subsection 1292(2), (3), (4), (5), (6) or (7),

deal with the matter under subsection 1292(9) in response to the application or convene a conference under section 1294A.

- (3) The same matter may not be dealt with under Division 40 of the Insolvency Practice Schedule (Corporations).

### **1568 Board considering terminating suspension before the commencement day**

- (1) If:
- (a) an application has been made under section 1295 of the old Act to terminate the suspension of the registration of a person as a liquidator, or as a liquidator of a specified body corporate; and
  - (b) the Board has neither refused the application nor, by order, terminated the suspension before the commencement day;
- the Board must cease its consideration of the matter on the commencement day without making such an order.
- (2) If:
- (a) the Board, under section 1295 of the old Act, is considering of its own motion whether to terminate the suspension of the registration of a person as a liquidator, or as a liquidator of a specified body corporate; and
  - (b) the Board has not, by order, terminated the suspension before the commencement day;
- the Board must cease its consideration of the matter on the commencement day without making such an order.
- (3) The fact that the Board has ceased to consider the matter does not preclude the matter from being dealt with under Division 40 of the Insolvency Practice Schedule (Corporations).

### **1569 Sharing information between the Board and committees**

- (1) The Chair of a committee convened under Part 2 of the Insolvency Practice Schedule (Corporations) may request the Chairperson of
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the Board (the **Board Chair**) to give the committee any information or document in the Board's possession or control in relation to a person who:

- (a) is, or has at any time been, a registered liquidator under the Insolvency Practice Schedule (Corporations); or
  - (b) has at any time been registered as a liquidator, or as a liquidator of a specified body corporate, under the old Act.
- (2) The Board Chair must comply with the request within 10 business days.

**Subdivision F—Suspension, cancellation and disciplinary action under the Insolvency Practice Schedule (Corporations)**

**1570 Direction to comply with requirement to lodge documents etc.**

Subdivision B of Division 40 of the Insolvency Practice Schedule (Corporations) applies whether or not a requirement mentioned in that Subdivision to lodge a document or give information or a document arises before, on or after the commencement day.

**1571 Suspension by ASIC under the Insolvency Practice Schedule (Corporations)**

- (1) Section 40-25 of the Insolvency Practice Schedule (Corporations) applies whether or not an event mentioned in subsection 40-25(1) occurs before, on or after the commencement day.
- (2) However, paragraph 40-25(1)(c) of the Insolvency Practice Schedule (Corporations) does not apply in relation to the cancellation of the registration of a person as a trustee under the *Bankruptcy Act 1966*, as in force at any time before the commencement day.



**1572 Cancellation by ASIC under the Insolvency Practice Schedule (Corporations)**

- (1) Section 40-30 of the Insolvency Practice Schedule (Corporations) applies whether or not an event mentioned in subsection 40-30(1) occurs before, on or after the commencement day.
- (2) However, paragraph 40-30(1)(c) of the Insolvency Practice Schedule (Corporations) does not apply in relation to the cancellation of the registration of a person as a trustee under the *Bankruptcy Act 1966*, as in force at any time before the commencement day.

**1573 Show-cause notice under the Insolvency Practice Schedule (Corporations)**

Subdivision E of Division 40 of the Insolvency Practice Schedule (Corporations) applies whether or not an event mentioned in subsection 40-40(1) of the Schedule occurs before, on or after the commencement day.

**1574 Lifting or shortening suspension under the Insolvency Practice Schedule (Corporations)**

Subdivision F of Division 40 of the Insolvency Practice Schedule (Corporations) applies whether or not a person's registration as a liquidator is suspended under a provision of the old Act or of the Insolvency Practice Schedule (Corporations).

**1575 Action initiated by industry bodies**

Section 40-100 of the Insolvency Practice Schedule (Corporations) applies, whether or not the grounds to which a notice under that section relates arise because of an action, a failure to act or circumstance that occurs before, on or after the commencement day.

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**Subdivision G—Powers of the Court and other bodies**

**1576 Application of court powers under section 45-1 of the Insolvency Practice Schedule (Corporations)**

The Court may exercise its powers to make an order under section 45-1 of the Insolvency Practice Schedule (Corporations), whether or not the action or failure to act in relation to which, or because of which, the order is made occurs before, on or after the commencement day.

**1577 Powers to deal with registration under the old Act on or after the commencement day**

- (1) This section applies if, as a result of the continued application of the old Act on or after the commencement day, a relevant body may decide to register a person, or suspend or cancel the registration of a person, as a liquidator or as a liquidator of a specified body corporate under the old Act.
- (2) A relevant body may instead:
  - (a) register the person, or suspend or cancel the registration of the person, as a liquidator under the Insolvency Practice Schedule (Corporations); and
  - (b) by order, modify the application of this Part or the Insolvency Practice Schedule (Corporations) in relation to the registration, or the suspension or cancellation of the registration, of the person as a liquidator under the Insolvency Practice Schedule (Corporations).
- (3) In this section:

**relevant body** means ASIC, the Administrative Appeals Tribunal, the Court or any other body.

## **Division 3—Application of Part 3 of the Insolvency Practice Schedule (Corporations) and related consequential amendments**

### **Subdivision A—Introduction**

#### **1578 Simplified outline of this Division**

This Division deals with the way this Act will apply to external administrations when the provisions of the Insolvency Practice Schedule (Corporations) begin to operate.

##### *New external administrations*

The Insolvency Practice Schedule (Corporations) applies to external administrations that start on or after the commencement of the *Insolvency Law Reform Act 2016* (called new external administrations).

##### *Ongoing external administrations*

For external administrations that start before that day but are still ongoing (called ongoing external administrations), the Insolvency Practice Schedule (Corporations) applies in accordance with this Division but usually only in relation to new events. Generally, the old Act continues to apply to old events and processes that are incomplete. There are some exceptions.

##### *Old external administrations*

For old external administrations that have ended but that may have ongoing obligations or processes, in most cases the old Act continues to apply.

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**Subdivision B—General rules for Part 3**

**1579 Application of Part 3 of the Insolvency Practice Schedule (Corporations)—general rules**

*New external administrations*

- (1) Part 3 of the Insolvency Practice Schedule (Corporations) applies in relation to a new external administration of a company.

*Ongoing external administrations*

- (2) Part 3 of the Insolvency Practice Schedule (Corporations) applies in relation to an ongoing external administration of a company in accordance with this Division.

**Subdivision C—Remuneration and other benefits received by external administrators**

**1580 Application of Division 60 of the Insolvency Practice Schedule (Corporations)—general rule**

Subdivision B to D of Division 60 of the Insolvency Practice Schedule (Corporations) applies in relation to an external administrator of a company under ongoing external administration who is appointed on or after the commencement day.

**1581 Old Act continues to apply in relation to remuneration for administrators already appointed**

- (1) Despite the repeal of sections 449E and 473 and the repeal and substitution of subsections 499(3) to (7) of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016*, the old Act continues to apply in relation to the remuneration of an external administrator of a company who is appointed before the commencement day.

- (2) Despite subsection (1), if, under Subdivision F of this Division, Division 75 of the Insolvency Practice Schedule (Corporations) rather than the old Act would apply to a meeting that deals with the remuneration of an external administrator of a company who is appointed before the commencement day, Division 75 of the Insolvency Practice Schedule (Corporations) applies to that meeting.

### **1582 Duties of administrators relating to remuneration and other benefits**

- (1) Section 60-20 of the Insolvency Practice Schedule (Corporations) applies in relation to an external administrator of an ongoing external administration of a company whether or not the administrator was appointed before, on or after the commencement day.
- (2) However, that section does not apply in relation to arrangements made before the commencement day.

### **1583 Old Act continues to apply in relation to any right of indemnity**

- (1) This section applies if the remuneration of an external administrator of a company is fixed under section 449E of the old Act:
- (a) before the commencement day; or
  - (b) on or after the commencement day (in accordance with a provision of this Division).
- (2) Despite the repeal of that section and the amendment of paragraph 443D(b) of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016*, the old Act continues to apply in relation to any right of indemnity that the external administrator has as if that repeal and amendment had not happened.

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**1584 Application of new provisions about vacancies of court-appointed liquidator**

Subsection 473A(1) (as inserted by Schedule 2 to the *Insolvency Law Reform Act 2016*) applies whether or not the vacancy in the office of liquidator occurred before, on or after the commencement day.

**1585 Application of new provisions about exercise of powers while company under external administration**

*Application of new section 198G*

- (1) Section 198G (as inserted by Schedule 2 to the *Insolvency Law Reform Act 2016*) applies in relation to an exercise of power or a performance of a function that occurs on or after the commencement day.

*Approval under old Act continues to have effect*

- (2) If, under subsection 499(4) of the old Act, a committee of inspection or the company's creditors give approval for a director of the company to continue to perform or exercise the director's powers or functions, subsections 198G(1) and (2) (as inserted by Schedule 2 to the *Insolvency Law Reform Act 2016*) do not apply in relation to the director.

**Subdivision D—Funds handling**

**1586 Application of Division 65 of the Insolvency Practice Schedule (Corporations)—general rule**

Division 65 of the Insolvency Practice Schedule (Corporations) applies in relation to an ongoing external administration of a company.

### **1587 Administration account**

If, immediately before the commencement day, a person has a liquidator's general account in relation to the external administration of:

- (a) a company; or
- (b) a company in a pooled group;

the account is taken on and after the commencement day to be an administration account for the company for the purposes of section 65-5 of the Insolvency Practice Schedule (Corporations).

### **1588 Paying money into administration account**

*Application of the Insolvency Practice Schedule (Corporations)*

- (1) Sections 65-5 and 65-15 of the Insolvency Practice Schedule (Corporations) do not apply in relation to money received before the commencement day.

*Old regulations continue to apply to money received before commencement*

- (2) Paragraph 5.6.06(1)(b) of the old regulations continues to apply in relation to money received before the commencement day.

### **1589 Paying money out of administration account**

Section 65-25 of the Insolvency Practice Schedule (Corporations) does not apply in relation to money paid out of an administration account before the commencement day.

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**1590 Handling securities**

*Application of the Insolvency Practice Schedule (Corporations)*

- (1) Section 65-40 of the Insolvency Practice Schedule (Corporations) does not apply in relation to negotiable instruments and other securities received before the commencement day.

*Old regulations continue to apply to money received before commencement*

- (2) Regulation 5.6.07 of the old regulations continues to apply in relation to bills, notes and other securities received before the commencement day.

**Subdivision E—Information**

**1591 Application of Division 70 of the Insolvency Practice Schedule (Corporations)—general rule**

Division 70 of the Insolvency Practice Schedule (Corporations) applies in relation to an ongoing external administration of a company.

**1592 Accounts and administration returns**

*Administration returns for 2017-18 and later years*

- (1) Sections 70-5 and 70-6 of the Insolvency Practice Schedule (Corporations) apply in relation to the financial year starting on 1 July 2017 and later financial years.

*Accounts under old Act*

- (2) Subsection (3) of this section applies in relation to the repeal of each of the following sections of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016*:



- (a) 438E;
  - (b) 445J;
  - (c) 539.
- (3) To the extent that a repealed section relates to a period for which an account or statement must be lodged:
- (a) the repeal of the section applies in relation to periods starting on or after 1 July 2017; and
  - (b) the section applies in relation to periods starting before 1 July 2017 and ending after that day as if the period ends on 30 June 2017.

*Continuation of audits under old Act*

- (4) For the avoidance of doubt, despite the repeal of a section mentioned in subsection (2) by Schedule 2 to the *Insolvency Law Reform Act 2016*, audits may be continued under that section in relation to accounts lodged under that section as if the old Act continued to apply.

### **1593 Administration books**

*Application of the Insolvency Practice Schedule (Corporations)*

- (1) Section 70-10 of the Insolvency Practice Schedule (Corporations) does not apply in relation to events:
- (a) that occur before the commencement day; and
  - (b) in respect of which, or because of which, entries or minutes are to be made.

*Old Act continues to apply to events etc. before commencement day*

- (2) Despite the repeal of section 531 of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016*, that section continues to apply in relation to events:
- (a) that occur before the commencement day; and

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- (b) in respect of which, or because of which, entries or minutes must be made.

**1594 Audit of administration books**

Sections 70-15 to 70-25 of the Insolvency Practice Schedule (Corporations) apply to books relating to an ongoing external administration whether or not the books are kept under a provision of the old Act or of the Insolvency Practice Schedule (Corporations).

**1595 Transfer of administration books**

*Application of the Insolvency Practice Schedule (Corporations)*

- (1) Sections 70-30 and 70-31 of the Insolvency Practice Schedule (Corporations) apply in relation to a person who ceases to be the external administrator of a company on or after the commencement day.

*Application of repeal of old Act*

- (2) The repeal of section 1298A of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016* applies in relation to a person whose registration as a liquidator is cancelled or suspended on or after the commencement day.

**1596 Retention and destruction of administration books**

*Application of the Insolvency Practice Schedule (Corporations)*

- (1) To avoid doubt, section 70-35 of the Insolvency Practice Schedule (Corporations) applies to books relating to an ongoing external administration whether or not the books were kept under a provision of the old Act or of the Insolvency Practice Schedule (Corporations).

*Old Act continues to apply in relation to books for old external administrations*

- (2) If:
- (a) an external administration of a company ends before the commencement day; and
  - (b) immediately before that day, a person was required under section 542 of the old Act to retain books of the company for a period; and
  - (c) but for the repeal of that section by Schedule 2 to the *Insolvency Law Reform Act 2016*, that period would have ended on or after the commencement day;
- section 542 of the old Act continues to apply (despite its repeal by Schedule 2 to the *Insolvency Law Reform Act 2016*) on and after the commencement day in relation to the person for the remainder of that period.

*Continued effect of consent by ASIC under old Act*

- (3) If before the commencement day, a person is entitled under subsections 542(3) and (4) of the old Act to destroy books of a company (or of the person's that are relevant to the affairs of the company) then, despite section 70-35 of the Insolvency Practice Schedule (Corporations), those books may be destroyed.

### **1597 Giving information to creditors etc.**

Subdivision D of Division 70 of the Insolvency Practice Schedule (Corporations) applies whether or not the information, report or document referred to in subsection 70-40(1), 70-45(1), 70-46(2), 70-47(2) or 70-50(1) of the Insolvency Practice Schedule (Corporations):

- (a) was obtained or generated; or
  - (b) was made or prepared; or
  - (c) is in respect of actions or events that occurred;
- before, on or after the commencement day.

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**1598 Commonwealth may request information**

Section 70-55 of the Insolvency Practice Schedule (Corporations) applies whether or not the information, report or document referred to in subsection 70-55(2):

- (a) was obtained or generated; or
- (b) was made or prepared; or
- (c) is in respect of actions or events that occurred; before, on or after the commencement day.

**1599 Reporting to ASIC**

Section 70-60 of the Insolvency Practice Schedule (Corporations) applies whether or not the information, report or document referred to in subsection 70-60(1):

- (a) was obtained or generated; or
- (b) was made or prepared; or
- (c) is in respect of actions or events that occurred; before, on or after the commencement day.

**1600 Old Act continues to apply in relation to notices to remedy default**

Despite its repeal by Schedule 2 to the *Insolvency Law Reform Act 2016*, section 540 of the old Act continues to apply in relation to a notice mentioned in that section that is served on a person before the commencement day.

**Subdivision F—Meetings**

**1601 Application of Division 75 of the Insolvency Practice Schedule (Corporations)—general rule**

- (1) Division 75 of the Insolvency Practice Schedule (Corporations) applies in relation to an ongoing external administration of a company.

- (2) However, Division 75 of the Insolvency Practice Schedule (Corporations) does not apply in relation to meetings convened or held before the commencement day.

### **1602 External administrator must convene meetings in certain circumstances**

*Application of the Insolvency Practice Schedule (Corporations)*

- (1) Section 75-15 of the Insolvency Practice Schedule (Corporations) does not apply in relation to:
- (a) directions given before the commencement day; or
  - (b) resolutions passed before the commencement day.

*Old Act continues to apply in relation to resolutions for voluntary winding up passed before commencement day*

- (2) Despite their repeal by Schedule 2 to the *Insolvency Law Reform Act 2016*:
- (a) sections 497 and 498 of the old Act continue to apply on and after the commencement day in relation to a resolution for voluntary winding up that is passed before the commencement day; and
  - (b) subsection 477(4) of the old Act continues to apply on and after the commencement day if a meeting of creditors has not been held under section 497 of the old Act in relation to a voluntary winding up a resolution for which is passed before the commencement day.

### **1603 Old Act continues to apply in relation to reporting for first year of administration**

- (1) This section applies if, in relation to a company, a year mentioned in subsection 508(1) of the old Act starts before the commencement day but ends after that day.

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- (2) Despite its repeal by Schedule 2 to the *Insolvency Law Reform Act 2016*, section 508 of the old Act continues to apply on and after the commencement day in relation to the company for that year.

**1604 Old Act continues to apply to the deregistration of companies**

The repeal and substitution of section 509 by Schedule 2 to the *Insolvency Law Reform Act 2016* applies where the external administration of the company ends during a financial year starting on or after 1 July 2017.

**1605 Old Act continues to apply for certain meetings convened etc. before commencement day**

- (1) If:
- (a) the administrator of a company under external administration is required to convene a meeting of the company's creditors under section 439A of the old Act; and
  - (b) the convening period for the meeting as fixed by subsection 439A(5) of the old Act (or extended under subsection (6) of that section) ends on or after the commencement day; and
  - (c) as at the commencement day, the meeting has not been convened;

then the old Act continues to apply on and after the commencement day (despite the repeal of subsections 439A(3) and (4) and section 439B by Schedule 2 to the *Insolvency Law Reform Act 2016*) in relation to the meeting.

- (2) Despite the repeal of section 445F of the old Act and the amendment of section 445A of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016*, those sections continue to apply on and after the commencement day in relation to meetings for which a notice under subsection 445F(2) is given before the commencement day.

- (3) Despite its repeal by Schedule 2 to the *Insolvency Law Reform Act 2016*, section 479 of the old Act continues to apply on and after the commencement day in relation to meetings which have been convened under subsection 479(2) or for which a direction or request is given under that subsection before the commencement day.
- (4) Despite the amendment of subsection 496(8) of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016*, that subsection continues to apply on and after the commencement day in relation to meetings convened before the commencement day as if the amendment had not been made.

### **1606 Outcome of voting at creditors' meeting determined by related entity or on casting vote—Court powers**

Sections 75-41 to 75-45 of the Insolvency Practice Schedule (Corporations) apply whether a proposal has been voted on or a resolution passed before, on or after the commencement day.

### **Subdivision G—Committees of inspection**

#### **1607 Application of Division 80 of the Insolvency Practice Schedule (Corporations)—general rules**

- (1) Division 80 of the Insolvency Practice Schedule (Corporations) applies in relation to a committee of inspection for an ongoing external administration of a company:
  - (a) that is appointed under that Division on or after the commencement day; or
  - (b) that is appointed under a provision of the old Act but is taken to be a committee of inspection under subsection 1608(2) of this Subdivision.
- (2) However, Division 80 of the Insolvency Practice Schedule (Corporations) does not apply in relation to meetings of, or related

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to, the committee of inspection convened or held before the commencement day.

**1608 Appointing committees of inspection**

*Committees appointed under old Act taken to be committee of inspection*

- (1) Subsection (2) applies if there is, in relation to the external administration of a company:
  - (a) a committee of creditors validly appointed under section 436E of the old Act; or
  - (b) a committee of inspection validly appointed under section 548 of the old Act; or
  - (c) a committee of inspection validly appointed under section 548A of the old Act.
- (2) On and after the day specified in subsection (3), the committee (the ***continued committee***) is taken for the purposes of the Insolvency Practice Schedule (Corporations) to be:
  - (a) in the case of a committee appointed under section 436E or 548 of the old Act—a committee of inspection established under section 80-10 of the Insolvency Practice Schedule (Corporations) in relation to the external administration of the company; and
  - (b) in the case of a committee appointed under section 548A of the old Act—a committee of inspection established under section 80-26 of the Insolvency Practice Schedule (Corporations) in relation to a pooled group of which the company is a member.
- (3) For the purposes of subsection (2), the day is:
  - (a) in the case of a committee appointed on or before the commencement day—the commencement day; and



- (b) in the case of a committee appointed on a day that is after the commencement day in accordance with a provision of this section—that later day.

*Old Act continues to apply to certain meetings*

- (4) If:
- (a) because of the operation of section 436E, 548 or 548A (the **repealed section**) of the old Act before the commencement day, the administrator or liquidator of a company is required to convene a meeting; and
  - (b) as at the commencement day, the meeting has not been convened;

then (despite their repeal by Schedule 2 to the *Insolvency Law Reform Act 2016*) the repealed sections of the old Act continue to apply on and after the commencement day in relation to the meeting.

### **1609 Old Act continues to apply to certain reports by administrator**

If, before the commencement day, the administrator of a company under administration is directed under subsection 436F(3) of the old Act to give a report, then despite the repeal of section 436F by Schedule 2 to the *Insolvency Law Reform Act 2016*, that section continues to apply on and after commencement day in relation to the report.

### **1610 Membership of continued committees**

*Members of continued committees*

- (1) The members of a continued committee are the members appointed to the committee under section 436E (in accordance with section 436G), 548 or 548A of the old Act, as the case requires.

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*Old Act continues to apply to members of continued committees*

- (2) If a person is a member of a continued committee, then despite the repeal of:
- (a) section 436G, 548 or 548A (and any regulations made under that section), as the case requires; and
  - (b) section 550;
- by Schedule 2 to the *Insolvency Law Reform Act 2016*, those provisions continue to apply in relation to the person.

*Application of the Insolvency Practice Schedule (Corporations)*

- (3) The following provisions do not apply in relation to members of a continued committee:
- (a) sections 80-15 to 80-25 and paragraph 80-26(2)(b) of the Insolvency Practice Schedule (Corporations);
  - (b) Insolvency Practice Rules made under section 80-30 of the Insolvency Practice Schedule (Corporations) that relate to membership of a committee of inspection.

Note: However, the committee could dissolve and the members could form a new committee to which these provisions would then apply.

**1611 Validity of appointment under section 548 of the old Act not affected by lack of separate meeting of contributories**

- (1) The appointment of a committee of inspection under section 548 of the old Act before the commencement day is not invalid merely because a separate meeting of contributories was not convened for the purposes of determining:
- (a) whether a committee of inspection should be appointed; and
  - (b) where a committee of inspection is to be appointed:
    - (i) the numbers of members to represent the creditors and the contributories, respectively; and
    - (ii) the persons who are to be members of the committee representing creditors and contributories, respectively.

- (2) However, if:
- (a) a debt or claim has been paid in the winding up of a company before the commencement day; and
  - (b) the priority given to the debt or claim was determined under section 556 of the *Corporations Act 2001* on the basis that a committee of inspection was not validly appointed because a separate meeting of contributories was not convened for the purposes mentioned in paragraphs (1)(a) and (b); and
  - (c) but for subsection (1), the committee of inspection would not have been validly appointed;
- the priority of the payment is not affected by subsection (1).

### **1612 Continued application of directions by creditors or committees under the old Act**

Sections 80-35 and 85-5 of the Insolvency Practice Schedule (Corporations) apply whether or not the direction is given before, on or after the commencement day.

### **1613 Committee of inspection may request information**

Section 80-40 of the Insolvency Practice Schedule (Corporations) applies whether or not the information, report or document referred to in subsection 80-40(1):

- (a) was obtained or generated; or
  - (b) was made or prepared; or
  - (c) is in respect of actions or events that occurred;
- before, on or after the commencement day.

### **1614 Duties of members of committee of inspection and creditors relating to profits and advantages etc.**

Sections 80-55 and 80-60 of the Insolvency Practice Schedule (Corporations) apply to arrangements made on or after the commencement day.

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**Subdivision H—Review of the external administration of a company**

**1615 Application of Division 90 of the Insolvency Practice Schedule (Corporations)—general rule**

Division 90 of the Insolvency Practice Schedule (Corporations) applies in relation to an ongoing external administration whether or not the matter to be reviewed occurred before, on or after the commencement day.

**1616 Application of the Insolvency Practice Schedule (Corporations) provisions that conflict with old Act Court orders—general rule**

- (1) This section applies if a court makes an order in relation to a person or the external administration of a company under the old Act (the *old Act order*).
- (2) The old Act order does not cease to have effect because a provision of the old Act under which it was made has been amended or repealed by Schedule 2 to the *Insolvency Law Reform Act 2016*.
- (3) If the old Act order is inconsistent with a provision of this Act that is amended or inserted by Schedule 2 to the *Insolvency Law Reform Act 2016*, then, subject to this Part, the provision does not apply to the extent that it is inconsistent with the old Act order.

**1617 Old Act continues to apply in relation to ongoing proceedings before a court—general rule**

- (1) This section applies if proceedings are brought under the old Act in a court (on application or on the initiative of the court) in relation to the external administration of a company either:
  - (a) before the commencement day; or

- (b) on or after the commencement day (in accordance with a provision of this Division).
- (2) Subject to this Part, nothing in Schedule 2 to the *Insolvency Law Reform Act 2016* affects:
- (a) the proceedings; or
  - (b) the power of the court to make orders in relation to the proceedings; or
  - (c) any orders made by the court in relation to the proceedings; or
  - (d) any enforcement in relation to, or as a result of, the proceedings (including giving effect to any court orders); or
  - (e) any appeal or review in relation to the proceedings.
- (3) Subject to this Part, the old Act continues to apply on and after the commencement day in relation to the proceedings despite the amendments and repeals made by Schedule 2 to the *Insolvency Law Reform Act 2016*.
- (4) In this section:
- proceedings* include civil and criminal proceedings, inquiries by the court, enforcement processes and any other processes.

## 1618 Court powers to inquire into and make orders

### *Application of the Insolvency Practice Schedule (Corporations)*

- (1) Subsections (2) to (4) are for the avoidance of doubt.
- (2) Sections 90-5 and 90-10 of the Insolvency Practice Schedule (Corporations) apply whether or not the information, report or document mentioned in subsections 90-5(2) and 90-10(4) was prepared before, on or after the commencement day.
- (3) Paragraph 90-15(3)(f) of the Insolvency Practice Schedule (Corporations) applies whether or not the remuneration is paid or payable before, on or after the commencement day.

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**Division 3** Application of Part 3 of the Insolvency Practice Schedule (Corporations) and related consequential amendments

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- (4) Subsection 90-15(4) of the Insolvency Practice Schedule (Corporations) applies whether or not the action or failure to act occurred before, on or after the commencement day.

*Old Act continues to apply for inquiries started under section 536*

- (5) Despite the repeal of section 536 of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016*, that section continues to apply in relation to inquiries commenced by ASIC before the commencement day (including inquiries commenced because of the extension of section 536 by subsection 411(9) to persons appointed under the terms of a compromise or arrangement).

*Application of new section 599*

- (6) Section 599 (as inserted by Schedule 2 to the *Insolvency Law Reform Act 2016*) applies whether or not the act, omission or decision occurred before, on or after the commencement day.

**1619 Review by another registered liquidator**

- (1) The following subsections are for the avoidance of doubt.
- (2) Sections 90-24 and 90-26 of the Insolvency Practice Schedule (Corporations) apply whether or not:
- (a) the remuneration is paid or payable; or
  - (b) the cost or expense is incurred or paid;
- before, on or after the commencement day.
- (3) A period determined by the Court under paragraph 90-26(4)(d) of the Insolvency Practice Schedule (Corporations) or prescribed under paragraph 90-26(4)(c) may include a period that:
- (a) starts before the commencement day but ends after that day; or
  - (b) starts and ends before the commencement day.

- (4) Section 90-28 of the Insolvency Practice Schedule (Corporations) applies whether or not the books or information mentioned in paragraph 90-28(2)(a) were prepared before, on or after the commencement day.
- (5) Rules made for the purposes of section 90-29 of the Insolvency Practice Schedule (Corporations) in relation to the meaning of properly incurred may make provision for or in relation to costs and expenses incurred before, on or after the commencement day.

### **1620 Removal by creditors**

For the avoidance of doubt, section 90-35 of the Insolvency Practice Schedule (Corporations) applies whether or not the external administrator was appointed before, on or after the commencement day.

## **Division 4—Administrative review**

### **1621 Administrative Appeals Tribunal proceedings**

- (1) This section applies if an application is made to the Administrative Appeals Tribunal for review of a decision made under the old Act either:
  - (a) before the commencement day; or
  - (b) on or after the commencement day (in accordance with a provision of this Part).
- (2) Subject to this Part, nothing in the *Insolvency Law Reform Act 2016* affects:
  - (a) any proceedings before the Administrative Appeals Tribunal in relation to the decision; or
  - (b) the powers of the Administrative Appeals Tribunal in relation to the decision; or
  - (c) any enforcement in relation to, or as a result of, a decision of the Administrative Appeals Tribunal in relation to the decision; or
  - (d) any appeal or review in relation to a decision of the Administrative Appeals Tribunal in relation to the decision.
- (3) Subject to this Part, the old Act continues to apply on and after the commencement day in relation to the proceedings despite the amendments and repeals made by Schedule 2 to the *Insolvency Law Reform Act 2016*.

*Applications for review made after the commencement day*

- (4) Despite the repeals and amendments made by the *Insolvency Law Reform Act 2016*, applications may be made to the Administrative Appeals Tribunal for review of the decision.



## **Division 5—Application of other consequential amendments**

### **1622 Outcome of voting at creditors' meeting determined by related entity or on casting vote—Court powers**

Sections 415A to 415C, as inserted by the *Insolvency Law Reform Act 2016*, apply whether a proposed resolution has been voted on before, on or after the commencement day.

### **1623 Returns and accounts by controllers**

*Returns by controllers for 2017-18 and later years*

- (1) Sections 422A and 422B, as inserted by Schedule 2 to the *Insolvency Law Reform Act 2016*, apply in relation to the financial year starting on 1 July 2017 and later financial years.

*Accounts under old Act*

- (2) Subsection (3) of this section applies in relation to the amendment of section 432 of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016*.
- (3) To the extent that section 432 of the old Act relates to a period for which an account must be lodged:
  - (a) the amendment of the section applies in relation to periods starting on or after 1 July 2017; and
  - (b) the unamended section applies in relation to periods starting before 1 July 2017 and ending after that day as if the period ends on 30 June 2017.

*Continuation of audits under old Act*

- (4) For the avoidance of doubt, despite the amendment of section 432 of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016*, audits may be continued under that section in relation to

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accounts lodged under that section as if the old Act continued to apply.

**1624 Transfer of books by a controller to a new controller or ASIC**

Sections 422C and 422D, as inserted by Schedule 2 to the *Insolvency Law Reform Act 2016*, apply in relation to a person who ceases to act as a controller of property of a corporation on or after the commencement day.

**1625 Officers reporting to controller about corporation's affairs**

The amendment of paragraph 429(2)(b) by Schedule 2 to the *Insolvency Law Reform Act 2016* applies in relation to notices received on or after the commencement day.

**1626 Lodging notice of execution of a deed of company arrangement**

The amendment of paragraph 450B(c), and substitution with paragraph 450B(b), by Schedule 2 to the *Insolvency Law Reform Act 2016* applies in relation to deeds of company arrangement executed on or after the commencement day.

**1627 Office of liquidator appointed by the Court**

*Vacancies in office of liquidator appointed by the Court*

- (1) Despite the repeal of section 473 of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016*, that section continues to apply in relation to a vacancy in the office of a liquidator appointed by the Court that occurs before the commencement day.
- (2) Section 473A, as inserted by Schedule 2 to the *Insolvency Law Reform Act 2016*, applies in relation to vacancies in the office of a liquidator appointed by the Court that occur on or after the commencement day.

*Where there are 2 or more liquidators appointed by the Court*

- (3) Subsections 473A(4) and (5), as inserted by Schedule 2 to the *Insolvency Law Reform Act 2016*, apply in relation to 2 or more liquidators appointed by the Court, whether the liquidators were appointed before, on or after the commencement day.

### **1628 Report as to company's affairs to be submitted to liquidator**

- (1) The amendments of section 475 by Schedule 2 to the *Insolvency Law Reform Act 2016* apply where a winding up order is made on or after the commencement day.
- (2) The repeal of section 476 of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016* applies where a report referred to in subsection 475(1) or (2) is received on or after the commencement day.

### **1629 Orders for release or deregistration**

Despite the amendment of paragraph 481(1)(a) by Schedule 2 to the *Insolvency Law Reform Act 2016*, that paragraph continues to apply in relation to auditors appointed by ASIC under section 539 of the old Act.

### **1630 Meeting relating to the voluntary winding up of a company**

The repeal and substitution of section 506A by Schedule 2 to the *Insolvency Law Reform Act 2016* applies where the resolution for the voluntary winding up of a company is passed on or after the commencement day.

### **1631 Pooling determinations**

- (1) The repeal of sections 574 to 576 of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016* apply where a pooling determination is made or varied on or after the commencement day.

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- (2) Subsection 577(1A), as inserted by Schedule 2 to the *Insolvency Law Reform Act 2016*, applies where a pooling determination is made or varied on or after the commencement day.
- (3) The repeal of subsection 577(2) of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016* applies to resolutions agreed on or after the commencement day.

**1632 Electronic methods of giving or sending certain notices**

- (1) If:
  - (a) a notice or other document was authorised or required to be given or sent under a provision of the old Act mentioned in a paragraph of subsection 600G(1) that is repealed by Schedule 2 to the *Insolvency Law Reform Act 2016*; and
  - (b) although the authorisation or requirement arose before the commencement day, the notice or other document is required to be given or sent on or after the commencement day;that paragraph of subsection 600G(1) continues to apply in relation to the giving or sending of the notice or other document.
- (2) Subsections 600G(4) and (4A), as inserted by Schedule 2 to the *Insolvency Law Reform Act 2016*, apply in relation to notices or other documents given or sent on or after the commencement day.

**1633 Deregistration following winding up**

- (1) If, on or after the commencement day, the Court orders the deregistration of a company under subsection 509(6) of the old Act, subsection 601AC(1) of the old Act continues to apply in relation to the order.
- (2) Subsection 601AC(2) of the old Act continues to apply in relation to a company for which a return has been lodged under section 509 before the commencement day.

## **Division 6—Regulations**

### **1634 Regulations**

- (1) The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments and repeals made by Schedule 2 to the *Insolvency Law Reform Act 2016*.
- (2) The regulations may provide that certain provisions of Schedule 2 to the *Insolvency Law Reform Act 2016* are taken to be modified as set out in the regulations. Those provisions then have effect as if they were so modified.
- (3) The provisions of Schedule 2 to the *Insolvency Law Reform Act 2016* that provide for regulations to deal with matters do not limit each other.

## **Part 10.26—Transitional provisions relating to Schedule 3 to the Insolvency Law Reform Act 2016**

### **1635 Application of amendments made by Schedule 3 to the *Insolvency Law Reform Act 2016***

- (1) The amendment made by Part 1 of Schedule 3 to the *Insolvency Law Reform Act 2016* applies in relation to the administration of a company that begins on or after the commencement of that Schedule.
- (2) The amendment made by Part 2 of Schedule 3 to the *Insolvency Law Reform Act 2016* applies in relation to material contraventions, and likely material contraventions, of a deed of company arrangement that occur on or after the commencement of that Schedule, regardless of when the deed was executed.
- (3) The amendment made by item 9 of Part 4 of Schedule 3 to the *Insolvency Law Reform Act 2016* applies in relation to deeds of company arrangement that are terminated on or after the commencement of that Schedule.
- (4) The amendments made by Part 5 of Schedule 3 to the *Insolvency Law Reform Act 2016* apply for the purposes of working out the relation-back day in relation to a winding up of a company or Part 5.7 body starting on or after the commencement of that Schedule.
- (5) The amendments made by items 22, 23, 25, 26, 29 and 30 of Part 6 of Schedule 3 to the *Insolvency Law Reform Act 2016* apply in relation to declarations made after the commencement of that Schedule.

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- (6) The amendment made by item 28 of Part 6 of Schedule 3 to the *Insolvency Law Reform Act 2016* applies in relation to resolutions passed on or after the commencement of that Schedule.
- (7) The amendments made by items 31 and 32 of Part 6 of Schedule 3 to the *Insolvency Law Reform Act 2016* apply in relation to orders made on or after the commencement of that Schedule.
- (8) The amendment made by item 33 of Part 6 of Schedule 3 to the *Insolvency Law Reform Act 2016* applies in relation to orders and declarations made on or after the commencement of that Schedule.
- (9) The amendment made by item 34 of Part 6 of Schedule 3 to the *Insolvency Law Reform Act 2016* applies whether the payment of an amount in respect of a liability was made before, on or after the commencement of that Schedule.

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**Part 10.28—Transitional provisions relating to the  
Treasury Laws Amendment (2016  
Measures No. 1) Act 2017**

**1636A Application of subsections 981D(2) and 984B(3)**

- (1) Subsection 981D(2), as added by the *Treasury Laws Amendment (2016 Measures No. 1) Act 2017*, applies to a use of money on or after the commencement of this section, whether the money was paid to the licensee as mentioned in subsection 981A(1) before, on or after that commencement.
- (2) Subsection 984B(3), as added by the *Treasury Laws Amendment (2016 Measures No. 1) Act 2017*, applies to a use of property on or after the commencement of this section, whether the property was given to the licensee as mentioned in subsection 984A(1) before, on or after that commencement.

**1637 Application of subparagraph 1274(2)(a)(iva) and  
subsections 1274(2AA) and (2AB)**

Subparagraph 1274(2)(a)(iva) and subsections 1274(2AA) and (2AB), as inserted by Schedule 2 to the *Treasury Laws Amendment (2016 Measures No. 1) Act 2017*, apply to the following:

- (a) a disclosure document lodged under section 718 after that Schedule commences;
- (b) a replacement document lodged under section 719 after that commencement;
- (c) a supplementary document lodged under section 719 after that commencement if the disclosure document it supplements was also lodged after that commencement.



## **Part 10.30—Transitional provisions relating to the Treasury Laws Amendment (2017 Measures No. 5) Act 2018**

### **1639 Definitions**

In this Part:

*start day* means the later of:

- (a) 1 January 2018; and
- (b) the day after the *Treasury Laws Amendment (2017 Measures No. 5) Act 2018* receives the Royal Assent.

### **1640 Application—obligation to comply with rules about financial benchmarks**

Subsection 908CF(1) applies on or after the start day in relation to rules made before, on or after that day.

### **1641 Application—offences relating to manipulation of financial benchmarks**

Division 4 of Part 7.5B applies in relation to acts or omissions occurring on or after the start day (whether or not the financial benchmark to which the acts or omissions relate is first generated or administered before, on or after the start day).

### **1642 Application—extended meaning of financial products and Division 3 financial products for Part 7.10**

Section 1040B applies in relation to acts or omissions occurring on or after the start day (whether or not the bank accepted bills or negotiable certificates of deposit to which the acts or omissions relate are issued before, on or after the start day).

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**Part 10.31** Transitional provisions relating to the Corporations Amendment (Crowd-sourced Funding for Proprietary Companies) Act 2018

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**Part 10.31—Transitional provisions relating to the  
Corporations Amendment (Crowd-sourced  
Funding for Proprietary Companies) Act  
2018**

**1643 Application of amendments**

The amendments made by items 50 and 51 of Schedule 1 to the *Corporations Amendment (Crowd-sourced Funding for Proprietary Companies) Act 2018* apply in relation to CSF offers made at or after the commencement of those items.

## **Part 10.32—Transitional provisions relating to the Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019**

### **1644 Application of amendments**

- (1) The amendments made by Part 1 of Schedule 1 to the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019* apply in relation to disclosures that:
  - (a) are made at or after the time that Part commences (the **commencement time**); and
  - (b) relate to matters that occur or occurred before, at or after the commencement time.
- (2) Without limiting subsection (1), sections 1317AC, 1317AD and 1317AE, and any other provision of Part 9.4AAA to the extent that it relates to those sections, as in force immediately after the commencement time, also apply at and after the commencement time in relation to a disclosure that:
  - (a) was made before the commencement time; and
  - (b) would be a disclosure protected by Part 9.4AAA, if the amendments made by Part 1 of Schedule 1 to the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019* had been in force at the time the disclosure was made.

#### *Whistleblower policies*

- (3) Subsections 1317AI(1) to (4), as inserted by item 9 of Schedule 1 to the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019*, apply on and after the day 6 months after the day that item commences.

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- (4) A reference to a financial year in subsection 1317AI(2), as inserted by that item, is a reference to a financial year that ends on or after 30 June 2018.

**1644A Application of amendments relating to penalties**

The amendments made by Part 4 of Schedule 1 to the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019* apply in relation to the commission of an offence if the conduct constituting the commission of the offence occurs wholly on or after the commencement of that Part.

## **Part 10.33—Transitional provisions relating to the Corporations Amendment (Asia Region Funds Passport) Act 2018**

### **1 Saving delegations**

- (1) A delegation of functions or powers by the Minister in force under paragraph 1345A(1A)(b) of this Act immediately before the commencement of item 349 of Schedule 2 to the *Corporations Amendment (Asia Region Funds Passport) Act 2018* continues in force on and after that commencement.
- (2) Subsection (1) does not prevent an amendment or revocation of the delegation on or after commencement of item 349 of Schedule 2 to the *Corporations Amendment (Asia Region Funds Passport) Act 2018* as if it were a delegation under that paragraph as amended by that item.

### **2 Decisions to give, withdraw or not withdraw a notice under subsection 1313(1)**

The amendment made by item 307 of Schedule 2 to the *Corporations Amendment (Asia Region Funds Passport) Act 2018* applies in relation to decisions of ASIC to give, withdraw or not withdraw a notice under subsection 1313(1) that are made on or after the commencement of that item.

## **Part 10.34—Transitional provisions relating to the Corporations Amendment (Strengthening Protections for Employee Entitlements) Act 2019**

### **1647 Application—protection of employee entitlements**

The amendments made by Part 1 of Schedule 1 to the *Corporations Amendment (Strengthening Protections for Employee Entitlements) Act 2019* apply in relation to a relevant agreement or a transaction that is entered into at or after the commencement of that Part.

### **1648 Application—contribution orders**

The amendments made by Part 2 of Schedule 1 to the *Corporations Amendment (Strengthening Protections for Employee Entitlements) Act 2019* apply in relation to the winding up of a company that begins at or after the commencement of that Part.

### **1649 Application—director disqualification**

- (1) The period of 7 years referred to in paragraphs 206EAB(2)(a) and 206GAA(2)(a) may include any period that is not more than 5 years before the day (the **commencement day**) that Part 3 of Schedule 1 to the *Corporations Amendment (Strengthening Protections for Employee Entitlements) Act 2019* commences (subject to the time limit of 7 years in those paragraphs).
- (2) However, a person may only be disqualified from managing corporations under section 206EAB or 206GAA if at least one of the contraventions referred to in paragraph 206EAB(2)(d) or 206GAA(2)(d), as the case may be, occurs on or after the commencement day.

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- (3) A permission given under subsection 206F(5) that was in force immediately before the commencement day continues in force (and may be dealt with) as if it had been given under section 206GAB as inserted by Part 3 of Schedule 1 to the *Corporations Amendment (Strengthening Protections for Employee Entitlements) Act 2019*.

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## Part 10.35—Application and transitional provisions relating to registries modernisation amendments

### 1650 Definitions

(1) In this Part:

**amending item** means any of the following that amends a provision of this Act:

- (a) an item of Part 2 of Schedule 1 to the *Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020*;
- (b) an item of Part 3 of Schedule 1, or of Schedule 2, to the *Financial Sector Reform (Hayne Royal Commission Response—Better Advice) Act 2021*;
- (c) an item of Part 4 of Schedule 2 to the *Treasury Laws Amendment (2021 Measures No. 1) Act 2021*;
- (d) an item specified under subsection (2).

**application day**, for an amendment made by an amending item, as applying in relation to a matter, means the day on and after which the amendment applies in relation to that matter because of section 1650B.

**commencement day**, for an amending item, means the day on which the amending item commences (taking into account Part 1 of Schedule 4 to the *Treasury Laws Amendment (2022 Measures No. 1) Act 2022*).

**interim period** means the period:

- (a) starting at the start of 22 June 2022; and
- (b) ending at the end of the day before the day on which Part 2 of Schedule 4 to the *Treasury Laws Amendment (2022 Measures No. 1) Act 2022* commences.



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**postponed item** means any of the following that commenced on 22 June 2022 (disregarding Part 1 of Schedule 4 to the *Treasury Laws Amendment (2022 Measures No. 1) Act 2022*):

- (a) an item of Part 2 of Schedule 1 to the *Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020*;
- (b) an item of Part 3 of Schedule 1 to the *Financial Sector Reform (Hayne Royal Commission Response—Better Advice) Act 2021*;
- (c) an item of Part 4 of Schedule 2 to the *Treasury Laws Amendment (2021 Measures No. 1) Act 2021*.

Note Item 103 of Schedule 1 to the *Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020* is not covered by paragraph (a) because that item commenced on 4 April 2021.

- (2) For the purposes of paragraph (d) of the definition of **amending item** in subsection (1), the Minister may, by legislative instrument, specify items that:
  - (a) are in a Schedule to any Act and amend a provision of this Act that deals with a matter related to a government registry regime; and
  - (b) are to commence after the end of the interim period but before 1 July 2026.
- (3) For the purposes of subparagraph 1650B(1)(c)(ii), the Minister may, by legislative instrument, specify a day for an item specified under subsection (2) of this section. The day must occur after the end of the interim period but before 1 July 2026.

### **1650A Validation of acts or things done during interim period**

#### *Object*

- (1) The object of this section is to treat all situations during the interim period in every respect as if:

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- (a) the amendments made by Part 1 of Schedule 4 to the *Treasury Laws Amendment (2022 Measures No. 1) Act 2022* had been made at the start of 21 June 2022; and
- (b) the amendments made by the postponed items had not been made at the start of 22 June 2022 and had had no effect during the interim period.

*Validation of acts and things done in interim period*

- (2) An act or thing that was done at any time during the interim period is as valid, and is taken always to have been as valid, as it would have been if:
  - (a) the amendments made by Part 1 of Schedule 4 to the *Treasury Laws Amendment (2022 Measures No. 1) Act 2022* had been made at the start of 21 June 2022; and
  - (b) in particular, the amendments made by the postponed items had not been made at the start of 22 June 2022 and had had no effect during the interim period.

*Continuation of delegations*

- (3) Without limiting subsection (2), if:
    - (a) a function or power conferred by this Act was delegated to a person; and
    - (b) the delegation was in force immediately before 22 June 2022; and
    - (c) but for this subsection, the delegation would have ceased to have effect at the start of 22 June 2022 because of any of the amendments made by the postponed items;then:
    - (d) an act or thing done by the delegate in the interim period is, and is taken always to have been, as valid a performance or exercise of the function or power as it would have been if the delegation had continued in force throughout the interim period; and
    - (e) the delegation has effect, on and after the day section 1 of the *Treasury Laws Amendment (2022 Measures No. 1) Act 2022*
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commences, as if it had been made at the time that section commences.

*Acts and things to which this section applies*

- (4) This section applies to an act or thing, regardless of the basis on which, or capacity in which, the act or thing was done or purported to be done.

**1650B Application of amendments**

- (1) An amendment of a provision of this Act that is made by an amending item applies, in relation to a matter (the **relevant matter**), on and after the earliest of the following days:
- (a) if the amending item is covered by a notifiable instrument in force under paragraph (2)(a) of this section—the day the instrument specifies for the item;
  - (b) if the amending item is covered by a notifiable instrument in force under paragraph (2)(b) of this section that specifies matters for the item that include the relevant matter—the day the instrument specifies for the item in relation to those matters;
  - (c) whichever of the following is applicable:
    - (i) if a day is specified for the amending item under subsection 1650(3)—that day;
    - (ii) otherwise—1 July 2026.

Note: The provision, as in force immediately before the commencement day for the amending item, will continue to apply in relation to the relevant matter until the day that applies under this subsection.

- (2) The Minister:
- (a) may by notifiable instrument specify days for amending items for the purposes of paragraph (1)(a); and
  - (b) may by notifiable instrument specify days and matters for amending items for the purposes of paragraph (1)(b).

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

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- (3) A day specified for an amending item in a notifiable instrument made under subsection (2) must be:
  - (a) on or after the day that the instrument is made; and
  - (b) on or after the commencement day for the amending item.
- (4) Without limiting subsection 13(3) of the *Legislation Act 2003*, an instrument made under subsection (2) of this section may specify all amending items as a class of amending items.

**1650C Things started but not finished by ASIC**

If:

- (a) an amending item amends a provision of this Act; and
- (b) before the application day for the amendment made by the amending item, as applying in relation to a matter, ASIC started doing a thing that relates to that matter under the provision as in force immediately before the commencement day for the amending item; and
- (c) immediately before that application day, ASIC had not finished doing that thing; and
- (d) on and after that application day, doing that thing is within the powers or functions of the Registrar;

then, on and after that application day:

- (e) ASIC may finish doing that thing as if that thing were being done by the Registrar in performing or exercising the Registrar's functions or powers; and
- (f) to the extent that ASIC does not finish doing that thing under paragraph (e), the Registrar may finish doing that thing in performing and exercising the Registrar's functions and powers.

**1650D Register of Liquidators**

- (1) The Registrar must include in the record maintained under section 15-1 of Schedule 2, as substituted by amending item 1317, all details that, immediately before the application day for that item, were contained in the Register of Liquidators formerly

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established and maintained under section 15-1 of Schedule 2 to this Act as in force immediately before the commencement of that item.

- (2) Paragraph 1650B(1)(b) does not apply in relation to amending item 1317.
- (3) In this section:

***amending item 1317*** means item 1317 of Schedule 1 to the *Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020*.

***application day***, for amending item 1317, means the day on and after which the amendment made by that item applies because of paragraph 1650B(1)(a) or (c), as the case requires.

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**Part 10.35A—Transitional provisions relating to  
Schedule 2 to the Treasury Laws  
Amendment (Registries Modernisation and  
Other Measures) Act 2020**

**1653 Director identification numbers**

- (1) Part 9.1A applies on and after the day (the *application day*) the Minister appoints, under section 1270:
  - (a) a Commonwealth body to be the Registrar; or
  - (b) if more than one such body is appointed—such a body with functions and powers in connection with Part 9.1A.
- (2) If a person was an eligible officer immediately before the application day:
  - (a) if a period (the *transitional application period*) is specified under subsection (3) of this section—section 1272C applies to the person as if:
    - (i) the reference in subparagraph 1272C(2)(a)(ii) to an application period specified by regulations were instead a reference to the transitional application period; and
    - (ii) references in paragraph 1272C(2)(a) to the day the person first became an eligible officer (or an eligible officer within the meaning of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*) were instead references to the day the transitional application period came into effect; and
  - (b) until the transitional application period comes into effect—section 1272C does not apply to the person.
- (3) The Minister may, by legislative instrument, specify the transitional application period for the purposes of subsection (2).
- (4) If a person:

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- (a) was not an eligible officer immediately before the application day; and
  - (b) becomes an eligible officer within the 12 month period starting on the application day;
- section 1272C applies to the person as if a period of 28 days were the application period specified in regulations made for the purposes of subparagraph 1272C(2)(a)(ii).

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**Part 10.36—Application and transitional provisions relating to the Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019**

**1655 Definitions**

In this Part:

*amending Act* means the *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019*.

*commencement day* means the day on which Schedule 1 to the *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019* commences.

**1656 Application—offences**

Subject to this Part, the amendments made by Schedule 1 to the amending Act apply in relation to the commission of an offence if the conduct constituting the commission of the offence occurs wholly on or after the commencement day.

**1657 Application—civil penalty provisions**

Subject to this Part, the amendments made by Schedule 1 to the amending Act apply in relation to the contravention of a civil penalty provision if the conduct constituting the contravention of the provision occurs wholly on or after the commencement day.



**1658 Application—offence provisions repealed and substituted with conduct rules with multiple consequences**

To avoid doubt, the amendments made by items 82, 86, 87, 94, 100, 101 and 102 of Schedule 1 to the amending Act apply in relation to the commission of an offence or the contravention of a civil penalty provision under the sections inserted by those items if the conduct constituting the commission of the offence or the contravention of the civil penalty provision occurs wholly on or after the commencement day.

**1659 Application—infringement notices**

- (1) An infringement notice may be given on or after the commencement day under section 1317DAM of the Act, as inserted by item 113 of Schedule 1 to the amending Act, in relation to an alleged contravention of a provision whether the alleged contravention occurred before, on or after the commencement day.
- (2) Despite the repeal of section 1313 of the Act by item 111 of Schedule 1 to the amending Act, the Act continues to apply in relation to notices given under that section before the commencement day as if:
  - (a) that section, and any regulations made under that section, had not been repealed; and
  - (b) section 1311 had not been amended.

**1660 Application—definition of dishonesty**

- (1) The amendment of the definition of *dishonesty* in section 9 of the Act made by item 7 of Schedule 1 to the amending Act applies in relation to a decision whether to convict a person of an offence under this Act for which dishonesty is an element, if the conduct constituting the commission of the offence occurs wholly on or after the commencement day.
- (2) The amendment of the definition of *dishonesty* in section 9 of the Act made by item 7 of Schedule 1 to the amending Act applies:

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- (a) in relation to the disqualification of a person from managing corporations under section 206B of the Act—to convictions for an offence involving dishonesty that occur on or after the commencement day; and
- (b) in relation to a decision under section 913B of the Act whether to grant an Australian financial services licence—to convictions for an offence involving dishonesty whether the conviction occurs before, on or after the commencement day; and
- (c) in relation to a decision under section 915B of the Act whether to suspend or cancel an Australian financial services licence—to convictions for an offence involving dishonesty whether the conviction occurs before, on or after the commencement day; and
- (d) in relation to a decision under section 920A of the Act whether to make a banning order—to convictions for an offence involving dishonesty whether the conviction occurs before, on or after the commencement day; and
- (e) in relation to a decision to register a person as a liquidator under section 20-20 of Schedule 2 to the Act—to decisions made on or after the commencement day (whether conviction for the offence involving dishonesty occurs before on or after the commencement day); and
- (f) in relation to the obligation on a registered liquidator under section 35-1 of the Schedule 2 to the Act to lodge notice with ASIC of a conviction for an offence involving fraud or dishonesty—to convictions that occur on or after the commencement day; and
- (g) in relation to a decision under section 40-25 of Schedule 2 to the Act to suspend the registration of a person as a liquidator—to convictions for an offence involving dishonesty whether the conviction occurs before, on or after the commencement day; and
- (h) in relation to a decision under section 40-30 of Schedule 2 to the Act to cancel the registration of a person as a liquidator—to convictions for an offence involving dishonesty whether

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the conviction occurs before, on or after the commencement day; and

- (i) in relation to a decision under section 40-40 of Schedule 2 to the Act to give a show cause notice—to convictions for an offence involving dishonesty whether the conviction occurs before, on or after the commencement day.

**Part 10.37—Transitional provisions relating to the  
Treasury Laws Amendment (Combating  
Illegal Phoenixing) Act 2020**

**1661 Application of amendments**

- (1) The amendments of section 588H by Schedule 1 to the *Treasury Laws Amendment (Combating Illegal Phoenixing) Act 2020* apply in relation to debts incurred, and dispositions made, after the commencement of those amendments.
- (2) Sections 203AA and 203AB, as inserted by Schedule 2 to the *Treasury Laws Amendment (Combating Illegal Phoenixing) Act 2020*, apply in relation to a person's resignation as a director of a company if the person stopped being a director of the company on or after the day that is 12 months after the day those sections commence.
- (3) Section 203CA, as inserted by Schedule 2 to the *Treasury Laws Amendment (Combating Illegal Phoenixing) Act 2020*, applies in relation to a resolution that is to take effect on or after the day that is 12 months after the day that section commences.

**Part 10.38—Transitional provisions relating to  
Schedule 1 to the Treasury Laws  
Amendment (Mutual Reforms) Act 2019**

**1662 Application of amendments made by Schedule 1 to the  
*Treasury Laws Amendment (Mutual Reforms) Act 2019***

The amendments made by Schedule 1 to the *Treasury Laws Amendment (Mutual Reforms) Act 2019* apply on and after the commencement of that Schedule.

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**Part 10.39** Transitional provisions relating to Schedule 3 to the Financial Sector Reform (Hayne Royal Commission Response—Stronger Regulators (2019 Measures)) Act 2020

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**Part 10.39—Transitional provisions relating to  
Schedule 3 to the Financial Sector Reform  
(Hayne Royal Commission Response—  
Stronger Regulators (2019 Measures)) Act  
2020**

**1663 Definitions**

In this Part:

*amending Part* means Part 1 of Schedule 3 to the *Financial Sector Reform (Hayne Royal Commission Response—Stronger Regulators (2019 Measures)) Act 2020*.

*commencement day* means the day the amending Part commences.

**1664 Application—existing financial services licensee**

- (1) Subject to this section, the amendments made by the amending Part apply on and after the commencement day to a financial services licensee whose licence was granted before, on or after the commencement day.
- (2) Section 912DA, as inserted by the amending Part, applies in relation to an entity that starts to control, or stops controlling, the licensee on or after the commencement day.
- (3) In relation to an Australian financial services licence in force immediately before the commencement day, the period of 6 months referred to in subsection 912DB(1) or 915B(1A), (2A), (3A) or (4A), as inserted by the amending Part, begins at the start of the commencement day.

- (4) The reference in paragraph 915C(1)(g), as inserted by the amending Part, to information lodged with ASIC in accordance with a request under subsection 913B(3) in relation to an application for a licence includes information provided in accordance with paragraph 913B(1)(ca) before the commencement day.

**1665 Application—applications made before commencement**

- (1) The following applications made before the commencement day, and not yet granted or refused at the start of the commencement day, are to be dealt with, on and after the commencement day, in accordance with this Act as amended by the amending Part:
- (a) an application under section 913A for an Australian financial services licence;
  - (b) an application under paragraph 914A(2)(b) for conditions on an Australian financial services licence to be imposed, varied or revoked.
- (2) A request for information under paragraph 913B(1)(ca) that was made before the commencement day and that has not, at the start of the commencement day, been complied with is taken, on and after the commencement day, to be a request for information under paragraph 913B(3)(a) as amended by the amending Part.

**Chapter 10** Transitional provisions

**Part 10.40** Transitional provisions relating to Schedule 4 to the Financial Sector Reform (Hayne Royal Commission Response—Stronger Regulators (2019 Measures)) Act 2020

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**Part 10.40—Transitional provisions relating to  
Schedule 4 to the Financial Sector Reform  
(Hayne Royal Commission Response—  
Stronger Regulators (2019 Measures)) Act  
2020**

**1666 Application—conduct etc. relevant to new banning and  
disqualification orders**

When making either of the following orders at or after the commencement of Part 1 of Schedule 4 to the *Financial Sector Reform (Hayne Royal Commission Response—Stronger Regulators (2019 Measures)) Act 2020*:

- (a) a banning order;
- (b) a disqualification order described in paragraph 921A(2)(a) of this Act;

regard may be had to acts, omissions, states of affairs or matters before, at or after that commencement.

**1667 Transitional—existing banning and disqualification orders**

- (1) An order made under subsection 920A(1), that is in force immediately before the commencement of Part 1 of Schedule 4 to the *Financial Sector Reform (Hayne Royal Commission Response—Stronger Regulators (2019 Measures)) Act 2020*, continues in force (and may be dealt with) as if it had been made under that subsection as amended by that Act.
- (2) An order described in paragraph 921A(2)(a) that:
  - (a) was made under subsection 921A(2); and
  - (b) is in force immediately before the commencement of Part 1 of Schedule 4 to the *Financial Sector Reform (Hayne Royal*



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*Commission Response—Stronger Regulators (2019  
Measures)) Act 2020;*

continues in force (and may be dealt with) as if it had been made  
under that subsection as amended by that Act.

- (3) Section 920D applies to an order covered by subsection (1) of this  
section as if the words “because of a change in any of the  
circumstances based on which ASIC made the order” were omitted  
from subsection 920D(1).

**Part 10.41—Transitional provisions relating to the  
Treasury Laws Amendment (2019  
Measures No. 3) Act 2020**

**1668 Transitional—delegations**

- (1) The amendments of sections 890C, 1101J and 1345A made by items 25, 27, 28 and 29 of Schedule 3 to the *Treasury Laws Amendment (2019 Measures No. 3) Act 2020* do not affect a delegation in effect for the purposes of any of those sections immediately before the commencement of those items.
- (2) Despite the amendment of subsection 1345A(1) made by item 28 of that Schedule, regulations in force for the purposes of that subsection immediately before the commencement of that item continue in force, on and after that commencement, for the purposes of that subsection.

**Part 10.42—Transitional provisions relating to the  
Coronavirus Economic Response Package  
Omnibus Act 2020**

**1669 Application of amendments made by Schedule 12 to the  
*Coronavirus Economic Response Package Omnibus Act  
2020***

The amendments made by Part 2 of Schedule 12 to the  
*Coronavirus Economic Response Package Omnibus Act 2020*  
apply to statutory demands that are served on or after the  
commencement of that Schedule.

**Part 10.43—Application provisions relating to  
Schedule 10 to the Financial Sector Reform  
(Hayne Royal Commission Response) Act  
2020**

**1670 Application of Reference Checking and Information Sharing  
Protocol**

The amendments made by Schedule 10 to the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020* apply in relation to information shared on or after 1 October 2021.

## **Part 10.44—Application and transitional provisions relating to Schedule 11 to the Financial Sector Reform (Hayne Royal Commission Response) Act 2020**

### **1671 Definitions**

In this Part:

*amending Schedule* means Schedule 11 to the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020*.

### **1671A Continued application of paragraph 601FC(1)(l) and section 912D**

- (1) Despite the repeal of paragraph 601FC(1)(l) by item 1 of the amending Schedule, that paragraph (as in force immediately before 1 October 2021) continues to apply to the responsible entity of a registered scheme in relation to a breach of this Act if:
  - (a) the breach occurs before 1 October 2021; and
  - (b) before 1 October 2021, the responsible entity knows of the breach.
- (2) Despite the repeal of section 912D by item 5 of the amending Schedule, subsections 912D(1) to (1D) and subsection 912D(3) (to the extent that it relates to subsections 912D(1) to (1D)), as in force immediately before 1 October 2021, continue to apply to a financial services licensee in relation to a breach or likely breach of an obligation mentioned in paragraph 912D(1)(a) (as in force immediately before 1 October 2021) if:
  - (a) the obligation is breached or is likely to be breached before 1 October 2021; and
  - (b) before 1 October 2021, the licensee knows that the obligation has been breached or is likely to be breached.

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**Part 10.44** Application and transitional provisions relating to Schedule 11 to the Financial Sector Reform (Hayne Royal Commission Response) Act 2020

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- (3) Despite the repeal of section 912D by item 5 of the amending Schedule, subsection 912D(2) and subsection 912D(3) (to the extent that it relates to subsection 912D(2)), as in force immediately before 1 October 2021, continue to apply to a financial services licensee if:
- (a) the licensee becomes a participant, or ceases to be a participant, in a licensed market or a licensed CS facility before 1 October 2021; and
  - (b) before 1 October 2021, the licensee knows of that circumstance.

**1671B Application of sections 912DAA and 912DAB**

Sections 912DAA and 912DAB, as inserted by item 5 of the amending Schedule, apply:

- (a) to the responsible entity of a registered scheme in relation to a breach of this Act that occurs before 1 October 2021, but in respect of which paragraph 601FC(1)(l) (as in force immediately before 1 October 2021) does not apply on or after 1 October 2021 (see subsection 1671A(1)); and
- (b) to a financial services licensee in relation to a breach or likely breach of an obligation mentioned in paragraph 912D(1)(a) (as in force immediately before 1 October 2021) that occurs before 1 October 2021, but in respect of which subsections 912D(1) to (1D) (as in force immediately before 1 October 2021) do not apply on or after 1 October 2021 (see subsection 1671A(2)); and
- (c) in relation to reportable situations arising on or after 1 October 2021.

**1671C Application of section 912DAC**

Section 912DAC, as inserted by item 5 of the amending Schedule, applies:

- (a) to a financial services licensee who becomes a participant, or ceases to be a participant, in a licensed market or a licensed CS facility before 1 October 2021, but in respect of which

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subsection 912D(2) (as in force immediately before 1 October 2021) does not apply on or after 1 October 2021 (subsection 1671A(3)); and

- (b) to a financial services licensee who becomes a participant, or ceases to be a participant, in a licensed market or a licensed CS facility on or after 1 October 2021.

**1671D Application of ASIC’s obligations to publish information under section 912DAD**

Section 912DAD, as inserted by item 5 of the amending Schedule, applies in relation to financial years ending on or after 30 June 2022.

**1671E Application of provisions dealing with notifying and compensating a person affected by a reportable situation**

Subdivision C of Division 3 of Part 7.6, as inserted by item 6 of the amending Schedule, applies in relation to reportable situations arising on or after 1 October 2021.

## Part 10.45—Transitional provisions relating to the Financial Sector Reform (Hayne Royal Commission Response) Act 2020

### 1672 Transitional—Banking Code of Practice

- (1) The following provisions have effect:
- (a) the *Banking Code of Practice*, whose approval by ASIC was registered on the Federal Register of Legislation on 18 December 2019, is taken to be approved under section 1101A, as substituted by Schedule 1 to the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020*;
  - (b) Division 2 of Part 7.12, as inserted by that Schedule to that Act, applies to the *Banking Code of Practice*.

- (2) In this section:

***Banking Code of Practice*** means the *Banking Code of Practice*, published on 12 December 2019 by the Australian Banking Association Incorporated (ABN 60 117 262 978).

Note: The *Banking Code of Practice* could in 2020 be viewed on the Australian Banking Association's website (<http://www.ausbanking.org.au>).



## **Part 10.46—Application and transitional provisions relating to Schedule 1 to the Financial Sector Reform (Hayne Royal Commission Response No. 2) Act 2021**

### **Division 1—Introduction**

#### **1673 Definitions**

In this Part:

***amending Schedule*** means Schedule 1 to the *Financial Sector Reform (Hayne Royal Commission Response No. 2) Act 2021*.

***disclosure day*** for an ongoing fee arrangement has the same meaning as it has in Part 7.7A, as in force immediately before the amending Schedule commences.

***renewal notice*** has the same meaning as it has in Part 7.7A, as in force immediately before the amending Schedule commences.

***renewal notice day*** has the same meaning as it has in Part 7.7A, as in force immediately before the amending Schedule commences.

***transition day***, for an ongoing fee arrangement, means the earlier of:

- (a) the day when a fee disclosure statement is given for the arrangement in accordance with subsection 1673C(3); and
- (b) the last day of the 12 month transition period.

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**Part 10.46** Application and transitional provisions relating to Schedule 1 to the  
Financial Sector Reform (Hayne Royal Commission Response No. 2) Act 2021

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**Division 2—New ongoing fee arrangements**

**1673A Application provision for new ongoing fee arrangements**

The amendments made by the amending Schedule apply in relation to an ongoing fee arrangement entered into on or after 1 July 2021.

## **Division 3—Existing ongoing fee arrangements**

### **1673B Application of this Division**

This Division applies in relation to an ongoing fee arrangement that is in force immediately before 1 July 2021.

### **1673C Application—annual requirement to give fee disclosure statement**

#### *General rule*

- (1) Subject to this section, Subdivision B of Division 3 of Part 7.7A, as amended by the amending Schedule, applies to the ongoing fee arrangement on and from 1 July 2021.

#### *Modified application during transition period*

- (2) For the period from 1 July 2021 to 30 June 2022 (the **12 month transition period**):
  - (a) subsection 962G(1), as amended by the amending Schedule, applies in relation to the ongoing fee arrangement as if it were replaced with subsection (3) of this section; and
  - (b) subsection 962H(1), as amended by the amending Schedule, applies in relation to the ongoing fee arrangement as if it were replaced with subsection (4) of this section.
- (3) The current fee recipient in relation to the ongoing fee arrangement must, on a day that is before the end of the 12 month transition period, give the client a fee disclosure statement for the arrangement and the transition day.
- (4) A **fee disclosure statement** for an ongoing fee arrangement and a transition day is a statement in writing that:
  - (a) includes the information and statements required under this section; and
  - (b) relates to:

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**Part 10.46** Application and transitional provisions relating to Schedule 1 to the Financial Sector Reform (Hayne Royal Commission Response No. 2) Act 2021

**Division 3** Existing ongoing fee arrangements

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- (i) the period of 12 months (the *previous year*) ending immediately before the transition day for the arrangement; and
- (ii) the period of 12 months (the *upcoming year*) starting on the transition day for the arrangement.

*Modified application after transition period*

- (5) After 1 July 2021, subsection 962G(3), as inserted by the amending Schedule, applies in relation to the ongoing fee arrangement as if it were replaced with subsection (6) of this section.
- (6) **Anniversary day**, for an ongoing fee arrangement, means:
  - (a) the transition day for the arrangement; or
  - (b) the anniversary of the transition day for the arrangement.

*Acquisition of property*

- (7) Section 1350 does not apply in relation to the operation of Subdivision B of Division 3 of Part 7.7A, as amended by the amending Schedule, in respect of the ongoing fee arrangement.

**1673D Transitional—existing obligation to give a fee disclosure statement under section 962G**

- (1) This section applies if:
  - (a) a disclosure day for the ongoing fee arrangement occurs before 1 July 2021; and
  - (b) the period of 60 days beginning on the disclosure day ends on or after 1 July 2021; and
  - (c) before 1 July 2021 the current fee recipient in relation to the ongoing fee arrangement has not given a fee disclosure statement in relation to the ongoing fee arrangement in accordance with the obligation arising under section 962G (as in force before 1 July 2021) in relation to the disclosure day.

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- (2) The obligation on the fee recipient to give the fee disclosure statement within the 60 day period beginning on the disclosure day ceases on 1 July 2021.
- (3) However, to the extent that the fee disclosure statement referred to in subsection (2) would have been required to include information in relation to a period that would not otherwise be required to be included in a fee disclosure statement given under section 1673C, the fee disclosure statement given under that section must include that information.

**1673E Transitional—existing obligation to give a renewal notice and fee disclosure statement under section 962K**

- (1) This section applies if:
  - (a) a renewal notice day for the ongoing fee arrangement occurs before 1 July 2021; and
  - (b) the period of 60 days beginning on the renewal notice day ends on or after 1 July 2021; and
  - (c) before 1 July 2021 the current fee recipient in relation to the ongoing fee arrangement has not given a renewal notice and a fee disclosure statement in relation to the ongoing fee arrangement in accordance with the obligation arising under section 962K (as in force before 1 July 2021) in relation to the renewal notice day.
- (2) The obligation on the fee recipient to give the renewal notice and fee disclosure statement within the 60 day period beginning on the renewal notice day ceases on 1 July 2021.
- (3) However, to the extent that the fee disclosure statement referred to in subsection (2) would have been required to include information in relation to a period that would not otherwise be required to be included in a fee disclosure statement given under section 1673C, the fee disclosure statement given under that section must include that information.

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**Part 10.46** Application and transitional provisions relating to Schedule 1 to the Financial Sector Reform (Hayne Royal Commission Response No. 2) Act 2021

**Division 3** Existing ongoing fee arrangements

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**1673F Application—consent requirements for deductions of ongoing fees**

- (1) Subdivision C of Division 3 of Part 7.7A, as inserted by the amending Schedule, applies in relation to the ongoing fee arrangement on and from 1 July 2022.
- (2) However, if a person gives a fee recipient in relation to the ongoing fee arrangement consent for the purposes of that Subdivision before 1 July 2022:
  - (a) section 962U (variation or withdrawal of consent) in that Subdivision applies in relation to the consent from when it is given; and
  - (b) section 962X (obligation to keep records of compliance), as inserted by the amending Schedule, applies in relation to records relating to the consent.
- (3) Section 1350 does not apply in relation to the operation of Subdivision C of Division 3 of Part 7.7A, as inserted by the amending Schedule, in respect of the ongoing fee arrangement.

**1673G Application—compliance records**

Subdivision D of Division 3 of Part 7.7A, as inserted by the amending Schedule, applies on and from 1 July 2021 in relation to a fee recipient's compliance with Division 3 of Part 7.7A on and from that date in relation to the ongoing fee arrangement.

## **Part 10.47—Application and transitional provisions relating to Schedule 2 to the Financial Sector Reform (Hayne Royal Commission Response No. 2) Act 2021**

### **1674 Application of disclosure of lack of independence reforms**

The amendments made by Schedule 2 to the *Financial Sector Reform (Hayne Royal Commission Response No. 2) Act 2021* apply in relation to a financial service provided on or after 1 July 2021.

#### **1674A Obligation to give updated Financial Services Guide**

- (1) If:
- (a) the providing entity has given a Financial Services Guide to the client under section 941A or 941B before 1 July 2021; and
  - (b) the providing entity will provide a financial service to the client on or after 1 July 2021; and
  - (c) paragraph 942B(2)(fa) or 942C(2)(ga), as inserted by Schedule 2 to the *Financial Sector Reform (Hayne Royal Commission Response No. 2) Act 2021*, applies in relation to the providing entity and the financial service;
- the providing entity must, before the financial service is provided to the client, give the client:
- (d) another Financial Services Guide that contains the statement required by whichever of the paragraphs referred to in paragraph (c) of this subsection is applicable; or
  - (e) a Supplementary Financial Services Guide that contains that statement.
- (2) Subsections 941A(1) and 941B(1) apply as if the reference in those subsections to “this Division” included a reference to this section.

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**Part 10.48—Application and transitional provisions  
relating to Schedule 7 to the Financial  
Sector Reform (Hayne Royal Commission  
Response) Act 2020**

**1675 Definitions**

In this Part:

*commencement day* means the day on which Schedule 7 to the  
*Financial Sector Reform (Hayne Royal Commission Response) Act  
2020* commences.

*transition period* has the meaning given by section 1675B.

**1675A Application of claims handling and settling services reforms**

Subject to this Part, the amendments made by Schedule 7 to the  
*Financial Sector Reform (Hayne Royal Commission Response) Act  
2020* apply to claims made under insurance products, or potential  
claims that arise under insurance products, on or after the  
commencement day.

**1675B Transition periods**

- (1) For the purposes of this Part, the *transition period* for a person begins on the commencement day and ends on:
  - (a) if the person lodges an application for an Australian financial services licence covering claims handling and settling services and ASIC gives the applicant notice in writing on or before 30 June 2021 that the application is granted—the last licence-processing day; or
  - (b) if the person lodges an application for an Australian financial services licence covering claims handling and settling



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services, the application complies with section 913A and is pending on 30 June 2021—the earlier of:

- (i) if, after 30 June 2021, the person withdraws the application—the day on which the application is withdrawn; and
  - (ii) if, after 30 June 2021, ASIC notifies the person in writing that ASIC refuses to receive the application under subsection 1274(8)—the day on which ASIC gives that notification; and
  - (iii) if ASIC refuses to grant the person an Australian financial services licence covering claims handling and settling services—the day on which ASIC gives the person notice in writing of the refusal; and
  - (iv) the last licence-processing day; or
- (c) if the person lodges an application for ASIC to vary the conditions on the licence to specify that claims handling and settling services are financial services that the licensee is authorised to provide and ASIC gives the applicant notice in writing on or before 30 June 2021 that the application is granted—the last licence-processing day; or
- (d) if the person is a financial services licensee and lodges an application for ASIC to vary the conditions on the licence to specify that claims handling and settling services are financial services that the licensee is authorised to provide, the application complies with paragraph 914A(2)(b) and is pending on 30 June 2021—the earlier of:
- (i) if, after 30 June 2021, the person withdraws the application—the day on which the application is withdrawn; and
  - (ii) if, after 30 June 2021, ASIC notifies the person in writing that ASIC refuses to receive the application under subsection 1274(8)—the day on which ASIC gives that notification; and
  - (iii) if ASIC refuses to grant the person the variation—the day on which ASIC gives the person notice in writing of the refusal; and

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**Part 10.48** Application and transitional provisions relating to Schedule 7 to the  
Financial Sector Reform (Hayne Royal Commission Response) Act 2020

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- (iv) the last licence-processing day; or
- (e) otherwise—30 June 2021.

(2) In this section:

***last licence-processing day*** means the later of:

- (a) 31 December 2021; and
- (b) if the Minister determines another day under subsection (3)—  
that other day.

***pending***: an application is ***pending*** on a particular day if the application has been lodged on or before that day and each of the following is satisfied:

- (a) the application has not been withdrawn by the applicant on or before that day;
  - (b) ASIC has not, on or before that day, given the applicant notice in writing that the application has been granted or refused;
  - (c) ASIC has not, on or before that day, notified that applicant in writing that ASIC refuses to receive the application under subsection 1274(8).
- (3) The Minister may, by notifiable instrument, determine a day that is after 31 December 2021 and before 1 July 2022 to be the last licence-processing day.

**1675C Application during transition period**

- (1) Despite section 1675A, a claims handling and settling service provided by or on behalf of a person during the transition period for that person is not to be treated as a financial service, except for the purposes of:
- (a) section 912C; and
  - (b) section 912CA; and
  - (c) section 912E.

(2) Nothing in this section prevents:

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- (a) a financial services licensee from giving a person a notice under section 916A during the transition period for the licensee authorising the person to provide claims handling and settling services after the end of that transition period; or
- (b) an authorised representative of a financial services licensee giving an individual written notice under section 916B during the transition period for the licensee authorising that individual to provide specified claims handling and settling services or claims handling and settling services on behalf of the licensee after the end of the transition period for the authorised representative.

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**Part 10.49—Transitional provisions relating to  
Schedule 9 to the Financial Sector Reform  
(Hayne Royal Commission Response) Act  
2020**

**1676 Definitions**

In this Part:

*amending Schedule* means Schedule 9 to the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020*.

*commencement day* means the day on which Schedule 9 to the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020* commences.

**1676A Automatic extension of licence conditions on the  
commencement day—licensees who are authorised to deal**

- (1) This section applies to an Australian financial services licensee if, just before the commencement day:
  - (a) the licensee's Australian financial services licence authorised the licensee to deal in a superannuation product; and
  - (b) the licensee was also an RSE licensee.
- (2) The licensee's Australian financial services licence is taken from the commencement day to be subject to a condition authorising the licensee to provide a superannuation trustee service.

**1676B Automatic extension of licence conditions—licence  
applications pending just before commencement day**

- (1) This section applies if:
  - (a) before the commencement day, a person lodges an application for an Australian financial services licence

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- authorising the person to deal in a superannuation product;  
and
- (b) on or after the commencement day, ASIC decides the application by granting the person an Australian financial services licence authorising the person to deal in a superannuation product; and
  - (c) at the time the licence is granted, the person is an RSE licensee.
- (2) The licensee's Australian financial services licence is taken from the time it is granted to also be subject to a condition authorising the licensee to provide a superannuation trustee service.

**1676C Automatic extension of licence conditions—variation applications pending just before commencement day**

- (1) This section applies if:
- (a) before the commencement day, a person lodges an application for ASIC to vary the conditions on the person's Australian financial services licence by authorising the person to deal in a superannuation product; and
  - (b) on or after the commencement day, ASIC decides the application by varying the conditions on the person's licence to authorise the person to deal in a superannuation product; and
  - (c) at the time the licence is varied, the person is an RSE licensee.
- (2) The licensee's Australian financial services licence is taken from the time it is so varied to also be subject to a condition authorising the licensee to provide a superannuation trustee service.

**1676D Automatic licence conditions may be varied etc.**

If an Australian financial services licence is subject to a condition authorising a licensee to provide a superannuation trustee service as a result of the operation of this Part, ASIC may, in accordance with the provisions of Part 7.6:

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- (a) vary or revoke the condition; or
  - (b) vary, suspend or cancel the licence;
- as if the authorisation to provide a superannuation trustee service had been specified by ASIC under subsection 914A(6).

## **Part 10.51—Transitional provisions relating to the Territories Legislation Amendment Act 2020**

### **1678 Definitions**

In this Part:

**amending Act** means the *Territories Legislation Amendment Act 2020*.

**commencement** means the commencement of Division 1 of Part 1 of Schedule 2 to the amending Act.

**commencement day** means the day on which commencement occurs.

**eligible**: a corporation is **eligible** for registration as a company under Part 5B.1 of this Act if:

- (a) it is a registered company under the Norfolk Island Companies Act, other than a foreign company registered under Part 25 of that Act; and
- (b) the corporation is not a Chapter 5 body corporate; and
- (c) no application to wind up the corporation has been made to the Supreme Court of Norfolk Island that has not been dealt with; and
- (d) no application to approve a compromise or arrangement between the corporation and another person has been made to the Supreme Court of Norfolk Island that has not been dealt with.

**Norfolk Island Companies Act** means the *Companies Act 1985* of Norfolk Island.

**personal information** has the same meaning as in the *Privacy Act 1988*.

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**1678A Registration of Norfolk Island companies—general**

*Scope of section*

- (1) This section applies to a corporation that is eligible for registration as a company under Part 5B.1.

*Registration*

- (2) ASIC must register the corporation as a company under Part 5B.1 on the commencement day, as if it had received an application for registration from the corporation in accordance with section 601BC.
- (3) ASIC must register the corporation:
- (a) as a type of company corresponding to whichever of the types covered by subsection (4) corresponds to its type under the Norfolk Island Companies Act immediately before commencement; and
  - (b) with the same characteristics and attributes as the corporation had immediately before commencement.

Note: Most eligible corporations will retain the same name, registered office, directors and members. However, for whether the corporation retains the same name and directors, see subsections 1678B(4) and (8).

- (4) This subsection covers the following types of company:
- (a) a proprietary company limited by shares;
  - (b) an unlimited proprietary company;
  - (c) a proprietary company limited both by shares and by guarantee;
  - (d) a public company limited by shares;
  - (e) an unlimited public company;
  - (f) a company limited by guarantee;
  - (g) a public company limited both by shares and by guarantee;
  - (h) a no liability company.



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Note: This list includes some types of company not covered by subsection 601BA(1).

- (5) However, the corporation must not be registered if, immediately before commencement, it is no longer eligible for registration as a company under Part 5B.1.

Note: The corporation is no longer eligible for registration if it has ceased to be registered under the Norfolk Island Companies Act, if it has started to be a Chapter 5B body corporate or if an application for winding up or to approve a compromise or arrangement had been made to the Supreme Court of Norfolk Island.

*References to companies in this and other laws*

- (6) On and after commencement, in this and any other Act, and any instrument under an Act, a reference to a company registered under a Territory law, or under a law of Norfolk Island, is taken not to include a reference to a corporation registered as a company under Part 5B.1 for the purposes of this section.

**1678B Registration of Norfolk Island companies—registration process and other matters**

*Scope*

- (1) This section applies to an eligible corporation that is registered as a company under Part 5B.1 for the purposes of section 1678A.
- (2) ASIC must comply with subsections (3) and (4) of this section to the extent practicable, having regard to any information disclosed under section 1678C.

*Registration process*

- (3) On the registration of the company, ASIC must:
- (a) give the company an ACN; and
  - (b) issue a certificate that states:
    - (i) the company's name (see subsection (4) of this section); and

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- (ii) the company's ACN; and
- (iii) the company's type (see subsection 1678A(4)); and
- (iv) that the company is registered as a company under this Act; and
- (v) that the company is taken to be registered in Norfolk Island; and
- (vi) the date of the company's registration.

Note: The date of the company's registration is the commencement day (see subsection 1678A(2)).

*Company name*

- (4) Despite section 601BF, ASIC must register the company with a name consisting of:
  - (a) either:
    - (i) the corporation's name immediately before commencement; or
    - (ii) if that name is prescribed by regulations made for the purposes of paragraph 147(1)(c) as unacceptable for registration—a name that consists of the expression "Australian Company Number" followed by the company's ACN; and
  - (b) the words required by subsection 148(2) or (3).
- (5) If the company is registered with a name that is identical or nearly identical to a name that is reserved or registered for another body or entity under an Act covered by subsection (6), the company's registration with that name does not affect the availability of the name to the company or to the other body or entity under such an Act, despite any provision of such an Act to the contrary.
- (6) The Acts covered by this subsection are:
  - (a) this Act;
  - (b) the *Business Names Registration Act 2011*;
  - (c) the *Business Names Registration (Transitional and Consequential Provisions) Act 2011*.

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*Company constitution*

- (7) The company's constitution on registration is the memorandum and articles of association of the corporation as in force immediately before commencement.

Note: Section 601BG (which deals with the constitutions of companies registered under Part 5B.1) does not apply to the company. But within 3 months after the date of registration, the company must modify its constitution to give effect to Part 5B.1 (see section 601BH).

*Company directors*

- (8) If, immediately before commencement, a person who is a director of the corporation does not meet the requirements of section 201B, that person does not become a director of the company on its registration.

**1678C Registration of Norfolk Island companies—provision of information**

- (1) For the purposes of ASIC performing functions or duties, or exercising powers, under this Part, or any rules made under section 1678D:
- (a) the Registrar of Companies under the Norfolk Island Companies Act (the *Norfolk Island Registrar*) may disclose to ASIC information (including personal information) obtained for the purposes of that Act; and
  - (b) ASIC may record or use information disclosed under paragraph (a); and
  - (c) ASIC may disclose to the Norfolk Island Registrar information (including personal information) obtained for the purposes of this Act; and
  - (d) the Norfolk Island Registrar may record or use information disclosed under paragraph (c).
- (2) In addition, for the purposes mentioned in subsection (1):
- (a) ASIC may, by written notice given to an eligible corporation, request the corporation to provide specified information

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(including personal information) in relation to the registration of the corporation as a company under Part 5B.1; and

- (b) the eligible corporation may disclose the requested information to ASIC; and
- (c) ASIC may record or use information disclosed under paragraph (b).

Note: This section constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws (including the common law).

**1678E Saving of rules in relation to particular corporations**

- (1) Despite the repeal of section 1678D by subsection (5) of that section, a rule of the kind mentioned in paragraph 1678D(2)(b) continues in force until the earlier of the following times:
  - (a) the end of the period specified under subsection 1678D(3) for the rule;
  - (b) when the rule is repealed under subsection (2).

Note: Paragraph 1678D(2)(b) provides that ASIC may make rules under subsection 1678D(1) in relation to the registration of a particular corporation or corporations.

- (2) A rule of the kind mentioned in paragraph 1678D(2)(b) may, under this subsection, be repealed before the end of the period specified under subsection 1678D(3).

**1678F Director identification numbers—Norfolk Island company directors**

*Scope*

- (1) This section applies if commencement (within the meaning of this Part) occurs on or after the application day within the meaning of subsection 1653(1).
- (2) This section applies in relation to a person who:
  - (a) is not an eligible officer immediately before commencement; and

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- (b) becomes an eligible officer because of the registration of a company under Part 5B.1 for the purposes of section 1678A (which deals with the registration of former Norfolk Island companies).

Note: When such a company is registered, the former directors of the Norfolk Island company generally become directors of the registered company (see subsection 1678A(3)). Such a director is an eligible officer (see section 1272B).

*Transitional application period for Norfolk Island company directors to apply for director identification numbers*

- (3) If a period (the **transitional application period**) is specified under subsection (5) of this section, section 1272C applies to the person as if:
- (a) the reference in subparagraph 1272C(2)(a)(ii) to an application period specified by regulations were instead a reference to the transitional application period; and
  - (b) the reference in subparagraph 1272C(2)(a)(ii) to the start of the application period specified by regulations were instead a reference to when the transitional application period came into effect; and
  - (c) the reference in subparagraph 1272C(2)(a)(iii) to the start of a longer period (if any) allowed by the Registrar under section 1272E were instead a reference to when the transitional application period came into effect.
- Note: Section 1272C requires an eligible officer to have a director identification number, but allows a certain time (an application period) within which an application can be made for a director identification number.
- (4) Until a transitional application period comes into effect, section 1272C does not apply to the person.
- (5) The Minister may, by legislative instrument, specify a transitional application period for the purposes of subsection (3).
- (6) Subsection 1653(4) does not apply to the person.

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Note: Subsection 1653(4) applies a default period of 28 days under section 1272C within which an application can be made for a director identification number.

**Part 10.52—Application and transitional provisions  
relating to Schedule 1 to the Treasury Laws  
Amendment (2021 Measures No. 1) Act  
2021**

**1679 Definitions**

In this Part:

**Chapter 2G meeting** has the meaning given by section 253P.

**commencement day** means the day on which Schedule 1 to the *Treasury Laws Amendment (2021 Measures No. 1) Act 2021* commences.

**1679A Application—virtual meetings and electronic  
communications**

- (1) The amendments made by Schedule 1 to the *Treasury Laws Amendment (2021 Measures No. 1) Act 2021* apply in relation to:
  - (a) a Chapter 2G meeting; and
  - (b) a document that relates to a Chapter 2G meeting that is required or permitted to be given to a person under this Act;if:
  - (c) the meeting is held on or after the commencement day; and
  - (d) the document is given on or after the commencement day.
- (2) The amendments made by Schedule 1 to the *Treasury Laws Amendment (2021 Measures No. 1) Act 2021* apply in relation to any document that is required or permitted to be given to a person under this Act that relates to a resolution to be considered without a Chapter 2G meeting if the document is given on or after the commencement day.

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**Part 10.52** Application and transitional provisions relating to Schedule 1 to the Treasury Laws Amendment (2021 Measures No. 1) Act 2021

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Note: The amendments relating to meetings and giving documents made by Schedule 1 to the *Treasury Laws Amendment (2021 Measures No. 1) Act 2021* are superseded by the amendments made by Schedule 2 to the *Corporations Amendment (Meetings and Documents) Act 2022* (see sections 1687B and 1687C of this Act).

**1679C Application—recording and keeping of minute books**

The amendments made by Schedule 1 to the *Treasury Laws Amendment (2021 Measures No. 1) Act 2021* apply in relation to minute books kept before, on or after the commencement day.

**1679D Application—execution of documents**

Sections 127 and 129, as amended by Schedule 1 to the *Treasury Laws Amendment (2021 Measures No. 1) Act 2021*, apply in relation to a document that is executed on or after the commencement day.



## **Part 10.53—Application and transitional provisions relating to meetings and communications under the Corporations Amendment (Corporate Insolvency Reforms) Act 2020**

### **1680 Definitions**

In this Part:

*commencement day* means the day on which Part 2 of Schedule 4 to the *Corporations Amendment (Corporate Insolvency Reforms) Act 2020* commences.

### **1680A Application of COVID-19 instrument**

The modifications of this Act made by the *Corporations (Coronavirus Economic Response) Determination (No. 3) 2020* do not apply in relation to:

- (a) a meeting of a committee convened under Part 2 of Schedule 2; or
- (b) a meeting concerning one or more companies under external administration;

that is held on or after the commencement day.

### **1680B Validation of things done under COVID-19 instruments**

- (1) This item applies if, before the commencement day:
  - (a) a thing is done in accordance with:
    - (i) the *Corporations (Coronavirus Economic Response) Determination (No. 1) 2020*; or
    - (ii) the *Corporations (Coronavirus Economic Response) Determination (No. 3) 2020*; and

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- (b) the thing done would, apart from this item, be invalid or ineffective because it did not satisfy the requirements of this Act.
- (2) The thing done is as valid and effective, and is taken always to have been as valid and effective, as it would have been had the thing done satisfied the requirements of this Act.

**Part 10.54—Application provisions relating to  
simplified liquidation process under the  
Corporations Amendment (Corporate  
Insolvency Reforms) Act 2020**

**1681 Application of amendments relating to the simplified  
liquidation process**

The amendments made by Schedule 3 to the *Corporations Amendment (Corporate Insolvency Reforms) Act 2020* apply in relation to the winding up of a company because of a triggering event that occurs on or after 1 January 2021.

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**Part 10.55** Transitional provisions relating to the Treasury Laws Amendment (Your Future, Your Super) Act 2021

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**Part 10.55—Transitional provisions relating to the  
Treasury Laws Amendment (Your Future,  
Your Super) Act 2021**

**1682 Application of amendment relating to portfolio holdings  
disclosure**

The amendment of section 1017BB made by Schedule 3 to the *Treasury Laws Amendment (Your Future, Your Super) Act 2021* applies in relation to the reporting day that is 31 December 2021 and to later reporting days.

## **Part 10.56—Application and transitional provisions relating to the Treasury Laws Amendment (2021 Measures No. 1) Act 2021**

### **1683 Definitions**

In this Part:

*amending Act* means the *Treasury Laws Amendment (2021 Measures No. 1) Act 2021*.

### **1683A Application**

The amendments made by Parts 1 and 2 of Schedule 2 to the amending Act to apply in relation to conduct that is engaged in on or after the commencement of those Parts.

### **1683B Review of operation of laws**

- (1) The Minister must cause a review of the operation of the amendments made by Parts 1 and 2 of Schedule 2 to the amending Act to be conducted by an independent expert within 6 months after the second anniversary of the commencement of this section.
- (2) The person who conducts the review must give the Minister a written report of the review.
- (3) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

*Recommendations*

- (4) The report may set out recommendations to the Commonwealth Government.

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- (5) If the report sets out one or more recommendations to the Commonwealth Government, the report must set out the reasons for those recommendations.

*Government response to recommendations*

- (6) If the report sets out one or more recommendations to the Commonwealth Government, as soon as practicable, and in any event within 3 months, after the report is first tabled in a House of the Parliament, the Minister must cause:
- (a) a statement setting out the Commonwealth Government's response to each of the recommendations to be prepared; and
  - (b) the statement to be published on the Department's website.

**1683C Amendments made by Schedule 2 to the amending Act cease to have effect if review of operation of laws is not conducted**

- (1) This section applies if the Minister:
- (a) fails to cause a review to be conducted in accordance with subsection 1683B(1) within the period required by that subsection; or
  - (b) is given a written report of a review conducted in accordance with subsection 1683B(1), but fails to cause a copy of the report to be tabled in each House of the Parliament within the period required by subsection 1683B(3); or
  - (c) is given a written report of a review conducted in accordance with subsection 1683B(1) that sets out one or more recommendations to the Commonwealth Government, but fails to cause a statement to be published on the Department's website within the period required by subsection 1683B(6).
- (2) This Act and the ASIC Act have effect, on or after the day mentioned in subsection (3), as if the amendments made by Parts 1, 2 and 4 of Schedule 2 to the amending Act had not been made.
- (3) The day (the *sunsetting day*) is:
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- (a) the day after the end of the period referred to in the applicable paragraph of subsection (1), unless paragraph (b) of this subsection applies; or
  - (b) if there is more than one applicable paragraph in subsection (1)—the earliest day determined under paragraph (a) of this subsection for each of those paragraphs.
- (4) To avoid doubt, nothing in this section affects the validity of anything that is done, or not done, in reliance on this Act or the ASIC Act as in force before the sunseting day.

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**Part 10.57** Transitional provisions relating to the Financial Sector Reform (Hayne Royal Commission Response—Better Advice) Act 2021

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**Part 10.57—Transitional provisions relating to the  
Financial Sector Reform (Hayne Royal  
Commission Response—Better Advice) Act  
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**Division 1—Definitions**

**1684 Definitions**

In this Part:

***amending Act*** means the *Financial Sector Reform (Hayne Royal Commission Response—Better Advice) Act 2021*.

***exam cut-off day***, for an existing provider, means:

- (a) if, on 1 January 2022, regulations made for the purposes of paragraph 1684B(a) prescribe a day in relation to the existing provider—that day; or
- (b) otherwise—1 January 2022.

***existing provider*** has the meaning given by section 1546A.

***old Tax Agent Services Act*** means the *Tax Agent Services Act 2009* as in force immediately before 1 January 2022.

***registered tax (financial) adviser*** has the meaning given by the old Tax Agent Services Act.

***relevant provider*** has the meaning given by section 910A.

***standards body*** has the meaning given by section 910A, as in force immediately before 1 January 2022.



## **Division 2—Transitional provisions for existing providers**

### **1684A Application—qualifications for existing providers**

*Existing providers who are relevant providers on 1 January 2026*

- (1) Subsection 921BA(1) and subsection 921BA(5) in so far as it relates to subsection 921BA(1), as inserted by Schedule 1 to the amending Act, apply on and after 1 January 2026 in relation to an existing provider who is a relevant provider if the existing provider is a relevant provider on 1 January 2026.

*Existing providers who are not relevant providers on 1 January 2026*

- (2) If an existing provider who is a relevant provider is not a relevant provider on 1 January 2026, subsection 921BA(1) and subsection 921BA(5) in so far as it relates to subsection 921BA(1), as inserted by Schedule 1 to the amending Act, apply on and after 1 January 2026 in relation to the existing provider as if the reference in subsection 921BA(1), as inserted by Schedule 1 to the amending Act, to meeting the education and training standard in subsection 921B(2), as amended by Schedule 1 to the amending Act, were a reference to:
  - (a) meeting the education and training standard in subsection 921B(2), as amended by Schedule 1 to the amending Act; or
  - (b) completing one or more courses determined by the Minister under subsection 1684E(1) to give the existing provider qualifications equivalent to that standard.

### **1684B Application—exam for existing providers**

Subsection 921BA(2) and subsection 921BA(5) in so far as it relates to subsection 921BA(2), as inserted by Schedule 1 to the amending Act, apply, in relation to an existing provider who is a relevant provider, on and after:

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- (a) if, on 1 January 2022, regulations made for the purposes of this paragraph prescribe a day in relation to the existing provider—that day; or
- (b) otherwise—1 January 2022.

**1684C Application—existing providers who meet certain education and training standards exempt from work and training requirement**

- (1) Subsection 921BA(3) and subsection 921BA(5) in so far as it relates to subsection 921BA(3), as inserted by Schedule 1 to the amending Act, do not apply in relation to an existing provider who is a relevant provider.
- (2) Subsection (1) has effect subject to subsections (3) and (4).

*Consequences of failing to gain qualifications for existing providers who are relevant providers on certain days*

- (3) The provisions mentioned in subsection (1) apply, in relation to an existing provider who is a relevant provider, on and after 1 January 2026 if (and only if), at the start of that day:
  - (a) the existing provider is a relevant provider; and
  - (b) the existing provider has not:
    - (i) met the education and training standard in subsection 921B(2), as amended by Schedule 1 to the amending Act; or
    - (ii) completed one or more courses determined by the Minister under subsection 1684E(1) to give the existing provider qualifications equivalent to that standard.

*Consequences of failing to pass exam for existing providers who are relevant providers on certain days*

- (4) The provisions mentioned in subsection (1) apply to an existing provider who is a relevant provider on and after the exam cut-off day for the existing provider, if (and only if), at the start of that day:

- (a) the existing provider is a relevant provider; and
- (b) the existing provider has not met the education and training standard in subsection 921B(3), as amended by Schedule 1 to the amending Act.

**1684D Application—limitation on authorisation of existing providers to provide personal advice**

- (1) The following provisions (the *relevant provisions*), as inserted by Schedule 1 to the amending Act, do not apply in relation to an existing provider:
  - (a) paragraph 921C(1)(a);
  - (b) paragraphs 921C(2)(a) and (b);
  - (c) paragraphs 921C(3)(a) and (b);
  - (d) paragraphs 921C(4)(a) and (b).
- (2) Subsection (1) has effect subject to subsections (3) and (5).

*Consequences of failing to gain qualifications*

- (3) Subject to subsection (4), the relevant provisions begin to apply on 1 January 2026, in relation to an existing provider if, at the start of that day, the existing provider has not:
  - (a) met the education and training standard in subsection 921B(2), as amended by Schedule 1 to the amending Act; or
  - (b) completed one or more courses determined by the Minister under subsection 1684E(1) to give the existing provider qualifications equivalent to that standard.

*Exemption in relation to existing providers who are not relevant providers on 1 January 2026*

- (4) If, under subsection (3), the relevant provisions begin to apply to an existing provider who is not a relevant provider on 1 January 2026, the relevant provisions apply in relation to the existing provider as if:

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- (a) a reference in them to meeting the education and training standard in subsection 921B(2), as amended by Schedule 1 to the amending Act, were a reference to:
  - (i) meeting the education and training standard in that subsection; or
  - (ii) completing one or more courses determined by the Minister under subsection 1684E(1) to give the existing provider qualifications equivalent to that standard; and
- (b) they did not include a reference to the education and training standard in subsection 921B(4), as amended by Schedule 1 to the amending Act, or a reference to undertaking work and training in accordance with that subsection.

*Consequences of failing to pass exam*

- (5) Subject to subsection (6), the relevant provisions begin to apply, in relation to an existing provider, on the exam cut-off day for the existing provider if, at the start of that day, the existing provider has not met the education and training standard in subsection 921B(3), as amended by Schedule 1 to the amending Act.

*Exemption in relation to existing providers who are not relevant providers on exam cut-off day*

- (6) If, under subsection (5), the relevant provisions begin to apply to an existing provider who is not a relevant provider on the exam cut-off day for the existing provider, the relevant provisions apply in relation to the existing provider as if:
  - (a) a reference in them to meeting the education and training standard in subsection 921B(2), as amended by Schedule 1 to the amending Act, were a reference to:
    - (i) meeting the education and training standard in that subsection; or
    - (ii) completing one or more courses determined by the Minister under subsection 1684E(1) to give the existing provider qualifications equivalent to that standard; and

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- (b) they did not include a reference to the education and training standard in subsection 921B(4), as amended by Schedule 1 to the amending Act, or a reference to undertaking work and training in accordance with that subsection.

*Consequences of relevant provisions beginning to apply to existing provider*

- (7) If, on a particular day, any of the relevant provisions begin to apply to an existing provider who is a relevant provider, the existing provider is taken for the purposes of this Act to have ceased to be a relevant provider on that day.
- (8) Subsection (7) does not prevent the existing provider again becoming a relevant provider.

**1684E Transitional—Minister may determine courses for certain purposes**

- (1) The Minister may, by legislative instrument, determine courses for the purposes of the following provisions:
- (a) paragraph 1684A(2)(b);
  - (b) subparagraph 1684C(3)(b)(ii);
  - (c) paragraph 1684D(3)(b);
  - (d) subparagraphs 1684D(4)(a)(ii) and (6)(a)(ii).

*Saving of determinations made by standards body*

- (2) A determination that:
- (a) was made under subsection 1546B(7), as in force immediately before 1 January 2022; and
  - (b) was in force immediately before that day;
- continues in force (and may be dealt with) on and after that day as if it had been made under subsection (1) of this section.

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**Part 10.57** Transitional provisions relating to the Financial Sector Reform (Hayne Royal Commission Response—Better Advice) Act 2021

**Division 3** Other transitional provisions

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**Division 3—Other transitional provisions**

**1684F Transitional—exams**

If, immediately before 1 January 2022, a person met the education and training standard in subsection 921B(3), as in force at that time, the person is taken, at and after that time, to have met the education and training standard in subsection 921B(3), as amended by Schedule 1 to the amending Act.

**1684G Application—continuing professional development**

Subsection 921BA(4) and subsection 921BA(5) in so far as it relates to subsection 921BA(4), as inserted by Schedule 1 to the amending Act, apply in relation to a financial services licensee's CPD year that begins on or after 1 January 2022.

**1684H Application—action against relevant providers**

Section 921K, as inserted by Schedule 1 to the amending Act, applies in relation to an act or omission by a relevant provider that occurs, or a circumstance that arises in relation to a relevant provider, on or after 1 January 2022.

**1684J Application—recommendations to ASIC in relation to restricted civil penalty provisions**

Section 921Q, as inserted by Schedule 1 to the amending Act, applies in relation to an act or omission by a relevant provider that occurs on or after 1 January 2022.

**1684K Application—warnings and reprimands**

Sections 921S and 921T, as inserted by Schedule 1 to the amending Act, apply in relation to an act or omission by a relevant provider that occurs, or a circumstance that arises in relation to a relevant provider, on or after 1 January 2022.

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**1684L Application—requirement for relevant providers to be registered**

Sections 921Y and 921Z, as inserted by Schedule 1 to the amending Act, apply on and after 1 January 2023.

**1684M Saving—determinations made for education and training standards**

An instrument that:

- (a) was made under subparagraph 921U(2)(a)(i), (iii) or (iv), as in force immediately before 1 January 2022; and
  - (b) was in force immediately before that day;
- continues in force (and may be dealt with) on and after that day as if it had been made under subsection 921B(6), as added by Schedule 1 to the amending Act.

**1684N Saving—word or expression to refer to a provisional relevant provider**

A determination that:

- (a) was made under subparagraph 921U(2)(a)(v), as in force immediately before 1 January 2022; and
  - (b) was in force immediately before that day;
- continues in force (and may be dealt with) on and after that day as if it had been made under subsection 923C(9A), as inserted by Schedule 1 to the amending Act.

**1684P Saving—Code of Ethics**

The Code of Ethics that:

- (a) was made under paragraph 921U(2)(b), as in force immediately before 1 January 2022; and
- (b) was in force immediately before that day;

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continues in force (and may be dealt with) on and after that day as if it had been made under section 921E, as amended by Schedule 1 to the amending Act.

**1684Q Transitional—approvals of foreign qualifications**

An application for approval of a foreign qualification that:

- (a) was made under subsection 921V(1), as in force immediately before 1 January 2022; and
  - (b) had not been finally determined at the start of that day;
- may be dealt with, on and after that day, as if it had been made under subsection 921G(1), as added by Schedule 1 to the amending Act.

**1684R Saving—approvals of foreign qualifications that are in force**

An approval of a foreign qualification that:

- (a) was given under paragraph 921V(3)(a), as in force immediately before 1 January 2022; and
- (b) was in force immediately before that day;

continues in force (and may be dealt with) on and after that day as if it had been given under paragraph 921G(2)(a), as added by Schedule 1 to the amending Act.

**1684S Transitional—approvals of foreign qualifications that are not yet in force**

If:

- (a) for the purposes of approving a foreign qualification for a person, one or more courses were specified for the person under subsection 921V(5), as in force immediately before 1 January 2022; and
- (b) immediately before that day, the person had not completed all of those courses;



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section 921G, as added by Schedule 1 to the amending Act, has effect on and after that day, as if the courses were specified for the person under subparagraph 921G(3)(b)(i).

**1684T Transitional—orders under section 30-20 of the old Tax Agent Services Act**

- (1) This section applies if a relevant provider does not comply with:
  - (a) an order under section 30-20 of the old Tax Agent Services Act that is in force against the relevant provider immediately before 1 January 2022; or
  - (b) an order made on or after that day against the relevant provider, in relation to an act or omission before that day, under section 30-20 of the old Tax Agent Services Act.

*Action by Financial Services and Credit Panels*

- (2) If no other Financial Services and Credit Panel has taken action against the relevant provider under this subsection, a Financial Services and Credit Panel may do one of the following:
  - (a) give the relevant provider a warning or reprimand;
  - (b) make an instrument of a kind specified in subsection 921L(1), as inserted by Schedule 1 to the amending Act, in relation to the relevant provider.

*Action by ASIC*

- (3) If no Financial Services and Credit Panel has taken action against the relevant provider under subsection (2), ASIC may make an order against the relevant provider.
- (4) If:
  - (a) no Financial Services and Credit Panel has taken action against the relevant provider under subsection (2); and
  - (b) ASIC has not made an order against the relevant provider under subsection (3);ASIC must give the relevant provider a warning or reprimand.

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*Application of Act to action taken by Financial Services and Credit Panels under subsection (2)*

- (5) This Act applies in relation to a warning or reprimand given under paragraph (2)(a) as if the warning or reprimand were given under subsection 921T(1), as inserted by Schedule 1 to the amending Act.
- (6) This Act applies in relation to an instrument made, or proposed to be made, under paragraph (2)(b) as if the instrument were made, or proposed to be made, under subsection 921K(1), as inserted by Schedule 1 to the amending Act.

*Application of Act to action taken by ASIC under subsection (3) or (4)*

- (7) This Act applies in relation to an order made, or proposed to be made, under subsection (3) as if the order were a banning order.
- (8) This Act applies in relation to a warning or reprimand given under subsection (4) as if the warning or reprimand were given under subsection 921S(1), as inserted by Schedule 1 to the amending Act.

**1684U Transitional—deemed registration of certain relevant providers**

- (1) This section applies in relation to a person if:
  - (a) the person is a relevant provider; and
  - (b) immediately before 1 January 2022, the person was a registered tax (financial) adviser; and
  - (c) the person's registration (the *old registration*) as a registered tax (financial) adviser continues, or is, in force on and after that day because of item 139 or 140 of Schedule 1 to the amending Act.
- (2) On and after the application day for the person, this Act applies in relation to the person as if:
  - (a) the person were registered under subsection 921ZC(1), as inserted by Schedule 1 to the amending Act, because of an application in accordance with:

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- (i) if the relevant provider is a financial services licensee—section 921ZA, as inserted by Schedule 1 to the amending Act; or
  - (ii) if the relevant provider is not a financial services licensee—section 921ZB, as inserted by Schedule 1 to the amending Act; and
  - (b) the person’s registration under subsection 921ZC(1), as inserted by Schedule 1 to the amending Act, came into force on the application day for the person.
- (3) For the purposes of this section, the **application day** for a person is:
- (a) if the person’s old registration continues in force because of item 139 of Schedule 1 to the amending Act—1 January 2022; or
  - (b) if the person’s old registration is in force because of item 140 of Schedule 1 to the amending Act—the day the old registration comes into force under that item.

**1684V Transitional—transfer of documents**

- (1) After 1 January 2022, any document that:
- (a) was in the possession of a director or employee of the standards body immediately before that day; and
  - (b) relates to the functions of the standards body (other than the exam function);
- is to be transferred to the Secretary of the Department.
- (2) After 1 January 2022, any document that:
- (a) was in the possession of a director or employee of the standards body immediately before that day; and
  - (b) relates to the exam function of the standards body;
- is to be transferred to ASIC.
- (3) In this section:

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*exam function* means the function mentioned in paragraph 921U(1)(d), as in force immediately before 1 January 2022.

## **Part 10.59—Application provisions relating to the Treasury Laws Amendment (2021 Measures No. 5) Act 2021**

### **1686 Definitions**

In this Part:

*amending Schedule* means Schedule 2 to the *Treasury Laws Amendment (2021 Measures No. 5) Act 2021*.

### **1686A Qualified privilege for restructuring practitioners**

Section 456LA, as inserted by the amending Schedule, applies in relation to a statement made before, on or after the commencement of that Schedule.

### **1686B Protection of persons dealing with restructuring practitioner**

Section 456LB, as inserted by the amending Schedule, applies in relation to a company that is under restructuring, or a company that makes a restructuring plan, before, on or after the commencement of that Schedule.

### **1686C Eligibility criteria for simplified liquidation**

The amendment of paragraph 500AA(1)(g) by the amending Schedule applies to a company if a triggering event occurs in relation to the company before, on or after the commencement of that Schedule.

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**Part 10.59** Application provisions relating to the Treasury Laws Amendment (2021 Measures No. 5) Act 2021

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**1686D Powers and duties of liquidator**

The amendment of subsection 506(1A) by the amending Schedule applies in relation to a liquidator appointed before, on or after the commencement of that Schedule.

**1686E Withdrawal of market bids**

The amendment of subsection 652C(2) by the amending Schedule applies in relation to restructuring practitioners appointed, or restructuring plans made, before, on or after the commencement of that Schedule.

## **Part 10.60—Application and transitional provisions relating to the Corporations Amendment (Meetings and Documents) Act 2022**

### **1687 Definitions**

In this Part:

*amending Act* means the *Corporations Amendment (Meetings and Documents) Act 2022*.

### **1687A Application—Signing and execution of documents**

The amendments made by Schedule 1 to the amending Act apply in relation to the signing or execution of a document (including a deed) on or after the day that Schedule commences.

### **1687B Application—meetings**

The amendments made by the Schedule 2 to the amending Act apply in relation to:

- (a) a meeting of the members of a company or a registered scheme (including a meeting of a class of members); or
- (b) a meeting of the directors of a company (including a meeting of a committee of directors);

if the meeting is held on or after the day that Schedule commences.

### **1687C Application—sending documents**

The amendments made by Schedule 2 to the amending Act apply in relation to a document sent on or after the day that Schedule commences.

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**1687D Transitional—elections to be sent documents in hard copy  
made under section 253RB or 253RC**

- (1) This section applies to an election, by a member of a company or registered scheme to be sent documents in hard copy only, that is in force under section 253RB or 253RC of this Act immediately before the day Schedule 2 to the amending Act commences.
- (2) Despite the repeal of those sections by that Schedule, the election continues in force on and after that day as if it were an election to be sent those documents in physical form under section 110E of this Act, as inserted by that Schedule.

**1687E Transitional—elections to receive annual reports in  
particular form**

- (1) This section applies to an election, by a member to receive reports from a company, registered scheme or disclosing entity in hard copy or as an electronic copy, that is in force under subsection 314(1AB) of this Act immediately before the day Schedule 2 to the amending Act commences.
- (2) Despite the repeal of that subsection by that Schedule, the election continues in force on and after that day as if it were an election under section 110E of this Act, as inserted by that Schedule, to be sent such reports:
  - (a) for an election to receive in hard copy—in physical form; or
  - (b) for an election to receive as an electronic copy—in electronic form.

**1687F Transitional—elections not to be sent annual reports**

- (1) This section applies if a request of a member for a company, registered scheme or disclosing entity not to send them material required by section 314 of this Act is in force under subsection 316(1) of this Act immediately before the day Schedule 2 to the amending Act commences.



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- (2) Despite the amendment of that subsection by that Schedule, the request continues in force on and after that day as if it were an election under section 110E of this Act not to be sent:
- (a) in the case of a standing request—the documents comprising that material; or
  - (b) in the case of a request for a particular financial year—the documents comprising that material in relation to that financial year.

**1687G Transitional—requests for full reports**

- (1) This section applies if a request of a member for a company, registered scheme or disclosing entity to send them a full financial report and the director’s report and auditor’s report is in force under subsection 316(1) of this Act immediately before the day Schedule 2 to the amending Act commences.
- (2) Despite the amendment of that subsection by that Schedule, the request continues in force on and after that day as if it had been made under that subsection as amended by that Schedule.

**1687H Transitional—other elections to be sent documents in particular form**

- (1) This section applies if:
- (a) a member gave notice (whether or not in writing) before the day Schedule 2 to the amending Act commences to a company, the responsible entity of a registered scheme or a disclosing entity, to the effect that the member elects to be sent one or more classes of document in physical form, or in electronic form; and
  - (b) some or all of the documents in those classes are documents to which Division 2 of Part 1.2AA, as inserted by that Schedule, applies (the *covered documents*); and
  - (c) the member is the recipient in relation to the covered documents under that Division and is mentioned in subsection 110E(1), as inserted by that Schedule; and

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- (d) the member had not withdrawn the election before that day;  
and
  - (e) the election is not an election under section 253RB, 253RC  
or 314 of this Act, as in force immediately before that day.
- (2) An election of the member under section 110E, as inserted by that  
Schedule, to be sent the covered documents in physical form or in  
electronic form (corresponding to the election mentioned in  
paragraph (1)(a)) is taken to be in force on and after that day.
- (3) Subsection (2) has effect subject to paragraph 110E(7)(b)  
(withdrawal of election).

**1687J Review of operation of laws**

- (1) The Minister must cause a review to be undertaken of the operation  
of this Act, as in force immediately after the commencement of this  
section, resulting from the amendments made by:
- (a) Schedule 1 to the *Treasury Laws Amendment (2021  
Measures No. 1) Act 2021*; and
  - (b) the *Corporations Amendment (Meetings and Documents) Act  
2022*.

- (2) The review must be conducted no later than the earliest practicable  
day after the end of 2 years after the commencement of Schedule 1  
to the *Corporations Amendment (Meetings and Documents) Act  
2022*.

Note: Paragraphs 249R(c) and 252P(c) of this Act (as inserted by Schedule 2  
to the *Corporations Amendment (Meetings and Documents) Act 2022*)  
cease to apply if a report is not prepared and tabled within a certain  
period: see section 1687K.

- (2A) The review, to the extent that it relates to sections 249R and 252P  
of this Act, must be conducted by an independent panel, with:
- (a) at least one member of the panel having experience in  
corporate governance and the role of company directors; and
  - (b) at least one member of the panel having experience  
advocating for corporate social responsibility; and

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- (c) at least one member of the panel having experience representing the interests of shareholders.
- (3) The Minister must cause one or more written reports about the review to be prepared.
- (4) If there is more than one report under subsection (3), each of those reports need not deal with the operation of all the amendments mentioned in subsection (1). However, the reports as a whole must deal with all of those amendments.
- (5) The Minister must cause a copy of a report under subsection (3) to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.
- (6) If a report under subsection (3) sets out recommendations, the Minister must cause:
  - (a) a written response of the Commonwealth Government to the recommendations to be prepared; and
  - (b) the response to be tabled in each House of the Parliament no later than the first sitting day of that House occurring 3 months or more after the day the report is first tabled in either House of the Parliament under subsection (5).

**1687K Provisions relating to holding virtual-only meetings cease to have effect if report of review of operation of laws is not tabled within certain period**

- (1) Paragraphs 249R(c) and 252P(c) of this Act do not apply to a meeting held after the first sitting day of a House of the Parliament to occur after the end of the period of 30 months beginning on the day Schedule 1 to the *Corporations Amendment (Meetings and Documents) Act 2022* commences, if the Minister does not cause a report dealing with the amendments of sections 249R and 252P made by Schedule 2 to that Act to be prepared, and tabled in that House, on or before that first sitting day.

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- (2) To avoid doubt, nothing in this section affects the validity of anything that is done, or not done, in reliance on this Act as in force before the end of that sitting day.

## **Part 10.62—Application provisions relating to Schedule 8 to the Corporate Collective Investment Vehicle Framework and Other Measures Act 2022**

### **1689 Definitions**

In this Part:

*amending Part* means Part 1 of Schedule 8 to the *Corporate Collective Investment Vehicle Framework and Other Measures Act 2022*.

*commencement day* means the day the amending Part commences.

### **1690 Application of paragraph 912D(3)(e)**

- (1) Paragraph 912D(3)(e), as inserted by the amending Part, applies in relation to a reportable situation that arises on or after 1 October 2021 and relates to a breach of an obligation referred to in that paragraph.
- (2) If:
  - (a) due to subsection (1), a financial services licensee is required, under a provision of Division 3 of Part 7.6, to do a thing in relation to a reportable situation that arose before the commencement day; and
  - (b) that thing must be done within a period of a specified number of days after the licensee first knows about, or is reckless with respect to, particular matters; and
  - (c) that period began before the commencement day;then that requirement is taken to be a requirement to do the thing within the specified number of days after the commencement day.

**Chapter 10** Transitional provisions

**Part 10.62** Application provisions relating to Schedule 8 to the Corporate Collective Investment Vehicle Framework and Other Measures Act 2022

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**1691 Application of subsection 912D(6)**

Subsection 912D(6), as inserted by the amending Part, applies in relation to a reportable situation that arises on or after the commencement day.

**1692 Saving of regulation 7.6.04A of the *Corporations Regulations 2001***

Regulation 7.6.04A of the *Corporations Regulations 2001*, as in force immediately before the commencement day, has effect, on and after the commencement day, as if the regulation had been made for the purposes of paragraph 916F(1AA)(1)(d) as inserted by the amending Part.

**Part 10.63—Application provisions relating to  
Part 7 of Schedule 4 to the Treasury Laws  
Amendment (2022 Measures No. 1) Act  
2022**

**1693 Definitions**

In this Part:

*amending Part* means Part 7 of Schedule 4 to the *Treasury Laws Amendment (2022 Measures No. 1) Act 2022*.

*commencement day* means the day the amending Part commences.

**1693A Application provision**

- (1) This section applies to a company if, immediately before the commencement day, the company was exempted from complying with subsection 319(1) of this Act by the *ASIC Corporations (Exempt Proprietary Companies) Instrument 2015/840*.
- (2) Despite the repeals made by the amending Part, that exemption continues to apply to the company in relation to a financial year that ends before the commencement day.

**1693B Instruments that provide relief from requirements of this Act—Lodgement of annual reports by large proprietary companies**

- (1) Despite anything contained in this Act, ASIC may not make a legislative instrument, however described, if that legislative instrument would have the effect of relieving the class of companies referred to in subsection (2) of the requirement to comply with subsection 319(1) of this Act for a financial year.

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**Part 10.63** Application provisions relating to Part 7 of Schedule 4 to the Treasury Laws Amendment (2022 Measures No. 1) Act 2022

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- (2) The class of companies is the class of large proprietary companies that was relieved from the requirement to comply with subsection 319(1) of this Act by the *ASIC Corporations (Exempt Proprietary Companies) Instrument 2015/840* as in force immediately before the commencement day.



**Part 10.66—Transitional provisions relating to  
Schedule 4 of the Treasury Laws  
Amendment (Cost of Living Support and  
Other Measures) Act 2022**

**1696 Employee share schemes—recognised foreign markets**

- (1) If, immediately after the commencement of this section, there is no legislative instrument in force under subsection 1100K(2), then an approved foreign market, within the meaning of the *ASIC Corporations (Definition of Approved Foreign Market) Instrument 2017/669*, is taken to be a foreign market determined by ASIC for the purposes of that section.
- (2) This section ceases to apply when ASIC determines a foreign market under subsection 1100K(2).

**Part 10.67—Application provisions relating to  
Schedule 4 to the Treasury Laws  
Amendment (2022 Measures No. 1) Act  
2022**

**1697 Application of amendment to obligation to make product  
dashboard publicly available**

Subsection 1017BA(1), as amended by Part 4 of Schedule 4 to the *Treasury Laws Amendment (2022 Measures No. 1) Act 2022*, applies, on and after the day after that Act receives the Royal Assent, in relation to a regulated superannuation fund that has 6 or fewer members.

## **Schedule 2—Insolvency Practice Schedule (Corporations)**

Note: See section 600K.

### **Part 1—Introduction**

#### **Division 1—Introduction**

##### **1-1 Object of this Schedule**

- (1) The object of this Schedule is to ensure that any person registered as a liquidator:
  - (a) has an appropriate level of expertise; and
  - (b) behaves ethically; and
  - (c) maintains sufficient insurance to cover his or her liabilities in practising as a registered liquidator.
- (2) The object of this Schedule is also:
  - (a) to regulate the external administration of companies consistently, unless there is a clear reason to treat a matter that arises in relation to a particular kind of external administration differently; and
  - (b) to regulate the external administration of companies to give greater control to creditors.

##### **1-5 Simplified outline of this Schedule**

###### *Registering liquidators*

Under this Act, only a registered liquidator can perform certain roles, such as that of the receiver of the property of a corporation, the administrator of a company or of a deed of company arrangement, the restructuring practitioner for a company or for a restructuring plan, or the liquidator or provisional liquidator of a company.

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Part 2 of this Schedule sets out the process for registering liquidators, and also deals with disciplining registered liquidators.

*Consistently regulating the external administration of companies*

Part 3 of this Schedule sets out provisions to regulate the external administration of companies consistently.

A company is under external administration if the company is under administration, is the subject of a deed of company arrangement, is under restructuring, is the subject of a restructuring plan or has had a liquidator or provisional liquidator appointed in relation to it. A company is not under external administration merely because a person has been appointed as a receiver, receiver and manager or other controller in relation to the property of the company.

*Other provisions*

There are other matters relevant to the external administration of a company regulated in Chapter 5.

This Schedule also gives authority for a legislative instrument, the Insolvency Practice Rules, to deal with some matters.

Many of the terms in this Schedule are defined. The Dictionary in section 5-5 contains a list of every term that is defined in this Schedule. Other terms are defined in section 9 of this Act.

## **Division 5—Definitions**

### **Subdivision A—Introduction**

#### **5-1 Simplified outline of this Division**

Terms used in this Schedule are defined in the Dictionary. In some cases, the definition is a signpost to another provision of the Schedule in which the meaning of the term is explained.

Some of the key terms, the meaning of which is explained in this Division, are external administration of a company and external administrator of a company.

### **Subdivision B—The Dictionary**

#### **5-5 The Dictionary**

In this Schedule:

*adequate and appropriate fidelity insurance* has a meaning affected by subsection 25-1(2).

*adequate and appropriate professional indemnity insurance* has a meaning affected by subsection 25-1(2).

*administration account*: see section 65-5.

*annual administration return* means the return required to be lodged under subsection 70-5(3).

*annual liquidator return* means the return required to be lodged under subsection 30-1(1).

*approved form*: a document is lodged in the *approved form* if it is lodged in accordance with section 100-6.

*committee of inspection* for a company means:

**Schedule 2** Insolvency Practice Schedule (Corporations)

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- (a) a committee appointed under sections 80-10 to 80-25 in relation to the external administration of the company; or
- (b) a committee that is taken to be a committee of inspection in relation to the external administration of the company under subsection 80-26(3) (the company is a member of a pooled group).

**creditor**, when used in relation to a company under external administration, means a creditor of the company.

**current conditions**: see section 5-10.

**end of administration return** means the return required to be lodged under subsection 70-6(2).

**end of an external administration** of a company means:

- (a) in relation to a company under administration—the day worked out under paragraph 435C(1)(b); and
- (b) in relation to a company subject to a deed of company arrangement—the day the deed is terminated; and
- (ba) in relation to a company under restructuring—the day worked out under regulations made for the purposes of paragraph 453A(b); and
- (bb) in relation to a company subject to a restructuring plan—the day the plan is terminated; and
- (c) in the case of a winding up of a company—the day on which the affairs of the company are fully wound up.

**external administration** of a company: see section 5-15.

**external administrator** of a company: see section 5-20.

**financial interest**: a person has a **financial interest** in the external administration of a company in the circumstances set out in section 5-30.

**GST** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

***Insolvency Practice Rules*** means the rules made by the Minister under section 105-1.

***Insolvency Practice Schedule (Bankruptcy)*** means Schedule 2 to the *Bankruptcy Act 1966*, and includes rules made under section 105-1 of that Schedule.

***March quarter*** means the period of 3 months beginning on 1 January.

***maximum default amount*** for an external administrator of a company: see section 60-15.

***member of a pooled group***: see section 5-27.

***pooled group***: see section 5-27.

***prescribed*** means prescribed by the Insolvency Practice Rules.

***property*** has a meaning affected by section 5-26.

***registered liquidator*** means an individual who is registered as a liquidator under Part 2 of this Schedule.

***Register of Liquidators*** means the register established and maintained by ASIC under section 15-1.

***related entity***, in relation to an individual, has the same meaning as in the *Bankruptcy Act 1966*.

***remuneration determination***, for an external administrator of a company, means a determination made in accordance with section 60-10 in relation to the external administrator.

***resolution***: a ***resolution*** is passed by creditors or contributories of a company:

- (a) in a meeting—in the circumstances prescribed under paragraph 75-50(2)(k); or
- (b) without a meeting—in the circumstances prescribed under paragraph 75-40(5)(b).

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**reviewing liquidator** means a registered liquidator who has been appointed under section 90-23 or 90-24 to conduct a review.

**special resolution**: a **special resolution** is passed by creditors or contributories of a company:

- (a) in a meeting—in the circumstances prescribed under paragraph 75-50(2)(k); or
- (b) without a meeting—in the circumstances prescribed under paragraph 75-40(5)(b).

**start of an external administration** of a company means:

- (a) in relation to a company under administration—the day an administrator of the company is appointed under section 436A, 436B or 436C; and
- (b) in relation to a company that is subject to a deed of company arrangement—the day the deed is executed; and
- (ba) in relation to a company under restructuring—the day a restructuring practitioner for the company is appointed under section 453B; and
- (bb) in relation to a company that is subject to a restructuring plan—the day the plan is made; and
- (c) in the case of a winding up of a company—the day the winding up of the company is taken to have begun under section 513A or 513B; and
- (d) in relation to a company for which a provisional liquidator has been appointed—the day the provisional liquidator is appointed.

**this Schedule** includes the Insolvency Practice Rules.

### Subdivision C—Other definitions

#### 5-10 Meaning of *current conditions*

- (1) Each of the following is a **current condition** imposed on a registered liquidator:



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- (a) a condition that a committee decides that the registered liquidator is to be subject to under subsection 20-20(5) or (6), subject to any variation that a committee has decided should be made to the condition under section 20-55;
  - (b) a condition imposed on all registered liquidators, or on registered liquidators of the liquidator's class, under section 20-35;
  - (c) a condition imposed under subsection 40-15(2) (direction not to accept further appointments);
  - (d) a condition that a committee decides that the registered liquidator is to be subject to under paragraph 40-55(1)(f) or (g) (conditions as a result of disciplinary action), subject to any variation that a committee has decided should be made to the condition under section 20-55;
  - (e) a condition imposed on the registered liquidator by the Court under section 45-1.
- (2) However, the **current conditions** imposed on a registered liquidator do not include:
- (a) a condition that a committee has decided to remove under section 20-55; or
  - (b) a condition that is removed under subsection 40-15(4) (condition removed because a direction not to accept further appointments has been withdrawn); or
  - (c) a condition that the Court has ordered be removed under section 45-1.

**5-15 Meaning of *external administration* of a company**

A company is taken to be under **external administration** if:

- (a) the company is under administration; or
- (b) a deed of company arrangement has been entered into in relation to the company; or
- (ba) the company is under restructuring; or
- (bb) a restructuring plan has been made in relation to the company; or

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- (c) a liquidator has been appointed in relation to the company; or
- (d) a provisional liquidator has been appointed in relation to the company.

Note: A company is not under *external administration* for the purposes of this Schedule merely because a receiver, receiver and manager, or other controller has been appointed in relation to property of the company.

**5-20 Meaning of external administrator of a company**

A person is an *external administrator* of a company if the person is:

- (a) the administrator of the company; or
- (b) the administrator under a deed of company arrangement that has been entered into in relation to the company; or
- (ba) the restructuring practitioner for the company; or
- (bb) the restructuring practitioner for a restructuring plan that has been made in relation to the company; or
- (c) the liquidator of the company; or
- (d) the provisional liquidator of the company.

Note: A person is not an *external administrator* of a company for the purposes of this Schedule merely because the person has been appointed as a receiver, receiver and manager, or controller in relation to property of the company.

**5-25 References to the external administrator of a company**

A reference in this Schedule to the external administrator of a company is to be read:

- (a) in relation to a company in respect of which there are 2 or more joint external administrators—as a reference to all of the external administrators; and
- (b) in relation to a company in respect of which there are 2 or more joint and several external administrators—as a reference to all of the external administrators or any one or more of the external administrators.

**5-26 Property of a company**

The *property* of a company includes any PPSA retention of title property of the company.

Note: See sections 9 (definition of *property*) and 51F (PPSA retention of title property).

**5-27 Meaning of *pooled group***

If:

- (a) a pooling determination is in force in relation to a group of 2 or more companies; or
- (b) a pooling order is in force in relation to a group of 2 or more companies;

then:

- (c) the companies are together a *pooled group*; and
- (d) each of the companies is a *member of the pooled group*.

**5-30 Persons with a *financial interest* in the external administration of a company**

A person has a *financial interest* in the external administration of a company:

- (a) if the person is one of the following:
  - (i) the company;
  - (ii) a creditor of the company;
  - (iii) an external administrator of the company;
  - (iv) in a members' voluntary winding up—a member of the company; or
- (b) in any other circumstances prescribed.

## Part 2—Registering and disciplining practitioners

### Division 10—Introduction

#### 10-1 Simplified outline of this Part

##### *Registering liquidators*

An individual may apply to ASIC to be registered as a liquidator. ASIC will refer the application to a committee who will consider the applicant's qualifications, conduct and fitness and whether the applicant will take out appropriate insurance. Registration may be subject to conditions, is for 3 years and may be renewed.

A registered liquidator must:

- (a) lodge an annual return with ASIC that includes proof that the liquidator has appropriate insurance; and
- (b) give ASIC notice if the liquidator's circumstances change or if certain other events happen.

##### *Disciplining registered liquidators*

If a registered liquidator fails to comply with certain requirements, such as the requirement to lodge a document or give information, ASIC may give directions that may result in the liquidator being unable to accept further appointments. ASIC may also seek a Court order.

ASIC may suspend or cancel a liquidator's registration in certain circumstances. ASIC may also give the liquidator a show-cause notice. If such a notice is given and no sufficient explanation is given, ASIC may take further disciplinary action on the decision of a committee.

Industry bodies may notify ASIC where they suspect there are grounds for disciplinary action.

*Court powers*

The Court has broad powers to make orders in relation to registered liquidators (including imposing conditions on registration).

**10-5 Working cooperatively with the Inspector-General in Bankruptcy**

In performing its functions and exercising its powers under this Act in relation to persons who are, have been or may become both registered liquidators under this Act and registered trustees under the *Bankruptcy Act 1966*, ASIC must work cooperatively with the Inspector-General in Bankruptcy.

## **Division 15—Register of liquidators**

### **15-1 Register of Liquidators**

- (1) ASIC must establish and maintain a Register of Liquidators.
- (2) The Register of Liquidators may be kept in any form that ASIC considers appropriate.
- (3) The Insolvency Practice Rules may provide for and in relation to the Register of Liquidators.
- (4) Without limiting subsection (3), the Insolvency Practice Rules may provide for and in relation to:
  - (a) the details to be entered on the Register of Liquidators; and
  - (b) the parts of the Register that are to be made available to the public.
- (5) Without limiting paragraph (4)(a), those details may include:
  - (a) details of any disciplinary action decided by a committee under section 40-55; and
  - (b) details of persons who have had their registration as a liquidator under this Act suspended or cancelled.

## **Division 20—Registering liquidators**

### **Subdivision A—Introduction**

#### **20-1 Simplified outline of this Division**

An individual may apply to ASIC to be registered as a liquidator. The application will be referred to a committee, which will assess the application against specified criteria (the applicant's qualifications, conduct and fitness and whether the applicant will take out appropriate insurance). The committee will report its decision to ASIC and, if the committee decides that the applicant should be registered, ASIC will register the applicant as a liquidator.

A registration may be subject to conditions. Conditions may be imposed on a particular registered liquidator by the committee, or on all registered liquidators or a class of registered liquidators by the Insolvency Practice Rules. A registered liquidator may apply to ASIC to have a condition imposed by a committee removed or varied. That application will be referred to a committee.

Registration is for 3 years, but may be renewed. An application for renewal may be made to ASIC within specified time periods.

A decision of a committee about an application for registration or about a condition of registration is reviewable by the Administrative Appeals Tribunal (see Part 9.4A of this Act).

### **Subdivision B—Registration**

#### **20-5 Application for registration**

- (1) An individual may apply to ASIC to be registered as a liquidator.
- (2) The application must be lodged with ASIC in the approved form.

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Note: Fees for lodging documents may be imposed under the *Corporations (Fees) Act 2001*.

- (3) The application is properly made if subsection (2) is complied with.

**20-10 ASIC may convene a committee to consider**

- (1) ASIC may convene a committee for the purposes of considering an application, or applications, for registration as a liquidator.
- (2) The committee must consist of:
- (a) ASIC; and
  - (b) a registered liquidator chosen by a prescribed body; and
  - (c) a person appointed by the Minister.

Note 1: Section 50-5 sets out the knowledge and experience that a prescribed body must be satisfied a person has before making an appointment under paragraph (2)(b).

Note 2: Section 50-10 sets out the matters of which the Minister must be satisfied before making an appointment under paragraph (2)(c).

**20-15 ASIC must refer applications to a committee**

- (1) ASIC must refer an application for registration as a liquidator that is properly made to a committee convened under section 20-10 for consideration.
- (2) ASIC must do so within 2 months after receiving the application.

**20-20 Committee to consider applications**

*Committee must consider referred applications*

- (1) If an application for registration as a liquidator is referred to a committee, the committee must consider the application.
- (2) For the purposes of considering the application, the committee:
- (a) must interview the applicant; and
  - (b) may require the applicant to sit for an exam.



*Decision of committee*

- (3) Within 45 business days after interviewing the applicant, the committee must decide whether the applicant should be registered as a liquidator or not.
- (4) The committee must decide that the applicant should be registered as a liquidator if it is satisfied that the applicant:
  - (a) has the qualifications, experience, knowledge and abilities prescribed; and
  - (b) will take out:
    - (i) adequate and appropriate professional indemnity insurance; and
    - (ii) adequate and appropriate fidelity insurance; against the liabilities that the applicant may incur working as a registered liquidator; and
  - (c) has not been convicted, within 10 years before making the application, of an offence involving fraud or dishonesty; and
  - (d) is not, and has not been within 10 years before making the application, an insolvent under administration; and
  - (e) has not had his or her registration as a liquidator under this Act cancelled within 10 years before making the application, other than in response to a written request by the applicant to have the registration cancelled; and
  - (f) has not had his or her registration as a trustee under the *Bankruptcy Act 1966* cancelled within 10 years before making the application, other than in response to a written request by the applicant to have the registration cancelled; and
  - (g) is not disqualified from managing corporations under Part 2D.6 of this Act, or under a law of an external Territory or a law of a foreign country; and
  - (h) is otherwise a fit and proper person; and
  - (i) is resident in Australia or in another prescribed country.
- (5) The committee may decide that the applicant should be registered even if the committee is not satisfied of a matter mentioned in

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paragraph (4)(a), (e), (f) or (i), provided the applicant would be suitable to be registered as a liquidator.

*Registration may be subject to conditions*

- (6) The committee may decide that the applicant's registration is to be subject to any conditions specified by the committee.

*Spent convictions*

- (7) Nothing in this section affects the operation of Part VIIC of the *Crimes Act 1914*.

Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

**20-25 Committee to report**

The committee must give the applicant and ASIC a report setting out:

- (a) the committee's decision on the application; and
- (b) the committee's reasons for that decision; and
- (c) if the committee decides under subsection 20-20(5) or (6) that the applicant should be registered subject to a condition:
  - (i) the condition; and
  - (ii) the committee's reasons for imposing the condition.

**20-30 Registration**

*Registration as liquidator*

- (1) ASIC must register the applicant as a liquidator if:
- (a) the committee has decided that the applicant should be registered; and
  - (b) the applicant has produced evidence in writing to ASIC that the applicant has taken out:

- (i) adequate and appropriate professional indemnity insurance; and
- (ii) adequate and appropriate fidelity insurance; against the liabilities that the applicant may incur working as a registered liquidator.

Note: Fees may be imposed under the *Corporations (Fees) Act 2001* for the doing of an act by ASIC.

- (2) ASIC registers an applicant by entering on the Register of Liquidators the details relating to the applicant prescribed for the purposes of subsection 15-1(3).

*Registration subject to current conditions*

- (3) The registration is subject to the current conditions imposed on the registered liquidator.

*Certificate of registration*

- (4) After registering a person as a liquidator, ASIC must give the person a certificate of registration.
- (5) The certificate may be given electronically.

*Period of registration*

- (6) The registration has effect for 3 years.

### **20-35 Conditions imposed on all registered liquidators or a class of registered liquidators**

- (1) The Insolvency Practice Rules may impose conditions on all registered liquidators, or registered liquidators of a specified class.
- (2) Without limiting subsection (1), a condition may be imposed limiting the kinds of activity in which a liquidator may engage, either for the duration of the registration or for a shorter period.

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**Subdivision C—Varying etc. conditions of registration**

**20-40 Application to vary etc. conditions of registration**

- (1) If a committee has decided under this Schedule that a person's registration as a liquidator is to be subject to a condition, the person may apply to ASIC for the condition to be varied or removed.
- (2) However, an application cannot be made:
  - (a) if the person's registration as a liquidator is suspended; or
  - (b) if the condition is of a prescribed kind; or
  - (c) in prescribed circumstances.
- (3) The application must be lodged with ASIC in the approved form.
- (4) The application is properly made if:
  - (a) an application can be made; and
  - (b) subsection (3) is complied with.
- (5) A single application by a registered liquidator may deal with more than one condition.

**20-45 ASIC may convene a committee to consider applications**

- (1) ASIC may convene a committee for the purposes of considering an application, or applications, made under section 20-40.
- (2) The committee must consist of:
  - (a) ASIC; and
  - (b) a registered liquidator chosen by a prescribed body; and
  - (c) a person appointed by the Minister.

Note 1: Section 50-5 sets out the knowledge and experience that a prescribed body must be satisfied a person has before making an appointment under paragraph (2)(b).

Note 2: Section 50-10 sets out the matters of which the Minister must be satisfied before making an appointment under paragraph (2)(c).

### **20-50 ASIC must refer applications to a committee**

- (1) ASIC must refer an application that is properly made under section 20-40 to a committee convened under section 20-45 for consideration.
- (2) ASIC must do so within 2 months after receiving the application.

### **20-55 Committee to consider applications**

- (1) If an application to vary or remove a condition of registration is referred to a committee, the committee must consider the application.
- (2) Unless the applicant otherwise agrees, the committee must, for the purposes of considering the application, interview the applicant.
- (3) The committee must, within 20 business days after interviewing the applicant or obtaining the agreement of the applicant as referred to in subsection (2):
  - (a) decide whether the condition to which the application relates should be varied or removed; and
  - (b) if a condition is to be varied—specify the way in which it is to be varied.

### **20-60 Committee to report**

The committee must give the applicant and ASIC a report setting out:

- (a) the committee's decision on the application; and
- (b) the committee's reasons for that decision; and
- (c) if the committee decides that a condition should be varied—the variation that is to be made.

### **20-65 Committee's decision given effect**

If the committee decides that a condition imposed on a registered liquidator is to be varied or removed, the condition is varied or removed in accordance with that decision.

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**Subdivision D—Renewal**

**20-70 Application for renewal**

- (1) An individual may apply to ASIC to have the individual's registration as a liquidator renewed.
- (2) The application must be lodged with ASIC in the approved form:
  - (a) if the Court makes an order under subsection (3)—on or before the time specified in the order; or
  - (b) otherwise—before the applicant's registration as a liquidator ceases to have effect.

Note: Fees for lodging documents and late lodgement fees may be imposed under the *Corporations (Fees) Act 2001*.

- (3) The Court may, on application, extend the time within which the individual may apply to ASIC to have the individual's registration as a liquidator renewed.
- (4) The application for renewal is properly made if subsection (2) is complied with.

**20-75 Renewal**

*Renewal of registration*

- (1) On application under section 20-70, ASIC must renew the registration of the applicant as a liquidator if:
  - (a) the application is properly made; and
  - (b) the applicant has produced evidence in writing to ASIC that the applicant maintains:
    - (i) adequate and appropriate professional indemnity insurance; and
    - (ii) adequate and appropriate fidelity insurance; against the liabilities that the applicant may incur working as a registered liquidator; and

- (c) the applicant has complied with any condition dealing with continuing professional education to which the applicant is subject during the applicant's current registration.
- (2) ASIC renews the registration of the applicant by entering, or maintaining, on the Register of Liquidators the details relating to the applicant prescribed for the purposes of subsection 15-1(3).

*Registration subject to current conditions*

- (3) The renewed registration is subject to the current conditions imposed on the registered liquidator.

*Certificate of registration*

- (4) After renewing the registration of a person as a liquidator, ASIC must give the person a certificate of registration.
- (5) The certificate may be given electronically.

*Period of registration*

- (6) The renewed registration has effect for 3 years, beginning on the day after the person's immediately preceding registration as a liquidator ceased to have effect.

## **Subdivision E—Offences relating to registration**

### **20-80 False representation that a person is a registered liquidator**

A person commits an offence if:

- (a) the person makes a representation; and
- (b) the representation is that the person is a registered liquidator; and
- (c) the representation is false.

Penalty: 30 penalty units.

## Division 25—Insurance

### 25-1 Registered liquidators to maintain insurance

*Registered liquidator must maintain insurance*

- (1) A registered liquidator must maintain:
  - (a) adequate and appropriate professional indemnity insurance; and
  - (b) adequate and appropriate fidelity insurance;against the liabilities that the liquidator may incur working as a registered liquidator.
- (2) ASIC may, by legislative instrument, determine what constitutes adequate and appropriate professional indemnity insurance, and adequate and appropriate fidelity insurance, in relation to either or both of the following:
  - (a) specified circumstances;
  - (b) one or more specified classes of registered liquidators.

*Offence*

- (3) A person commits an offence if:
  - (a) the person is subject to a requirement under subsection (1); and
  - (b) the person intentionally or recklessly fails to comply with the requirement.

Penalty: 1,000 penalty units.

- (4) A person commits an offence of strict liability if:
  - (a) the person is subject to a requirement under subsection (1); and
  - (b) the person fails to comply with the requirement.

Penalty: 60 penalty units.



## **Division 30—Annual liquidator returns**

### **30-1 Annual liquidator returns**

*Registered liquidator must lodge annual return*

- (1) A person who is a registered liquidator during all or part of a liquidator return year for the person must, within 1 month after the end of that year, lodge with ASIC a return that conforms with subsection (3).
- (2) Each of the following is a **liquidator return year** for a person who is or was registered as a liquidator under section 20-30:
  - (a) the period of 12 months beginning on the day on which that registration first began;
  - (b) each subsequent period of 12 months.
- (3) A return under subsection (1) must:
  - (a) be in the approved form; and
  - (b) include evidence that the person has, during the whole of any period of the year during which the person was registered as a liquidator, maintained:
    - (i) adequate and appropriate professional indemnity insurance; and
    - (ii) adequate and appropriate fidelity insurance; against the liabilities that the person may incur working as a registered liquidator.
- (4) ASIC may, on the application of the registered liquidator made before the end of the period for lodging a return under subsection (1), extend, or further extend, that period.

*Offence*

- (5) A person commits an offence of strict liability if:
  - (a) the person is subject to a requirement under subsection (1); and

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(b) the person fails to comply with the requirement.

Penalty: 20 penalty units.

## **Division 35—Notice requirements**

### **35-1 Notice of significant events**

*Registered liquidator must lodge notice*

- (1) A registered liquidator must lodge with ASIC a notice, in the approved form, if any of the following events occur:
- (a) the liquidator becomes an insolvent under administration;
  - (b) a bankruptcy notice is issued under the *Bankruptcy Act 1966* in relation to the liquidator as debtor, or a corresponding notice is issued in relation to the liquidator as debtor under a law of an external Territory or a law of a foreign country;
  - (c) the liquidator is convicted of an offence involving fraud or dishonesty;
  - (d) the liquidator is disqualified from managing corporations under Part 2D.6 of this Act, or under a law of an external Territory or a law of a foreign country;
  - (e) the liquidator ceases to have:
    - (i) adequate and appropriate professional indemnity insurance; or
    - (ii) adequate and appropriate fidelity insurance; against the liabilities that the liquidator may incur working as a registered liquidator;
  - (f) the liquidator is issued with a notice under section 40-40 of Schedule 2 to the *Bankruptcy Act 1966* (a show-cause notice) in relation to the liquidator's registration as a trustee under that Act;
  - (g) the liquidator's registration as a trustee under the *Bankruptcy Act 1966* is suspended or cancelled;
  - (h) any other event prescribed.

The notice must be lodged within 5 business days after the registered liquidator could reasonably be expected to be aware that the event has occurred.

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*Offence*

- (2) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (1);  
and
  - (b) the person intentionally or recklessly fails to comply with the requirement.

Penalty: 100 penalty units.

**35-5 Notice of other events**

*Registered liquidator must lodge notice*

- (1) A registered liquidator must lodge with ASIC a notice, in the approved form, if any of the following events occur:
- (a) information included in an annual liquidator return, an annual administration return or an end of administration return, prepared by or on behalf of the liquidator, is or becomes inaccurate in a material particular;
  - (b) any other event prescribed.

The notice must be lodged within 10 business days after the registered liquidator could reasonably be expected to be aware that the event has occurred.

*Offence*

- (2) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (1);  
and
  - (b) the person intentionally or recklessly fails to comply with the requirement.

Penalty: 30 penalty units.

## **Division 40—Disciplinary and other action**

### **Subdivision A—Introduction**

#### **40-1 Simplified outline of this Division**

*Remedying failure to lodge documents or give information or documents*

ASIC may direct a registered liquidator to comply with a requirement to lodge a document, or give any information or document, to ASIC. If the liquidator fails to comply with the direction, ASIC can direct that the liquidator accept no further appointments or seek an order from the Court directing the liquidator to comply.

*Correcting and completing information given to ASIC*

If ASIC reasonably suspects that information that a registered liquidator is required to give ASIC is incomplete or inaccurate, ASIC can direct the liquidator to confirm, complete or correct the information. ASIC can also direct the liquidator to tell someone about the defect in the information. If the liquidator fails to comply with a direction, ASIC can direct that the liquidator accept no further appointments or seek an order from the Court directing the liquidator to comply.

*Other grounds for a direction not to accept further appointments*

There are other grounds on which ASIC can issue a direction not to accept further appointments, for example, if the registered liquidator fails to comply with a direction to convene a meeting.

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*Suspending or cancelling registration*

An individual's registration as a liquidator can be suspended or cancelled.

The registration is automatically cancelled if the registered liquidator becomes an insolvent under administration or dies.

In some circumstances, ASIC can suspend or cancel the registration of a person as a liquidator. ASIC can also give a registered liquidator notice to show-cause why the liquidator should continue to be registered. If ASIC is not satisfied with the answer, ASIC can refer the matter to a committee which will make a decision on what action should be taken.

An industry body can give ASIC notice of possible grounds for disciplinary action.

If a registration is suspended, the liquidator can apply to ASIC to have the suspension lifted or shortened.

A decision about the suspension or cancellation of the registration of a liquidator is reviewable by the Administrative Appeals Tribunal (see Part 9.4A of this Act).

**Subdivision B—Direction to comply**

**40-5 Registered liquidator to remedy failure to lodge documents or give information or documents**

*Application of this section*

- (1) This section applies if a registered liquidator fails to comply with a requirement to lodge any document, or give any information or document, that the liquidator is required under this Act to lodge with or give to ASIC.

*ASIC may give direction to comply*

- (2) ASIC may, in writing, direct the liquidator to comply with the requirement within 10 business days after the direction is given.
- (3) ASIC may, on the application of a registered liquidator made before the end of the period referred to in subsection (2), extend, or further extend, that period.

*Consequences for failing to comply*

- (4) If the liquidator does not comply within the period, ASIC may do either or both of the following:
  - (a) give a direction under subsection 40-15(1) (direction not to accept further appointments);
  - (b) apply to the Court for an order, under subsection 1274(11) (registers), section 45-1 of this Schedule or any other provision that is relevant, directing the liquidator to comply with the requirement within such time as is specified in the order.

*Direction is not a legislative instrument*

- (5) A direction under subsection (2) is not a legislative instrument.

*Relationship with other laws*

- (6) Nothing in this section limits the operation of any other provision of this Act, or any other law, in relation to a person who fails to comply with a requirement to lodge a document with, or give information or a document to, ASIC.

**40-10 Registered liquidator to correct inaccuracies etc.**

*Application of this section*

- (1) This section applies if ASIC reasonably suspects that any information that a registered liquidator is required under this Act to

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give to ASIC (whether in a document lodged or given to ASIC or otherwise) is incomplete or incorrect in any particular.

*ASIC may give direction to correct information etc.*

- (2) ASIC may, in writing, direct the liquidator to do one or more of the following within a period of 10 business days after the direction is given:
- (a) confirm to ASIC that the information is complete and correct;
  - (b) complete or correct the information (as the case requires);
  - (c) notify any persons specified by ASIC in the direction of the addition or correction.
- (3) ASIC may, on the application of a registered liquidator made before the end of the period referred to in subsection (2), extend, or further extend, that period.

*Consequences for failing to comply*

- (4) If the liquidator does not comply within the period, ASIC may do either or both of the following:
- (a) give a direction under subsection 40-15(1) (direction not to accept further appointments);
  - (b) apply to the Court for an order, under subsection 1274(11) (registers), section 45-1 of this Schedule or any other provision that is relevant, directing the liquidator to comply with the requirement within such time as is specified in the order.

*Direction is not a legislative instrument*

- (5) A direction under subsection (2) is not a legislative instrument.

*Relationship with other laws*

- (6) Nothing in this section limits the operation of any other provision of this Act, or any other law, in relation to a person giving incomplete or incorrect information.



## **40-15 Direction not to accept further appointments**

*ASIC may give direction not to accept further appointments*

- (1) ASIC may, in writing, direct a registered liquidator not to accept any further appointments under Chapter 5 (external administration), or not to accept any further appointments under Chapter 5 during a period specified in the direction, if:
  - (a) the liquidator has failed to comply with a direction given to the liquidator under section 40-5 (direction to remedy failure to lodge documents, or give information or documents); or
  - (b) the liquidator has failed to comply with a direction given to the liquidator under section 40-10 (direction to correct inaccuracies); or
  - (c) a committee has decided under paragraph 40-55(1)(d) that ASIC should give the direction referred to in that paragraph; or
  - (d) the liquidator has failed to comply with a direction given to the liquidator under section 70-70 (direction to give relevant material); or
  - (e) the liquidator has failed to comply with a direction given to the liquidator under subsection 75-20(1) or (2), or subsection 80-27(1) (direction to convene a meeting of creditors or comply with requirements in relation to such a meeting).

*Condition of registration to comply with direction*

- (2) If ASIC gives a direction to a registered liquidator under subsection (1), it is a condition of the liquidator's registration that the liquidator must comply with the direction.

*Withdrawal of direction*

- (3) ASIC may withdraw a direction given under subsection (1).
- (4) The condition is removed from the liquidator's registration if ASIC withdraws the direction.

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*Direction is not a legislative instrument*

- (5) A direction under subsection (1) is not a legislative instrument.

*Relationship with other laws*

- (6) Nothing in this section limits the operation of any other provision of this Act, or any other law, in relation to:
- (a) a person who fails to comply with a requirement to lodge a document with, or give information or a document to, ASIC; or
  - (b) a person giving incomplete or incorrect information; or
  - (c) any matter in relation to which a committee makes a decision under subsection 40-55(1).
- (7) Nothing in this section limits ASIC's power under this Act, or any other law, to apply to the Court for an order in relation to a failure to comply with a direction mentioned in subsection (1).

**Subdivision C—Automatic cancellation**

**40-20 Automatic cancellation**

- (1) The registration of a person as a liquidator is cancelled if:
- (a) the person becomes an insolvent under administration; or
  - (b) the person dies.
- (2) The cancellation takes effect on the day the event mentioned in subsection (1) happens.

**Subdivision D—ASIC may suspend or cancel registration**

**40-25 ASIC may suspend registration**

- (1) ASIC may suspend the registration of a person as a liquidator if:
- (a) the person is disqualified from managing corporations under Part 2D.6 of this Act, or under a law of an external Territory or a law of a foreign country; or

- (b) the person ceases to have:
    - (i) adequate and appropriate professional indemnity insurance; or
    - (ii) adequate and appropriate fidelity insurance; against the liabilities that the person may incur working as a registered liquidator; or
  - (c) the person's registration as a trustee under the *Bankruptcy Act 1966* has been cancelled or suspended, other than in compliance with a written request by the person to cancel or suspend the registration; or
  - (d) if the Court has made an order under section 90-15 that the person repay remuneration—the person has failed to repay the remuneration; or
  - (e) the person has been convicted of an offence involving fraud or dishonesty; or
  - (f) the person lodges a request with ASIC in the approved form to have the registration suspended; or
  - (g) in the case of a person who is a leviable entity (within the meaning of the *ASIC Supervisory Cost Recovery Levy Act 2017*)—the following have not been paid in full at least 12 months after the due date for payment:
    - (i) an amount of levy (if any) payable in respect of the person;
    - (ii) an amount of late payment penalty payable (if any) in relation to the levy;
    - (iii) an amount of shortfall penalty payable (if any) in relation to the levy.
- (2) Nothing in this section affects the operation of Part VIIC of the *Crimes Act 1914*.

Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

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**40-30 ASIC may cancel registration**

- (1) ASIC may cancel the registration of a person as a liquidator if:
- (a) the person is disqualified from managing corporations under Part 2D.6 of this Act, or under a law of an external Territory or a law of a foreign country; or
  - (b) the person ceases to have:
    - (i) adequate and appropriate professional indemnity insurance; or
    - (ii) adequate and appropriate fidelity insurance; against the liabilities that the person may incur working as a registered liquidator; or
  - (c) the person's registration as a trustee under the *Bankruptcy Act 1966* has been cancelled, other than in compliance with a written request by the person to cancel the registration; or
  - (d) if the Court has made an order under section 90-15 that the person repay remuneration—the person has failed to repay the remuneration; or
  - (e) the person has been convicted of an offence involving fraud or dishonesty; or
  - (f) the person lodges a request with ASIC in the approved form to have the registration cancelled; or
  - (g) in the case of a person who is a leviable entity (within the meaning of the *ASIC Supervisory Cost Recovery Levy Act 2017*)—the following have not been paid in full at least 12 months after the due date for payment:
    - (i) an amount of levy (if any) payable in respect of the person;
    - (ii) an amount of late payment penalty payable (if any) in relation to the levy;
    - (iii) an amount of shortfall penalty payable (if any) in relation to the levy.
- (2) Nothing in this section affects the operation of Part VIIC of the *Crimes Act 1914*.

Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

### **40-35 Notice of suspension or cancellation**

#### *Application of this section*

- (1) This section applies if ASIC decides under section 40-25 or 40-30 to suspend or cancel the registration of a person as a liquidator.

#### *ASIC must give notice of decision*

- (2) ASIC must, within 10 business days after making the decision, give the person a written notice setting out the decision, and the reasons for the decision.

#### *When decision comes into effect*

- (3) The decision comes into effect on the day after the notice is given to the person.

#### *Failure to give notice does not affect validity of decision*

- (4) A failure by ASIC to give the notice under subsection (2) within 10 business days does not affect the validity of the decision.

### **Subdivision E—Disciplinary action by committee**

#### **40-40 ASIC may give a show-cause notice**

- (1) ASIC may give a registered liquidator notice in writing asking the liquidator to give ASIC a written explanation why the liquidator should continue to be registered, if ASIC believes that:
  - (a) the liquidator no longer has the qualifications, experience, knowledge and abilities prescribed under paragraph 20-20(4)(a); or

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- (b) the liquidator has committed an act of bankruptcy, within the meaning of the *Bankruptcy Act 1966* or a corresponding law of an external Territory or a foreign country; or
- (c) the liquidator is disqualified from managing corporations under Part 2D.6 of this Act, or under a law of an external Territory or a law of a foreign country; or
- (d) the liquidator has ceased to have:
  - (i) adequate and appropriate professional indemnity insurance; or
  - (ii) adequate and appropriate fidelity insurance; against the liabilities that the person may incur working as a registered liquidator; or
- (e) the liquidator has breached a current condition imposed on the liquidator; or
- (f) the liquidator has contravened a provision of this Act; or
- (g) the liquidator has been appointed to act as a reviewing liquidator under Subdivision C of Division 90 of this Schedule, and has failed to properly exercise the powers or perform the duties of a reviewing liquidator; or
- (h) the liquidator's registration as a trustee under the *Bankruptcy Act 1966* has been cancelled or suspended, other than in compliance with a written request by the liquidator to cancel or suspend the registration; or
- (i) if the Court has made an order under section 90-15 that the liquidator repay remuneration—the liquidator has failed to repay the remuneration; or
- (j) the liquidator has been convicted of an offence involving fraud or dishonesty; or
- (k) the liquidator is permanently or temporarily unable to perform the functions and duties of a liquidator because of physical or mental incapacity; or
- (l) the liquidator has failed to carry out adequately and properly (whether in Australia or in an external Territory or in a foreign country):
  - (i) the duties of a liquidator; or

- (ii) any other duties or functions that a registered liquidator is required to carry out under a law of the Commonwealth or of a State or Territory, or the general law; or
  - (m) the liquidator is not a fit and proper person; or
  - (n) the liquidator is not resident in Australia or in another prescribed country.
- (2) A notice under subsection (1) is not a legislative instrument.
- (3) Nothing in this section affects the operation of Part VIIC of the *Crimes Act 1914*.

Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

#### **40-45 ASIC may convene a committee**

- (1) ASIC may convene a committee to make a decision of a kind mentioned in section 40-55 in relation to a registered liquidator, or registered liquidators.
- (2) The committee must consist of:
- (a) ASIC; and
  - (b) a registered liquidator chosen by a prescribed body; and
  - (c) a person appointed by the Minister.

Note 1: Section 50-5 sets out the knowledge and experience that a prescribed body must be satisfied a person has before making an appointment under paragraph (2)(b).

Note 2: Section 50-10 sets out the matters of which the Minister must be satisfied before making an appointment under paragraph (2)(c).

#### **40-50 ASIC may refer matters to the committee**

ASIC may refer a registered liquidator to a committee convened under section 40-45 if ASIC:

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- (a) gives the liquidator a notice under section 40-40 (a show-cause notice); and
- (b) either:
  - (i) does not receive an explanation within 20 business days after the notice is given; or
  - (ii) is not satisfied by the explanation.

**40-55 Decision of the committee**

- (1) If a registered liquidator is referred to a committee under section 40-50, the committee must decide one or more of the following:
  - (a) that the liquidator should continue to be registered;
  - (b) that the liquidator's registration should be suspended for a period, or until the occurrence of an event, specified in the decision;
  - (c) that the liquidator's registration should be cancelled;
  - (d) that ASIC should direct the liquidator not to accept any further appointments as liquidator, or not to accept any further appointments as liquidator during the period specified in the decision;
  - (e) that the liquidator should be publicly admonished or reprimanded;
  - (f) that a condition specified in the decision should be imposed on the liquidator;
  - (g) that a condition should be imposed on all other registered liquidators that they must not allow the liquidator to carry out any of the functions or duties, or exercise any of the powers, of a registered liquidator on their behalf (whether as employee, agent, consultant or otherwise) for a period specified in the decision of no more than 10 years;
  - (h) that ASIC should publish specified information in relation to the committee's decision and the reasons for that decision.
- (2) Without limiting paragraph (1)(f), conditions imposed under that paragraph may include one or more of the following:



- (a) a condition that the liquidator engage in, or refrain from engaging in, specified conduct;
  - (b) a condition that the liquidator engage in, or refrain from engaging in, specified conduct except in specified circumstances;
  - (c) a condition that the liquidator publish specified information;
  - (d) a condition that the liquidator notify a specified person or class of persons of specified information;
  - (e) a condition that the liquidator publish a specified statement;
  - (f) a condition that the liquidator make a specified statement to a specified person or class of persons.
- (3) In making its decision, the committee may have regard to:
- (a) any information provided to the committee by ASIC; and
  - (b) any explanation given by the liquidator; and
  - (c) any other information given by the liquidator to the committee; and
  - (d) if the liquidator is or was also a registered trustee under the *Bankruptcy Act 1966*—any information in relation to the liquidator given to the committee by the Inspector-General in Bankruptcy or a committee convened under the Insolvency Practice Schedule (Bankruptcy); and
  - (e) any other matter that the committee considers relevant.

#### **40-60 Committee to report**

The committee must give the registered liquidator and ASIC a report setting out:

- (a) the committee's decision in relation to the liquidator; and
- (b) the committee's reasons for that decision; and
- (c) if the committee decides under paragraph 40-55(1)(f) that the liquidator should be registered subject to a condition:
  - (i) the condition; and
  - (ii) the committee's reasons for imposing the condition; and

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- (d) if the committee decides under paragraph 40-55(1)(g) that a condition should be imposed on all other registered liquidators in relation to the liquidator:
  - (i) the condition; and
  - (ii) the committee's reasons for imposing the condition.

**40-65 ASIC must give effect to the committee's decision**

ASIC must give effect to the committee's decision.

**Subdivision F—Lifting or shortening suspension**

**40-70 Application to lift or shorten suspension**

*Application of this section*

- (1) This section applies if a person's registration as a liquidator has been suspended.

*Suspended liquidator may apply to ASIC*

- (2) The person may apply to ASIC:
  - (a) for the suspension to be lifted; or
  - (b) for the period of the suspension to be shortened.
- (3) The application must be lodged with ASIC in the approved form.
- (4) The application is properly made if subsection (3) is complied with.

**40-75 ASIC may convene a committee to consider applications**

- (1) ASIC may convene a committee for the purposes of considering an application, or applications, made under section 40-70.
- (2) The committee must consist of:
  - (a) ASIC; and
  - (b) a registered liquidator chosen by a prescribed body; and

(c) a person appointed by the Minister.

Note 1: Section 50-5 sets out the knowledge and experience that a prescribed body must be satisfied a person has before making an appointment under paragraph (2)(b).

Note 2: Section 50-10 sets out the matters of which the Minister must be satisfied before making an appointment under paragraph (2)(c).

#### **40-80 ASIC must refer applications to a committee**

- (1) ASIC must refer an application that is properly made under section 40-70 to a committee convened under section 40-75 for consideration.
- (2) ASIC must do so within 2 months after receiving the application.

#### **40-85 Committee to consider applications**

- (1) If an application is referred to a committee, the committee must consider the application.
- (2) Unless the applicant otherwise agrees, the committee must interview the applicant for the purposes of considering the application.
- (3) Within 10 business days after interviewing the applicant or obtaining the agreement of the applicant as referred to in subsection (2), the committee must:
  - (a) decide whether the suspension should be lifted, or the period of the suspension shortened; and
  - (b) if the period of the suspension is to be shortened—specify when the suspension is to end.

#### **40-90 Committee to report**

The committee must give the applicant and ASIC a report setting out:

- (a) the committee's decision on the application; and
- (b) the committee's reasons for that decision; and

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- (c) if the committee decides that the period of the suspension should be shortened—when the suspension is to end.

**40-95 Committee’s decision given effect**

If the committee decides that a suspension is to be lifted or shortened, the suspension is lifted or shortened in accordance with the decision.

**Subdivision G—Action initiated by industry body**

**40-100 Notice by industry bodies of possible grounds for disciplinary action**

*Industry body may lodge notice*

- (1) An industry body may lodge with ASIC a notice in the approved form (an **industry notice**):
  - (a) stating that the body reasonably suspects that there are grounds for ASIC:
    - (i) to suspend the registration of a registered liquidator under section 40-25; or
    - (ii) to cancel the registration of a registered liquidator under section 40-30; or
    - (iii) to give a registered liquidator a notice under section 40-40 (a show-cause notice); or
    - (iv) to impose a condition on a registered liquidator under another provision of this Schedule; and
  - (b) identifying the registered liquidator; and
  - (c) including the information and copies of any documents upon which the suspicion is founded.

*ASIC must consider information and documents*

- (2) ASIC must consider the information and the copies of any documents included with the industry notice.

*ASIC must give notice if no action to be taken*

- (3) If, after such consideration, ASIC decides to take no action in relation to the matters raised by the industry notice, ASIC must give the industry body written notice of that fact.

*45 business days to consider and decide*

- (4) The consideration of the information and the copies of any documents included with the industry notice must be completed and, if ASIC decides to take no action, a notice under subsection (3) given, within 45 business days after the industry notice is lodged.

*ASIC not precluded from taking action*

- (5) ASIC is not precluded from:
- (a) suspending the registration of a registered liquidator under section 40-25; or
  - (b) cancelling the registration of a registered liquidator under section 40-30; or
  - (c) giving a registered liquidator a notice under section 40-40 (a show-cause notice); or
  - (d) imposing a condition on a registered liquidator under another provision of this Schedule;

wholly or partly on the basis of information or a copy of a document included with the industry notice, merely because ASIC has given a notice under subsection (3) in relation to the matters raised by the industry notice.

*Notice to industry body if ASIC takes action*

- (6) If ASIC does take action of the kind mentioned in subsection (5) wholly or partly on the basis of information or a copy of a document included with the industry notice, ASIC must give the industry body notice of that fact.

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*Notices are not legislative instruments*

- (7) A notice under subsection (3) or (6) is not a legislative instrument.

**40-105 No liability for notice given in good faith etc.**

- (1) An industry body is not liable civilly, criminally or under any administrative process for giving a notice under subsection 40-100(1) if:
- (a) the body acted in good faith in giving the notice; and
  - (b) the suspicion that is the subject of the notice is a reasonable suspicion.
- (2) A person who, in good faith, makes a decision as a result of which the industry body gives a notice under subsection 40-100(1) is not liable civilly, criminally or under any administrative process for making the decision.
- (3) A person who, in good faith, gives information or a document to an industry body that is included, or a copy of which is included, in a notice under subsection 40-100(1) is not liable civilly, criminally or under any administrative process for giving the information or document.

**40-110 Meaning of *industry bodies***

The Insolvency Practice Rules may prescribe *industry bodies* for the purposes of this Subdivision.

**Subdivision H—Consequences of certain disciplinary and other action**

**40-111 Appointment of another liquidator if liquidator's registration is suspended or cancelled**

- (1) If:
- (a) the registration of a liquidator is suspended or cancelled under this Division; and

- (b) the liquidator is conducting the external administration of a company at the time the registration is suspended or cancelled;

ASIC may, in writing, appoint another registered liquidator to conduct the external administration of the company.

(2) If:

- (a) a liquidator fails to renew his or her registration as a liquidator before that registration ceases to have effect; and
- (b) no order has been made by the Court under subsection 20-70(3) extending the period during which the liquidator may apply for renewal; and
- (c) the liquidator is conducting the external administration of a company at the time his or her registration as a liquidator ceases to have effect;

ASIC may, in writing, appoint another registered liquidator to conduct the external administration of the company.

(3) Subsections (1) and (2) do not apply to:

- (a) a liquidator appointed by the Court; or
- (b) a winding up ordered by ASIC under section 489EA; or
- (c) a members' voluntary winding up.

Note: For court-appointed liquidators, see section 473A. For a winding up ordered by ASIC, see section 489EA. For a members' voluntary winding up, see section 495.

(4) An appointment of a registered liquidator by ASIC under subsection (1) must not be made without the written consent of the liquidator.

## **Division 45—Court oversight of registered liquidators**

### **45-1 Court may make orders in relation to registered liquidators**

- (1) The Court may make such orders as it thinks fit in relation to a registered liquidator.
- (2) The Court may exercise the power under subsection (1):
  - (a) on its own initiative, during proceedings before the Court; or
  - (b) on application under subsection (3).
- (3) Each of the following persons may apply for an order under subsection (1):
  - (a) the registered liquidator;
  - (b) ASIC.
- (4) Without limiting the matters which the Court may take into account when making orders, the Court may take into account:
  - (a) whether the registered liquidator has faithfully performed, or is faithfully performing, the registered liquidator's duties; and
  - (b) whether an action or failure to act by the registered liquidator is in compliance with this Act and the Insolvency Practice Rules; and
  - (c) whether an action or failure to act by the registered liquidator is in compliance with an order of the Court; and
  - (d) whether any person has suffered, or is likely to suffer, loss or damage because of an action or failure to act by the registered liquidator; and
  - (e) the seriousness of the consequences of any action or failure to act by the registered liquidator, including the effect of that action or failure to act on public confidence in registered liquidators as a group.
- (5) This section does not limit the Court's powers under any other provision of this Act, or under any other law.



**45-5 Court may make orders about costs**

- (1) Without limiting section 45-1, the Court may make orders in relation to a registered liquidator that deal with the costs of a matter considered by the Court.
- (2) Those orders may include an order that:
  - (a) the registered liquidator is personally liable for some or all of those costs; and
  - (b) the registered liquidator is not entitled to be reimbursed by a company or its creditors in relation to some or all of those costs.
- (3) This section does not limit the Court's powers under any other provision of this Act, or under any other law.

## **Division 50—Committees under this Part**

### **50-1 Simplified outline of this Division**

This Division sets out common rules for committees established under this Part.

If a prescribed body appoints a person to a committee, that person must have the prescribed knowledge or experience or, if no knowledge or experience is prescribed, the knowledge and experience necessary to carry out the functions to be performed. If the Minister appoints a person to a committee, that person must have knowledge or experience in a field such as business, law (including the law of corporate insolvency) or public policy relating to corporate insolvency.

A single committee may consider more than one matter. The consideration of a matter is not affected by a change in the membership of the committee. A matter may be adjourned or transferred to another committee. The Insolvency Practice Rules may prescribe procedures and make other rules for committees.

The use and disclosure of information given to a committee is restricted to listed purposes.

### **50-5 Prescribed body appointing a person to a committee**

#### *Application of this section*

- (1) This section applies if a prescribed body is to appoint a person to a committee under this Part.

*Prescribed body must only appoint a person with appropriate knowledge and experience*

- (2) The prescribed body is to appoint a person as a member of the committee only if the prescribed body is satisfied that the person has:
- (a) if any knowledge or experience is prescribed in relation to appointments of the kind to be made—that knowledge or experience; or
  - (b) if no knowledge or experience is prescribed in relation to appointments of the kind to be made—the knowledge and experience necessary to carry out the person’s functions as a member of the committee if appointed.

### **50-10 Minister appointing a person to a committee**

*Application of this section*

- (1) This section applies if the Minister is to appoint a person to a committee under any of the following paragraphs:
- (a) paragraph 20-10(2)(c);
  - (b) paragraph 20-45(2)(c);
  - (c) paragraph 40-45(2)(c);
  - (d) paragraph 40-75(2)(c).

*Matters of which the Minister must be satisfied before appointing*

- (2) The Minister is to appoint a person as a member of the committee only if the Minister is satisfied that the person is qualified for appointment by virtue of his or her knowledge of, or experience in, one or more of the following fields:
- (a) business;
  - (b) law, including the law relating to corporate insolvency;
  - (c) economics;
  - (d) accounting;
  - (e) public policy relating to corporate insolvency;
  - (f) administration of companies, including insolvent companies.

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*Minister must not appoint member or staff member of ASIC*

- (3) The Minister must not appoint:
- (a) a member of ASIC (within the meaning of section 9 of the *Australian Securities and Investments Commission Act 2001*); or
  - (b) a staff member of ASIC;
- to be a member of the committee.

*Delegation of power to appoint*

- (4) The Minister may, in writing, delegate the Minister's powers to appoint a person to a committee to:
- (a) ASIC; or
  - (b) a member of ASIC (within the meaning of section 9 of the *Australian Securities and Investments Commission Act 2001*); or
  - (c) a staff member of ASIC who is a senior staff member (within the meaning given by subsection 5(1) of that Act).
- (5) In exercising powers under a delegation, the delegate must comply with any directions of the Minister.

**50-15 Single committee may consider more than one matter**

A single committee may be convened under this Part to consider one or more of the following:

- (a) a matter or matters relating to one applicant for registration as a liquidator;
- (b) a matter or matters relating to more than one applicant for registration as a liquidator;
- (c) a matter or matters relating to one registered liquidator;
- (d) a matter or matters relating to more than one registered liquidator.

**50-20 Ongoing consideration of matters by committee**

If a committee is convened under this Part to consider a matter:

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- (a) the committee's powers, functions and duties in relation to the matter are not affected by a change in the membership of the committee; and
- (b) the committee may adjourn its consideration of the matter, and may do so more than once; and
- (c) the matter may be transferred to another committee with powers, functions and duties under this Part in relation to matters of that kind.

### **50-25 Procedure and other rules relating to committees**

The Insolvency Practice Rules may provide for and in relation to:

- (a) the manner in which the committees convened under this Part are to perform their functions, including:
  - (i) meetings of committees; and
  - (ii) the number of committee members required to constitute a quorum; and
  - (iii) disclosure of interests in a matter before a committee; and
  - (iv) the manner in which questions are to be decided by the committee; and
- (b) the reconstitution of a committee; and
- (c) the termination of the consideration of a matter by a committee, and the transfer of matters to another committee.

### **50-30 Remuneration of committee members**

- (1) A member of a committee convened under this Part is entitled to receive the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is entitled to receive such remuneration as the Minister determines in writing.
- (2) A member is entitled to receive such allowances as the Minister determines in writing.

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- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

**50-35 Committee must only use information etc. for purposes for which disclosed**

*Offence*

- (1) A person commits an offence if:
- (a) the person is or was a member of a committee convened under this Part; and
  - (b) information or a document is or was disclosed to the person for the purposes of exercising powers or performing functions as a member of the committee; and
  - (c) the person uses or discloses the information or document.

Penalty: 50 penalty units.

*Exception—information or document disclosed to the Inspector-General in Bankruptcy or another committee etc.*

- (2) Subsection (1) does not apply if the information or document:
- (a) is used or disclosed by the person for the purposes of exercising powers or performing functions as a member of the committee mentioned in subsection (1); or
  - (b) is disclosed:
    - (i) to the Inspector-General in Bankruptcy to assist the Inspector-General to exercise his or her powers or perform his or her functions under the *Bankruptcy Act 1966*; or
    - (ii) to a committee convened under Part 2 of the Insolvency Practice Schedule (Bankruptcy) to assist the committee to exercise its powers or perform its functions under that Part; or
    - (iii) to another committee convened under this Part to assist the committee to exercise its powers or perform its functions under this Part; or

- (iv) to enable or assist a body prescribed for the purposes of this paragraph to perform its disciplinary function in relation to its members; or
- (v) in order to enable or assist an authority or person in a State or Territory, or a foreign country, to perform or exercise a function or power that corresponds, or is analogous, to any of the committee's or ASIC's functions and powers; or
- (vi) to a court or tribunal in relation to proceedings before the court or tribunal.

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

## **Part 3—General rules relating to external administrations**

### **Division 55—Introduction**

#### **55-1 Simplified outline of this Part**

This Part sets out requirements for conducting the external administration of a company.

The main provisions deal with:

- (a) the remuneration of the external administrator; and
- (b) the duties of the external administrator in handling the money and other property of the company; and
- (c) conflicts of interest; and
- (d) the duties of the external administrator to keep appropriate records, to report to ASIC and to give information, documents and reports to creditors, members of the company and others; and
- (e) creditor and company meetings; and
- (f) the creation and conduct of a committee to monitor the external administration (called a committee of inspection); and
- (g) the rights of creditors to review the external administration; and
- (h) the rights of creditors to remove the external administrator and appoint another; and
- (i) the review of the external administration by the Court.

There are additional rules that apply to companies under external administration in Chapter 5 (for example, about appointment of external administrators) of this Act.



Companies in receivership are not covered in this Part (see generally Part 5.2 of this Act).

## **Division 60—Remuneration and other benefits received by external administrators**

### **Subdivision A—Introduction**

#### **60-1 Simplified outline of this Division**

##### *Remuneration*

The external administrator of a company is entitled to receive remuneration for necessary work properly performed by the external administrator in relation to the external administration.

The amount of remuneration will usually be set under a remuneration determination. Remuneration determinations are made by:

- (a) in a members voluntary winding up—the members; and
- (b) in most other cases—the creditors or the committee of inspection (if there is one).

However, if there is no remuneration determination, the external administrator will be entitled to receive a reasonable amount for the work. The maximum amount that the external administrator may receive in this way is \$5,000 (exclusive of GST and indexed).

The remuneration of provisional liquidators is, in most cases, determined by the Court.

The remuneration of a restructuring practitioner for a company or for a restructuring plan is dealt with in the Insolvency Practice Rules.

The Court may review the remuneration of the external administrator of a company and may also make orders under Division 90 about remuneration (including ordering repayment of remuneration).

*Other benefits*

The external administrator of a company must not:

- (a) employ a related entity, unless certain requirements are met;
- (b) purchase any assets of the company; or
- (c) get any other benefits or profits from the administration.

**Subdivision B—Remuneration of external administrators—  
general rules**

**60-2 Application of this Subdivision**

This Subdivision applies in relation to an external administrator of a company other than:

- (a) a provisional liquidator; or
- (b) a liquidator appointed by ASIC under section 489EC (winding up by ASIC); or
- (c) a restructuring practitioner for a company; or
- (d) a restructuring practitioner for a restructuring plan.

Note: For the remuneration of provisional liquidators, see Subdivision C of this Division. For the remuneration of liquidators appointed by ASIC under section 489EC, see Subdivision D of this Division.

**60-5 External administrator's remuneration**

*Remuneration in accordance with remuneration determinations*

- (1) An external administrator of a company is entitled to receive remuneration for necessary work properly performed by the external administrator in relation to the external administration, in accordance with the remuneration determinations (if any) for the external administrator (see section 60-10).

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*Remuneration for external administrators if no remuneration determination made*

- (2) If no remuneration determination is made in relation to necessary work properly performed by the external administrator of a company in relation to the external administration, the administrator is entitled to receive reasonable remuneration for the work. However, that remuneration must not exceed the maximum default amount.

**60-10 Remuneration determinations**

*Remuneration determinations*

- (1) A determination, specifying remuneration that an external administrator of a company (other than an external administrator in a members' voluntary winding up) is entitled to receive for necessary work properly performed by the external administrator in relation to the external administration, may be made:
- (a) by resolution of the creditors; or
  - (b) if there is a committee of inspection and a determination is not made under paragraph (a)—by the committee of inspection; or
  - (c) if a determination is not made under paragraph (a) or (b)—by the Court.

Note: For determinations made by the Court, see also section 60-12 (matters to which the Court must have regard).

- (2) A determination, specifying remuneration that an external administrator of a company in a members' voluntary winding up is entitled to receive for necessary work properly performed by the external administrator in relation to the external administration, may be made:
- (a) by resolution of the company at a general meeting; or
  - (b) if a determination is not made under paragraph (a)—by the Court.

Note: For determinations made by the Court, see also section 60-12 (matters to which the Court must have regard).

- (3) A determination under this section may specify remuneration that the external administrator is entitled to receive in either or both of the following ways:
- (a) by specifying an amount of remuneration;
  - (b) by specifying a method for working out an amount of remuneration.

*Remuneration on a time-cost basis*

- (4) If a determination under this section specifies that the external administrator is entitled to receive remuneration worked out wholly or partly on a time-cost basis, the determination must include a cap on the amount of remuneration worked out on a time-cost basis that the external administrator is entitled to receive.

*More than one remuneration determination may be made*

- (5) To avoid doubt, more than one determination under this section may be made in relation to a particular external administrator of a company and a particular external administration of a company.

## **60-11 Review of remuneration determinations**

*Review on application*

- (1) Any of the following may apply to the Court for a review of a remuneration determination for an external administrator of a company:
- (a) ASIC;
  - (b) a person with a financial interest in the external administration of the company;
  - (c) an officer of the company.
- (2) Paragraph (1)(c) has effect despite section 198G.

Note: Section 198G deals with powers of officers etc. while a company is under external administration.

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- (3) On application under subsection (1), the Court may, if it considers it appropriate to do so, review the remuneration determination.

Note: See also section 60-12 (matters to which the Court must have regard).

*Court must affirm, vary or set aside remuneration determination*

- (4) After reviewing the remuneration determination, the Court must:
- (a) affirm the remuneration determination; or
  - (b) vary the remuneration determination; or
  - (c) set aside the remuneration determination and substitute another remuneration determination.

*Exception*

- (5) Subsection (1) does not apply to a remuneration determination made by the Court.

**60-12 Matters to which the Court must have regard**

In making a remuneration determination under paragraph 60-10(1)(c) or (2)(b), or reviewing a remuneration determination under section 60-11, the Court must have regard to whether the remuneration is reasonable, taking into account any or all of the following matters:

- (a) the extent to which the work by the external administrator was necessary and properly performed;
- (b) the extent to which the work likely to be performed by the external administrator is likely to be necessary and properly performed;
- (c) the period during which the work was, or is likely to be, performed by the external administrator;
- (d) the quality of the work performed, or likely to be performed, by the external administrator;
- (e) the complexity (or otherwise) of the work performed, or likely to be performed, by the external administrator;
- (f) the extent (if any) to which the external administrator was, or is likely to be, required to deal with extraordinary issues;

- (g) the extent (if any) to which the external administrator was, or is likely to be, required to accept a higher level of risk or responsibility than is usually the case;
- (h) the value and nature of any property dealt with, or likely to be dealt with, by the external administrator;
- (i) the number, attributes and conduct, or the likely number, attributes and conduct, of the creditors;
- (j) if the remuneration is worked out wholly or partly on a time-cost basis—the time properly taken, or likely to be properly taken, by the external administrator in performing the work;
- (k) whether the external administrator was, or is likely to be, required to deal with one or more controllers, or one or more managing controllers;
- (l) if:
  - (i) a review has been carried out under Subdivision C of Division 90 (review by another registered liquidator) into a matter that relates to the external administration; and
  - (ii) the matter is, or includes, remuneration of the external administrator;the contents of the report on the review that relate to that matter;
- (m) any other relevant matters.

## 60-15 Maximum default amount

### *Maximum default amount*

- (1) The **maximum default amount** for an external administrator of a company is an amount (exclusive of GST) worked out as follows:
  - (a) if the external administrator is appointed in relation to the external administration of the company during the financial year beginning on 1 July 2016—\$5,000;

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- (b) if the external administrator is appointed in relation to the external administration of the company during a financial year beginning on or after 1 July 2017—the greater of:
  - (i) the amount worked out by multiplying the indexation factor for the financial year (worked out under subsections (3) and (4)) by the maximum default amount for an external administrator appointed during the previous financial year; and
  - (ii) the amount (if any) prescribed for the purposes of this subparagraph.

*Rounding*

- (2) Amounts worked out under subsection (1) must be rounded to the nearest whole dollar (rounding 50 cents upwards).

*Indexation factor*

- (3) Subject to subsection (4), the **indexation factor** for a financial year is the number worked out by dividing the index number for the March quarter immediately preceding that financial year by the index number for the March quarter immediately preceding that first-mentioned March quarter.
- (4) If an indexation factor worked out under subsection (3) would be less than 1, the indexation factor is to be increased to 1.

*Changes to CPI index reference period and publication of substituted index numbers*

- (5) In working out the indexation factor:
  - (a) use only the index numbers published in terms of the most recently published index reference period for the Consumer Price Index; and
  - (b) disregard index numbers published in substitution for previously published index numbers (except where the substituted numbers are published to take account of changes in the index reference period).



*Definition—index number*

(6) In this section:

***index number***, in relation to a quarter, means the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician in respect of that quarter.

**Subdivision C—Remuneration of provisional liquidators**

**60-16 Remuneration of provisional liquidators**

- (1) A provisional liquidator is entitled to receive such remuneration, by way of percentage or otherwise, as is:
- (a) determined by the Court; or
  - (b) if:
    - (i) no determination by the Court is in force; and
    - (ii) there is a committee of inspection;  
determined by agreement between the liquidator and the committee of inspection; or
  - (c) if:
    - (i) no determination by the Court is in force; and
    - (ii) there is no committee of inspection or the liquidator and the committee of inspection fail to agree;  
determined by resolution of the creditors.
- (2) Sections 60-11 and 60-12 (Court review) apply in relation to a determination mentioned in this section in the same way as they apply to a remuneration determination made under section 60-10.

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**Subdivision D—Remuneration of liquidators in winding up by ASIC**

**60-17 Remuneration of liquidators in winding up by ASIC**

If ASIC orders under section 489EA that a company be wound up, ASIC may determine the remuneration that the liquidator is entitled to receive.

**Subdivision DA—Remuneration of restructuring practitioners**

**60-18 Insolvency Practice Rules**

- (1) The Insolvency Practice Rules may provide for and in relation to the remuneration of:
  - (a) a restructuring practitioner for a company; and
  - (b) a restructuring practitioner for a restructuring plan.
- (2) Without limiting subsection (1), the Insolvency Practice Rules may provide for the remuneration of a restructuring practitioner for a restructuring plan that has been made in relation to a company to be dealt with wholly or partly under the restructuring plan.

**Subdivision E—Duties of external administrators relating to remuneration and benefits etc.**

**60-20 External administrator must not derive profit or advantage from the administration of the company**

*Deriving profit or advantage from the company*

- (1) An external administrator of a company must not directly or indirectly derive any profit or advantage from the external administration of the company.

*Circumstances in which profit or advantage is taken to be derived*

- (2) To avoid doubt, an external administrator of a company is taken to derive a profit or advantage from the external administration of the company if:
- (a) the external administrator directly or indirectly derives a profit or advantage from a transaction (including a sale or purchase) entered into for or on account of the company; or
  - (b) the external administrator directly or indirectly derives a profit or advantage from a creditor or member of the company; or
  - (c) a related entity of the external administrator directly or indirectly derives a profit or advantage from the external administration of the company.

*Exceptions*

- (3) Subsection (1) does not apply to the extent that:
- (a) another provision of this Act, or of another law, requires or permits the external administrator to derive the profit or advantage; or
  - (b) the Court gives leave to the external administrator to derive the profit or advantage.

Note: Subsection (1) would not, for example, prevent the external administrator from recovering remuneration for necessary work properly performed by the external administrator in relation to the external administration of the company, as the external administrator is permitted to do so under other provisions of this Act.

- (4) Despite paragraph (2)(c), subsection (1) does not apply to the extent that:
- (a) the external administrator employs or engages a person to provide services in connection with the external administration of the company; and
  - (b) a related entity of the external administrator directly or indirectly derives a profit or advantage as a result of that employment or engagement; and
  - (c) one of the following is satisfied:

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- (i) the external administrator does not know, and could not reasonably be expected to know, that the related entity would derive that profit or advantage;
  - (ii) the creditors, by resolution, agree to the related entity deriving the profit or advantage;
  - (iii) it is not reasonably practicable in all the circumstances to obtain the agreement, by resolution, of the creditors to the related entity deriving the profit or advantage and the cost of employing or engaging the person to provide the services is reasonable in all the circumstances.
- (4A) Despite paragraph (2)(c), subsection (1) does not apply to the extent that a related entity of the external administrator directly or indirectly derives a profit or advantage:
- (a) from remuneration paid to the external administrator in accordance with section 60-5 of this Schedule; or
  - (b) from a profit or advantage covered by subsection (4).
- (5) Subsection (1) does not apply to the extent that the profit or advantage is a payment that:
- (a) is made to the external administrator by or on behalf of the Commonwealth or an agency or authority of the Commonwealth; and
  - (b) is of a kind prescribed.

*Offence*

- (6) A person commits an offence of strict liability if:
- (a) the person is subject to a requirement under subsection (1); and
  - (b) the person fails to comply with the requirement.

Penalty: 50 penalty units.

Note: A defendant bears an evidential burden in relation to the matters in subsections (3), (4) and (5) (see subsection 13.3(3) of the *Criminal Code*).

*Effect of contravention of this section*

- (7) A transaction or any other arrangement entered into in contravention of this section may be set aside by the Court.

## Division 65—Funds handling

### 65-1 Simplified outline of this Division

The external administrator of a company has duties to:

- (a) promptly pay all company money into an account (called an administration account); and
- (b) promptly deposit instruments such as securities with a bank; and
- (c) keep the account separate and not pay any money that is not company money into the account; and
- (d) only pay money out of the account if it is for a legitimate purpose.

The external administrator of a company may keep a single account for a group of related companies (called a pooled group).

People with a financial interest in the external administration of a company (such as creditors) may ask the Court to give directions to the external administrator about the way money and other property of the company is to be handled.

If the external administrator of a company does not comply with this Division, the external administrator may have to pay penalties, be paid less remuneration or be removed as external administrator.

### 65-5 External administrator must pay all money into an administration account

*External administrator must pay money into the administration account*

- (1) The external administrator of a company must pay all money received by the external administrator on behalf of, or in relation

to, the company into an administration account for the company within 5 business days after receipt.

*Exception*

- (2) If the Court gives a direction that is inconsistent with subsection (1), that subsection does not apply to the extent of the inconsistency.

*Offence*

- (3) A person commits an offence of strict liability if:
- (a) the person is subject to a requirement under subsection (1); and
  - (b) the person fails to comply with the requirement.

Penalty: 50 penalty units.

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

## 65-10 Administration accounts

- (1) A bank account is an **administration account** for a company if:
- (a) the account is maintained in relation to the external administration of the company; and
  - (b) if any requirements are prescribed in relation to the administration accounts of companies under external administration, the account complies with those requirements.
- (2) A bank account is an **administration account** for a member of a pooled group of companies if:
- (a) the account is maintained in relation to the external administration of the pooled group of companies; and
  - (b) if any requirements are prescribed in relation to the administration accounts of companies under external administration, the account complies with those requirements.

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**65-15 External administrator must not pay other money into the administration account**

*External administrator must not pay other money into the administration account*

- (1) The external administrator of a company must not pay any money into an administration account for the company if it is not received by the external administrator on behalf of, or in relation to:
  - (a) the company; or
  - (b) if the company is a member of a pooled group—another member of the pooled group.

*Exception*

- (2) If the Court gives a direction that is inconsistent with subsection (1), that subsection does not apply to the extent of the inconsistency.

*Offence*

- (3) A person commits an offence of strict liability if:
  - (a) the person is subject to the requirement under subsection (1); and
  - (b) the person fails to comply with the requirement.

Penalty: 50 penalty units.

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

**65-20 Consequences for failure to pay money into administration account**

*Application of this section*

- (1) This section applies if:
    - (a) an external administrator of a company:
-



- (i) is subject to a requirement under subsection 65-5(1) (paying money into administration account); and
  - (ii) fails to comply with the requirement in relation to an amount of money; and
- (b) the amount exceeds:
- (i) \$50; or
  - (ii) if another amount is prescribed—that other amount.

*Exception*

- (2) Subsection (1) does not apply if, on the application of the external administrator of the company, the Court is satisfied that the external administrator had sufficient reason for failing to comply with the requirement in relation to the amount.

*External administrator must pay penalty on excess*

- (3) The external administrator must, as a penalty, pay interest to the Commonwealth on the excess, worked out:
- (a) at the rate of 20% per year; or
  - (b) if another rate is prescribed—at that other rate;
- for the period during which the external administrator fails to comply with the requirement.
- (4) The external administrator is personally liable for, and is not entitled to be reimbursed out of the property of the company in relation to, the payment of that interest.

**65-25 Paying money out of administration account**

*Money only to be paid out of administration account in accordance with this Act etc.*

- (1) An external administrator of a company must not pay any money out of the administration account for the company otherwise than:
- (a) for purposes related to the external administration of the company; or
  - (b) in accordance with this Act; or

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(c) in accordance with a direction of the Court.

*Offence*

- (2) A person commits an offence of strict liability if:
- (a) the person is subject to a requirement under subsection (1); and
  - (b) the person fails to comply with the requirement.

Penalty: 50 penalty units.

**65-40 Handling securities**

*Securities must be deposited with administration account bank*

- (1) An external administrator of a company must deposit in a bank:
- (a) the negotiable instruments; and
  - (b) any other securities;
- payable to the company or the external administrator as soon as practicable after they are received by the external administrator.

*Exception*

- (2) If the Court gives a direction that is inconsistent with subsection (1), that subsection does not apply to the extent of the inconsistency.

*Offence*

- (3) A person commits an offence of strict liability if:
- (a) the person is subject to a requirement under subsection (1); and
  - (b) the person fails to comply with the requirement.

Penalty: 20 penalty units.

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

*Delivery of securities*

- (4) The negotiable instruments or other security must be delivered out on the signed request of the external administrator.

**65-45 Handling of money and securities—Court directions**

- (1) The Court may, on application, give directions regarding the payment, deposit or custody of:
- (a) money; and
  - (b) negotiable instruments and other securities;
- that are payable to, or held by, an external administrator of a company.
- (2) The Court may, on application, give directions authorising the external administrator of a company to make payments into and out of a special bank account.
- (3) Without limiting subsection (2), the Court may:
- (a) authorise the payments for the time and on the terms it thinks fit; and
  - (b) if the Court thinks the account is no longer required—at any time order it to be closed.
- (4) A copy of an order under paragraph (3)(b) must be served by the external administrator on the bank with which the special bank account was opened.
- (5) An application under this section may be made by:
- (a) any person with a financial interest in the external administration of the company; or
  - (b) an officer of the company.
- (6) Paragraph (5)(b) has effect despite section 198G.

Note: Section 198G deals with powers of officers etc. while a company is under external administration.

**65-50 Rules in relation to consequences for failure to comply with this Division**

The Insolvency Practice Rules may provide for and in relation to:

- (a) the payment by an external administrator of a company of interest at such rate, on such amount and in respect of such period as is prescribed; and
- (b) disallowance of all or of such part as is prescribed of the remuneration of an external administrator of a company; and
- (c) the removal from office of an external administrator of a company by the Court; and
- (d) the payment by an external administrator of a company of any expenses occasioned by reason of his or her default;

in cases where an external administrator contravenes or fails to comply with this Division (including Insolvency Practice Rules made under this Division).

## **Division 70—Information**

### **Subdivision A—Introduction**

#### **70-1 Simplified outline of this Division**

The external administrator of a company must:

- (a) give annual reports of the administration (called annual administrative returns) to ASIC; and
- (b) give a report of the administration to ASIC when the administration ends; and
- (c) keep books of meetings and other company affairs; and
- (d) allow those books to be audited if required to do so; and
- (e) allow access to those books by creditors; and
- (f) give creditors, members and others requested information, documents and reports relating to the administration.

The committee of inspection (if there is one) may also request information, documents and reports from the external administrator under Division 80.

If the external administrator does not comply with a request, ASIC may direct the external administrator to do so. If the external administrator does not comply with the direction, ASIC may ask the Court to order compliance. Alternatively, the person who requested the information may ask the Court to order compliance with the request.

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**Subdivision B—Administration returns**

**70-5 Annual administration return**

*Application of this section*

- (1) This section applies if a person is the external administrator of a company during all or part of an administration return year for the external administrator for the company.
- (2) However, this section does not apply if:
  - (a) the external administration of the company ends during the administration return year; and
  - (b) the person is the external administrator of the company when the external administration of the company ends.

Note: If a person is the external administrator of a company when the external administration of the company ends, the person must instead lodge a return under section 70-6.

*Annual administration return to be lodged*

- (3) The person must lodge a return in relation to the external administration of the company by the person during the year or part of the year (as the case requires).
- (4) The return must:
  - (a) be in the approved form; and
  - (b) be lodged with ASIC within 3 months after the end of the year.

Note: Fees for lodging documents and late lodgement fees may be imposed under the *Corporations (Fees) Act 2001*.

*Meaning of **administration return year***

- (5) Each of the following is an **administration return year** for an external administrator for a company:

- (a) the period of 12 months beginning on the day on which the person first began to be an external administrator of the company;
- (b) each subsequent period of 12 months.

*Notice of lodgement to be given*

- (6) The person must give notice that the return has been lodged:
  - (a) in a members' voluntary winding up—to the members of the company; and
  - (b) in a creditors' voluntary winding up—to the creditors; and
  - (c) in a court-ordered winding up—to the creditors; and
  - (d) if the external administrator is appointed as a provisional liquidator—to the Court; and
  - (e) if the company is under administration or has executed a deed of company arrangement—to the company; and
  - (f) if the company is under restructuring or has made a restructuring plan—to the company;

when next forwarding any report, notice of meeting, notice of call or dividend.

*Returns for pooled groups*

- (7) If 2 or more companies are members of a pooled group, then the returns under subsection (3) for those companies may be set out in the same document.

## **70-6 End of administration return**

*Application of this section*

- (1) This section applies if the external administration of a company ends.

*End of administration return to be lodged*

- (2) The person who is the external administrator of the company when the external administration of the company ends (the ***last external***

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**administrator**) must lodge a return in relation to the external administration of the company.

- (3) The return must:
- (a) be in the approved form; and
  - (b) be lodged with ASIC within 1 month after the end of the external administration of the company.

Note 1: Fees for lodging documents and late lodgement fees may be imposed under the *Corporations (Fees) Act 2001*.

Note 2: ASIC must deregister the company 3 months after the end of administration return is lodged (see section 509).

*Notice of lodgement to be given*

- (4) The last external administrator must give notice that the return has been lodged to a person mentioned in subsection (5), if that person requests in writing that the last external administrator give the person such a notice.
- (5) The persons who may request such a notice are:
- (a) in a members' voluntary winding up—the members of the company; and
  - (b) in a creditors' voluntary winding up—the creditors; and
  - (c) in a court-ordered winding up—the creditors; and
  - (d) if the external administrator is appointed as a provisional liquidator—the Court; and
  - (e) if the company is under administration or has executed a deed of company arrangement—the company; and
  - (f) if the company is under restructuring or has made a restructuring plan—the company.

*Returns for pooled groups*

- (6) If 2 or more companies are members of a pooled group, then the returns under subsection (2) for those companies may be set out in the same document.



## **Subdivision C—Record-keeping**

### **70-10 Administration books**

#### *External administrator must keep proper books*

- (1) An external administrator of a company must keep proper books in which the external administrator must cause to be made:
  - (a) entries or minutes of proceedings at meetings relating to the external administration of the company; and
  - (b) such other entries as are necessary to give a complete and correct record of the external administrator's administration of the company's affairs.
- (2) The external administrator must:
  - (a) ensure that the books are available at the external administrator's office for inspection; and
  - (b) permit a creditor or contributory, or another person acting on the creditor's or contributory's behalf, to inspect the books at all reasonable times.

#### *Exception*

- (3) Subsections (1) and (2) do not apply if the external administrator has a reasonable excuse.
- (3A) Subsection (2) does not apply if the company is under restructuring or has made a restructuring plan that has not yet terminated.

#### *Offence*

- (4) A person commits an offence of strict liability if:
  - (a) the person is subject to a requirement under subsection (1) or (2); and
  - (b) the person fails to comply with the requirement.

Penalty: 20 penalty units.

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

**70-15 Audit of administration books—ASIC**

*ASIC may cause books to be audited*

- (1) ASIC may cause the books referred to in section 70-5 (annual administration return), 70-6 (end of administration return) or 70-10 (administration books) to be audited by a registered company auditor.

*Audit on the ASIC's initiative or on request*

- (2) The audit may be conducted:
  - (a) on ASIC's own initiative; or
  - (b) at the request of the company; or
  - (c) at the request of a creditor; or
  - (d) at the request of any other person prescribed.

*Auditor must prepare a report*

- (3) The auditor must prepare a report on the audit.

*ASIC must give a copy of the report*

- (4) If ASIC causes books to be audited under subsection (1):
  - (a) ASIC must give a copy of the report prepared by the auditor to:
    - (i) the external administrator of the company; and
    - (ii) the person who requested the report (if any); and
  - (b) subsection 1289(5) applies in relation to the report prepared by the auditor as if it were a document required to be lodged.

*Costs of an audit*

- (5) The costs of an audit under this section must be determined by ASIC and form part of the expenses of the external administration of the company.

**70-20 Audit of administration books—on order of the Court**

- (1) The Court may order that an audit of the books referred to in section 70-5 (annual administration return), 70-6 (end of administration return) or 70-10 (administration books) be conducted by a registered company auditor.
- (2) The order may be made on application of:
  - (a) any person with a financial interest in the external administration of the company; or
  - (b) an officer of the company.
- (3) Paragraph (2)(b) has effect despite section 198G.

Note: Section 198G deals with powers of officers etc. while a company under external administration.
- (4) The Court may make such orders in relation to the audit as it thinks fit, including:
  - (a) the preparation and provision of a report on the audit; and
  - (b) orders as to the costs of the audit.

**70-25 External administrator to comply with auditor requirements**

*Application of this section*

- (1) This section applies if books are audited under section 70-15 or 70-20.

*External administrator must give assistance etc.*

- (2) The external administrator must give the auditor such books, information and assistance as the auditor reasonably requires.

*Exception*

- (3) Subsection (2) does not apply if the external administrator has a reasonable excuse.

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*Offence*

- (4) A person commits an offence of strict liability if:
- (a) the person is subject to a requirement under subsection (2); and
  - (b) the person fails to comply with the requirement.

Penalty: 20 penalty units.

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

**70-30 Transfer of books to new administrator**

*Application of this section*

- (1) This section applies if:
- (a) a person (the **former administrator**) ceases to be the external administrator of a company; and
  - (b) ASIC has not issued a notice to the former administrator under section 70-31; and
  - (c) a registered liquidator (the **new administrator**) is appointed as external administrator of the company instead.

*Transfer of books to new administrator*

- (2) The former administrator must transfer to the new administrator, within the handover period, possession or control of any books relating to the external administration of the company that are in the former administrator's possession or control.
- (3) The **handover period** is:
- (a) the period of 10 business days beginning on the day after the new administrator is appointed; or
  - (b) if another period is agreed between the former administrator and the new administrator—that other period.

- (4) The former administrator may take a copy of any part of the books before transferring possession or control of them to the new administrator.

*New administrator must accept the books*

- (5) The new administrator must take possession or accept control of any books relating to the external administration of the company.

*New administrator must allow inspection etc.*

- (6) After possession or control of the books is transferred, the new administrator must allow the former administrator to inspect them at any reasonable time and take a copy of any part of the books.

*Offence*

- (7) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (2), (5) or (6); and
  - (b) the person intentionally or recklessly fails to comply with the requirement.

Penalty: 50 penalty units.

*Lien against books not prejudiced*

- (8) If the new administrator is entitled to take possession or control of the books under this section:
- (a) a person is not entitled, as against the new administrator, to claim a lien on the books; and
  - (b) such a lien is not otherwise prejudiced.

**70-31 Transfer of books to ASIC etc.**

*Transfer of books to ASIC*

- (1) If a person ceases to be the external administrator of a company, ASIC may, by written notice given to the person, require the person to:
- (a) if the person has books relating to the external administration of the company in his or her possession or control—transfer possession or control of those books to ASIC within the period specified in the notice; or
  - (b) otherwise—notify ASIC, within the period and in the manner specified in the notice, that the person does not have books relating to the external administration of the company in the person’s possession or control.

*Offence*

- (2) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (1); and
  - (b) the person intentionally or recklessly fails to comply with the requirement.

Penalty: 50 penalty units.

*ASIC must transfer books to new external administrator*

- (3) If:
- (a) possession or control of books relating to an external administration of a company is transferred to ASIC under this section; and
  - (b) the books are in ASIC’s possession or control; and
  - (c) a person (the ***new administrator***) is or becomes the external administrator of the company;
- ASIC must, as soon as practicable, transfer possession or control of those books to the new administrator.

*ASIC must transfer books to company*

- (4) If:
- (a) possession or control of books relating to a company is transferred to ASIC under this section; and
  - (b) the books are in ASIC's possession or control; and
  - (c) the company ceases to be a company under external administration;
- ASIC must, as soon as practicable, transfer possession or control of those books to the company.

*Lien against books not prejudiced*

- (5) If ASIC is entitled to take possession or control of the books under this section:
- (a) a person is not entitled, as against ASIC, to claim a lien on the books; and
  - (b) such a lien is not otherwise prejudiced.
- (6) If ASIC is required to give possession or control of the books to the new administrator under this section:
- (a) a person is not entitled, as against the new administrator, to claim a lien on the books; and
  - (b) such a lien is not otherwise prejudiced.

*Notice is not a legislative instrument*

- (7) A notice under subsection (1) is not a legislative instrument.

*Retention period for books*

- (8) ASIC must retain all books of the company, and of the external administration of the company:
- (a) that are relevant to affairs of the company; and
  - (b) possession or control of which is transferred to ASIC under this section; and
  - (c) possession or control of which is not transferred to another entity under this section, or under any other law;

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for a period (the *retention period*) of 2 years after the end of the external administration of the company.

*Destruction of books at end of retention period*

- (9) ASIC may destroy the books at the end of the retention period.

*Relationship with other laws*

- (10) Subsections (8) and (9) do not apply to the extent that ASIC is under an obligation to retain the books, or a part of the books, under another provision of this Act or under any other law.

**70-35 Retention and destruction of books**

*Retention period for books*

- (1) The last external administrator of a company must retain all books of the company, and of the external administration of the company, that:

- (a) are relevant to affairs of the company; and
- (b) are in the external administrator's possession or control at the end of the external administration;

for a period (the *retention period*) of 5 years from the end of the external administration.

*Exception—reasonable excuse*

- (2) Subsection (1) does not apply if the external administrator has a reasonable excuse.

*Exception—consent of ASIC etc.*

- (3) Despite subsection (1), the books may be destroyed within the retention period:

- (a) in the case of a members' voluntary winding up—as the company by resolution directs; and
- (b) in the case of a creditor's voluntary winding up or a court-ordered winding up:



- (i) if there is a committee of inspection—as the committee directs; and
  - (ii) otherwise—as the creditors by resolution direct; and
  - (c) if the external administrator is appointed as a provisional liquidator—as the Court directs;
- if ASIC consents to the destruction.

Note: This subsection does not apply for a winding up of a sub-fund of a CCIV: see section 1237P.

*Destruction of books at end of retention period*

- (4) The external administrator may destroy the books at the end of the retention period.

Note: This subsection does not apply for a winding up of a sub-fund of a CCIV: see section 1237P.

*Offence*

- (5) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (1); and
  - (b) the person intentionally or recklessly fails to comply with the requirement.

Penalty: 50 penalty units.

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*).

*Relationship with other laws*

- (6) Subsections (3) and (4) do not apply to the extent that the external administrator is under an obligation to retain the books, or a part of the books, under another provision of this Act or under any other law.

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**70-36 Books of company in external administration—evidence**

If a company is in external administration, all books of the company, and of the external administrator of the company, that are relevant to affairs of the company at or after the start of the external administration are, as between the contributories of the company, prima facie evidence of the truth of all matters purporting to be recorded in those books.

**Subdivision D—Giving information etc. to creditors and others**

**70-40 Right of creditors to request information etc. from external administrator**

- (1) The creditors may by resolution request the external administrator of a company to:
  - (a) give information; or
  - (b) provide a report; or
  - (c) produce a document;to the creditors.
- (2) The external administrator must comply with the request unless:
  - (a) the information, report or document is not relevant to the external administration of the company; or
  - (b) the external administrator would breach his or her duties in relation to the external administration of the company if the external administrator complied with the request; or
  - (c) it is otherwise not reasonable for the external administrator to comply with the request.
- (3) The Insolvency Practice Rules may prescribe circumstances in which it is, or is not, reasonable for an external administrator of a company to comply with a request of a kind mentioned in subsection (1).

**70-45 Right of individual creditor to request information etc. from external administrator**

- (1) A creditor may request the external administrator of a company to:
  - (a) give information; or
  - (b) provide a report; or
  - (c) produce a document;to the creditor.
- (2) The external administrator must comply with the request unless:
  - (a) the information, report or document is not relevant to the external administration of the company; or
  - (b) the external administrator would breach his or her duties in relation to the external administration of the company if the external administrator complied with the request; or
  - (c) it is otherwise not reasonable for the external administrator to comply with the request.
- (3) The Insolvency Practice Rules may prescribe circumstances in which it is, or is not, reasonable for an external administrator of a company to comply with a request of a kind mentioned in subsection (1).

**70-46 Right of members to request information etc. from external administrator in a members' voluntary winding up**

- (1) This section applies in relation to a members' voluntary winding up.
- (2) The members of the company may by resolution request the external administrator of the company to:
  - (a) give information; or
  - (b) provide a report; or
  - (c) produce a document;to the members.
- (3) The external administrator must comply with the request unless:

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- (a) the information, report or document is not relevant to the external administration of the company; or
  - (b) the external administrator would breach his or her duties in relation to the external administration of the company if the external administrator complied with the request; or
  - (c) it is otherwise not reasonable for the external administrator to comply with the request.
- (4) The Insolvency Practice Rules may prescribe circumstances in which it is, or is not, reasonable for an external administrator of a company to comply with a request of a kind mentioned in subsection (2).

**70-47 Right of individual member to request information etc. from external administrator in a members' voluntary winding up**

- (1) This section applies in relation to a members' voluntary winding up.
- (2) A member of the company may request the external administrator of a company to:
- (a) give information; or
  - (b) provide a report; or
  - (c) produce a document;
- to the member.
- (3) The external administrator must comply with the request unless:
- (a) the information, report or document is not relevant to the external administration of the company; or
  - (b) the external administrator would breach his or her duties in relation to the external administration of the company if the external administrator complied with the request; or
  - (c) it is otherwise not reasonable for the external administrator to comply with the request.
- (4) The Insolvency Practice Rules may prescribe circumstances in which it is, or is not, reasonable for an external administrator of a

company to comply with a request of a kind mentioned in subsection (2).

### **70-50 Reporting to creditors and members**

- (1) The Insolvency Practice Rules may provide for and in relation to the obligations of external administrators of companies:
  - (a) to give information; and
  - (b) to provide reports; and
  - (c) to produce documents;to creditors or members.
- (2) Without limiting subsection (1), the Insolvency Practice Rules may provide for and in relation to:
  - (a) other circumstances in which the external administrator of a company must give information, provide a report or produce a document to a creditor or member; and
  - (b) the manner and form in which information is to be given, a report provided or a document produced; and
  - (c) the timeframes in which information is to be given, a report provided or a document produced; and
  - (d) who is to bear the cost of giving information, providing a report or producing a document.
- (3) The Insolvency Practice Rules may:
  - (a) make different provision in relation to different kinds of external administration; and
  - (b) provide that specified requirements imposed under the Insolvency Practice Rules may be replaced or modified, by resolution, by:
    - (i) the creditors; or
    - (ii) the members; or
    - (iii) if there is a committee of inspection—the committee.

### **Subdivision E—Other requests for information etc.**

#### **70-55 Commonwealth may request information etc.**

*Application of this section*

- (1) This section applies if either:
  - (a) a former employee of a company under external administration has made a claim for financial assistance from the Commonwealth in relation to unpaid employment entitlements; or
  - (b) the Commonwealth considers that such a claim is likely to be made.

*Commonwealth may request information etc.*

- (2) The Commonwealth may request the external administrator of the company to provide specified information, reports or documents in relation to the external administration.
- (3) The external administrator must comply with the request.
- (4) The Insolvency Practice Rules may provide for and in relation to who is to bear the cost of providing the information, reports or documents.

### **Subdivision F—Reporting to ASIC**

#### **70-60 Insolvency Practice Rules may provide for reporting to ASIC**

- (1) The Insolvency Practice Rules may provide for and in relation to the obligations of an external administrator of a company:
  - (a) to give information; and
  - (b) to provide reports; and
  - (c) to produce documents;to ASIC.

- (2) Without limiting subsection (1), the Insolvency Practice Rules may provide for and in relation to:
- (a) the manner and form in which information is to be given, a report provided or a document produced; and
  - (b) the timeframes in which information is to be given, a report provided or a document produced; and
  - (c) who is to bear the cost of giving information, providing a report or producing a document.
- (3) The Insolvency Practice Rules may make different provision in relation to different kinds of external administration.

Note: A failure to give information, provide a report or produce a document to ASIC in accordance with the Insolvency Practice Rules may lead to disciplinary action under Subdivision B of Division 40 of Part 2 of this Schedule.

### **Subdivision G—External administrator may be compelled to comply with requests for information etc.**

#### **70-65 Application of this Subdivision**

- (1) This Subdivision applies if the external administrator of a company refuses a request made by a person under:
- (a) Subdivision D; or
  - (b) a rule made under section 70-50;
  - (c) Subdivision E; or
  - (d) section 80-40;
- to give information, provide a report or produce a document.
- (2) In this Subdivision:
- (a) the information, report or document is referred to as the **relevant material**; and
  - (b) the request is referred to as the **request for relevant material**; and
  - (c) giving the information, providing the report or producing the document is referred to as **giving** the relevant material.

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**70-70 ASIC may direct external administrator to comply with the request for relevant material**

- (1) ASIC may, in writing, direct the external administrator to give all or part of the relevant material to the person or persons who made the request for the relevant material within 5 business days after the direction is given.
- (2) A direction under subsection (1) is not a legislative instrument.

**70-75 ASIC must notify external administrator before giving a direction under section 70-70**

- (1) Before giving the external administrator a direction under section 70-70, ASIC must give the external administrator notice in writing:
  - (a) stating that ASIC proposes to give the external administrator a direction under that section; and
  - (b) identifying:
    - (i) the relevant material, or the part of the relevant material, that ASIC proposes to direct be given; and
    - (ii) the person or persons to whom ASIC proposes to direct that the relevant material, or that part of the relevant material, be given; and
  - (c) inviting the external administrator to make a written submission to ASIC within 10 business days after the notice is given, stating:
    - (i) whether the external administrator has any objection to giving the relevant material, or that part of the relevant material, to a person or persons as proposed; and
    - (ii) if the external administrator has such an objection—the reasons for that objection.
- (2) If the external administrator objects to giving the relevant material, or part of the relevant material, to a person, ASIC must take into account the reasons for that objection when deciding whether to direct that the relevant material, or that part of the relevant material, be given to the person.



- (3) A notice under subsection (1) is not a legislative instrument.

**70-80 ASIC must not direct external administrator to give the relevant material if external administrator entitled not to comply with the request**

ASIC must not give a direction under section 70-70 to give the relevant material, or part of the relevant material, to a person if ASIC is satisfied that the external administrator was entitled, under a provision of this Act or any other law, not to comply with the request for the relevant material, or that part of the relevant material, to the person.

**70-85 ASIC may impose conditions on use of the relevant material**

*ASIC may, by notice, impose conditions*

- (1) ASIC may, by notice in writing to the person or persons to whom the relevant material is to be given, impose conditions on the use and disclosure of the relevant material, or part of the relevant material, by the person or persons.

*Offence*

- (2) A person commits an offence if:
- (a) ASIC directs that the relevant material, or part of the relevant material, be given to the person; and
  - (b) ASIC has given the person notice under subsection (1) imposing a condition in relation to the use or disclosure of that material by the person; and
  - (c) the person does not comply with the condition.

Penalty: 3 months imprisonment.

*Notice is not a legislative instrument*

- (3) A notice under subsection (1) is not a legislative instrument.

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**70-90 Court may order relevant material to be given**

- (1) The person or persons who made the request for the relevant material may apply to the Court for an order that the external administrator give the person or persons all or part of the relevant material.
- (2) If:
  - (a) ASIC gives the external administrator a direction under section 70-70 in relation to all or part of the relevant material; and
  - (b) the external administrator does not comply with the direction; ASIC may apply to the Court for an order that the external administrator comply with the direction.
- (3) On application under subsection (1) or (2), the Court may:
  - (a) order the external administrator to give the person, or any or all of the persons, who made the request for the relevant material all or part of that material; and
  - (b) make such other orders, including orders as to costs, as it thinks fit.

## **Division 75—Meetings**

### **75-1 Simplified outline of this Division**

In most cases, the external administrator of a company may convene creditor or company meetings at any time and must convene them in particular circumstances, for example when directed to do so by certain creditors or by ASIC.

The restructuring practitioner for a company or for a restructuring plan may convene a meeting of creditors in exceptional circumstances if it is in the interests of creditors to do so.

Under Chapter 5 of this Act, there are other instances in which an external administrator must hold a meeting.

Requirements for convening and holding meetings (including notice, agenda, quorum, voting on proposals and costs) are set out in the Insolvency Practice Rules.

There is a mechanism for resolving a matter without holding a meeting.

### **75-5 Other obligations to convene meetings not affected**

Nothing in this Division limits the operation of any other provision of this Act, or any other law, imposing an obligation to convene a meeting in relation to a company, or the external administration of a company.

### **75-10 External administrator may convene meetings**

The external administrator of a company may convene:

- (a) a meeting of the creditors; or
- (b) in the case of a members' voluntary winding up—a general meeting of the company;

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at any time.

**75-15 External administrator must convene meeting in certain circumstances**

- (1) The external administrator of a company must convene a meeting of the creditors if:
    - (a) where there is a committee of inspection—the committee of inspection directs the external administrator to do so; or
    - (b) the creditors direct the external administrator to do so by resolution; or
    - (c) at least 25% in value of the creditors direct the external administrator to do so in writing; or
    - (d) both of the following are satisfied:
      - (i) less than 25%, but more than 10%, in value of the creditors direct the external administrator to do so in writing;
      - (ii) security for the cost of holding the meeting is given to the external administrator before the meeting is convened; or
    - (e) all of the following are satisfied:
      - (i) the company is being wound up under a creditors' voluntary winding up;
      - (ii) less than 25%, but more than 5%, in value of the creditors direct the external administrator to do so in writing;
      - (iii) none of the creditors who give the direction is a related entity in relation to the company;
      - (iv) the direction is given no more than 20 business days after the resolution for the voluntary winding up of the company is passed.
  - (2) However, the external administrator need not comply with the direction if the direction is not reasonable.
  - (3) The Insolvency Practice Rules may prescribe circumstances in which a direction is, or is not, reasonable.
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- (4) For the purposes of paragraphs (1)(c), (d) and (e), the value of the creditors is to be worked out by reference to the value of the creditors' claims against the company that are known at the time the direction is given.
- (5) This section does not apply if:
  - (a) the external administrator is a provisional liquidator of the company; or
  - (b) the external administrator is the administrator of the company and the company is under administration.

#### **75-20 External administrator must convene meeting if required by ASIC**

- (1) ASIC may, in writing, direct an external administrator of a company to convene a meeting of the creditors.
- (2) ASIC may include in the direction requirements to be complied with by the external administrator in notifying the creditors of the meeting and in conducting the meeting.
- (3) The external administrator must comply with a direction given under subsection (1), and any requirements included in the direction under subsection (2).
- (4) A direction given under subsection (1) is not a legislative instrument.

#### **75-21 Restructuring and restructuring plans**

- (1) Sections 75-10, 75-15 and 75-20 do not apply to:
  - (a) a company under restructuring; or
  - (b) a company that has made a restructuring plan that has not yet terminated.
- (2) However, the restructuring practitioner for a company, or for a restructuring plan, may convene a meeting of the creditors if the restructuring practitioner is satisfied that:
  - (a) there are exceptional circumstances; and

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(b) it is in the interests of the creditors to do so.

**75-25 External administrator's representative at meetings**

- (1) The external administrator of a company may, in writing, appoint a person to represent the external administrator at a meeting.
- (2) Subsection (1) does not apply to a meeting of a kind prescribed.
- (3) If the external administrator is not personally present at a meeting, then a reference in a provision of this Act to the external administrator of a company, in respect of matters occurring at or in connection with the meeting, is a reference to a person appointed to represent the external administrator at the meeting.

**75-30 ASIC may attend meetings**

- (1) ASIC is entitled to attend any meeting of creditors or contributories held under this Act.
- (2) Subject to any provision of this Act (including any provision in relation to voting), ASIC is entitled to participate in any meeting of creditors held under this Act.

**75-35 Commonwealth may attend certain meetings etc.**

*Application of this section*

- (1) This section applies if:
  - (a) a company is under external administration; and
  - (b) either:
    - (i) a former employee of the company has made a claim for financial assistance from the Commonwealth in relation to unpaid employment entitlements; or
    - (ii) the Commonwealth considers that such a claim is likely to be made.

*Commonwealth may nominate representative for meetings*

- (2) The Commonwealth is entitled to nominate a representative to attend any meeting of creditors or contributories held in relation to the external administration.

**75-40 Proposals to creditors or contributories without meeting**

*Proposal by notice to creditors*

- (1) The external administrator of a company may at any time put a proposal to the creditors or contributories by giving notice, in writing, under this section.

*Content and service of notice*

- (2) The notice must:
- (a) contain a single proposal; and
  - (b) include a statement of the reasons for the proposal and the likely impact it will have on creditors or contributories, as the case may be (if it is passed); and
  - (c) be given to each creditor or contributory, as the case may be, who would be entitled to receive notice of a meeting of creditors or contributories, as the case may be; and
  - (d) invite the creditor or contributory, as the case may be, to either:
    - (i) vote Yes or No on the proposal; or
    - (ii) object to the proposal being resolved without a meeting of creditors or contributories, as the case may be; and
  - (e) specify a reasonable time by which replies must be received by the external administrator (in order to be taken into account).

*Evidentiary certificate relating to proposals*

- (3) A certificate signed by the external administrator of the company stating any matter relating to a proposal under this section is prima facie evidence of the matter.

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*Insolvency Practice Rules relating to proposals*

- (4) The Insolvency Practice Rules may provide for and in relation to proposals without meeting under this section.
- (5) Without limiting subsection (4), the Insolvency Practice Rules may provide for and in relation to:
  - (a) the circumstances in which a proposal is taken to be passed; and
  - (b) whether a proposal, if passed, is to be taken to have been passed as a resolution or a special resolution; and
  - (c) costs and security for those costs in relation to a proposal.

**75-41 Outcome of voting at creditors' meeting determined by related entity—Court powers**

*Application of this section*

- (1) This section applies if, on the application of a creditor of a company under external administration, the external administrator of the company or ASIC, the Court is satisfied of the following matters:
  - (a) a proposal has been voted on by creditors (either at a meeting of the creditors or under section 75-40 without a meeting);
  - (b) if the vote or votes that a particular related creditor, or particular related creditors, of the company cast on the proposal had been disregarded for the purposes of determining whether or not the proposal was passed, the proposal:
    - (i) if it was in fact passed—would not have been passed; or
    - (ii) if in fact it was not passed—would have been passed; or the question would have had to be decided on a casting vote;
  - (c) the passing of the proposal, or the failure to pass it, as the case requires:



- (i) is contrary to the interests of the creditors as a group or of that class of creditors as a group, as the case may be; or
- (ii) has prejudiced, or is reasonably likely to prejudice, the interests of the creditors who voted against the proposal, or for it, as the case may be, to an extent that is unreasonable having regard to the matters in subsection (2).

*Unreasonable prejudice to interests of creditors—matters to be taken into account*

- (2) For the purposes of subparagraph (1)(c)(ii), the matters are:
  - (a) the benefits resulting to the related creditor, or to some or all of the related creditors, from the proposal if passed, or from the failure to pass the proposal, as the case may be; and
  - (b) the nature of the relationship between the related creditor and the company, or of the respective relationships between the related creditors and the company; and
  - (c) any other relevant matter.

*Court may make orders*

- (3) The Court may make one or more of the following:
  - (a) an order that the proposal be considered and voted on at a meeting of the creditors convened and held as specified in the order;
  - (b) an order directing that the related creditor is not, or such of the related creditors as the order specifies are not, entitled to vote on:
    - (i) the proposal; or
    - (ii) a resolution to amend or vary the proposal;
  - (c) if the proposal was passed—an order setting aside the resolution passing the proposal;
  - (d) such other orders as the Court thinks fit.

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*Definition—related creditor*

- (4) In this section:

**related creditor**, for the purposes of a vote, in relation to a company, means a person who, when the vote was cast, was a related entity, and a creditor, of the company.

**75-42 Creditors' resolution passed because of casting vote—Court review**

*Application of this section*

- (1) This section applies if:
- (a) a resolution is passed at a meeting of creditors of a company under external administration; and
  - (b) the resolution is passed because the person presiding at the meeting exercises a casting vote.

*Application to the Court*

- (2) ASIC may apply to the Court for an order setting aside or varying the resolution.
- (3) A person (other than ASIC) may apply to the Court for an order setting aside or varying the resolution, but only if:
- (a) the person voted against the resolution in some capacity (even if the person voted for the resolution in another capacity); or
  - (b) a person voted against the resolution on the first-mentioned person's behalf.

*Court may make orders*

- (4) On application under subsection (2) or (3), the Court may:
- (a) by order set aside or vary the resolution; and
  - (b) if it does so—make such further orders, and give such directions, as it thinks fit.

- (5) On and after the making of an order varying the resolution, the resolution has effect as varied by the order.

**75-43 Proposed creditors' resolution not passed because of casting vote—Court's powers**

*Application of this section*

- (1) This section applies if:
- (a) a resolution is not passed at a meeting of creditors of a company under external administration; and
  - (b) the resolution is not passed because the person presiding at the meeting exercises a casting vote, or refuses or fails to exercise such a vote.

*Application to the Court*

- (2) ASIC may apply to the Court for an order under subsection (4).
- (3) A person (other than ASIC) may apply to the Court for an order under subsection (4), but only if:
- (a) the person voted for the proposed resolution in some capacity (even if the person voted against the proposed resolution in another capacity); or
  - (b) a person voted for the proposed resolution on the first-mentioned person's behalf.

*Court may make orders*

- (4) On application under subsection (2) or (3), the Court may:
- (a) order that the proposed resolution is taken to have been passed at the meeting; and
  - (b) if it does so—make such further orders, and give such directions, as it thinks fit.
- (5) If an order is made under paragraph (4)(a), the proposed resolution:
- (a) is taken for all purposes (other than those of subsection (1)) to have been passed at the meeting; and

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- (b) is taken to have taken effect:
  - (i) if the order specifies a time when the proposed resolution is taken to have taken effect—at that time, even if it is earlier than the making of the order; or
  - (ii) otherwise—on the making of the order.

**75-44 Interim order on application under section 75-41, 75-42 or 75-43**

- (1) If:
  - (a) an application under section 75-41, 75-42 or 75-43 has not yet been determined; and
  - (b) the Court is of the opinion that it is desirable to do so; the Court may make such interim orders as it thinks fit
- (2) An interim order must be expressed to apply until the application is determined, but may be varied or discharged.

**75-45 Order under section 75-41 or 75-42 does not affect act already done pursuant to resolution**

An act done pursuant to a resolution as in force before the making, under section 75-41 or 75-42, of an order setting aside or varying the resolution is as valid and binding on and after the making of the order as if the order had not been made.

**75-50 Rules relating to meetings**

- (1) The Insolvency Practice Rules may provide for and in relation to meetings concerning companies under external administration.
- (2) Without limiting subsection (1), the Insolvency Practice Rules may provide for and in relation to:
  - (a) the circumstances in which meetings must or may be convened; and
  - (b) notice for convening meetings; and
  - (c) agenda; and

- (d) information to be given in connection with meetings; and
- (e) who is to preside at meetings; and
- (f) the number of creditors or contributories required to constitute a quorum; and
- (g) proxies and attorneys; and
- (h) motions; and
- (i) voting (including casting votes); and
- (j) the circumstances in which a resolution must or may be put to creditors or contributories in a meeting; and
- (k) the circumstances in which a resolution or a special resolution put to creditors or contributories in a meeting is passed; and
- (l) facilities, including electronic communication facilities, to be available at meetings; and
- (m) minutes; and
- (n) costs in relation to meetings and security for those costs.

## Division 80—Committees of inspection

### 80-1 Simplified outline of this Division

In most cases, creditors of a company under external administration may decide that there is to be a committee of inspection to monitor the administration and to give assistance to the external administrator.

Committees of inspection are not appointed for a company that is under restructuring or that has made a restructuring plan.

#### *Appointing the committee*

Each of the following have rights to appoint members to the committee (and to remove those members and fill the vacancy):

- (a) the creditors by resolution;
- (b) a single creditor who is owed, or a group of creditors who together are owed, a large amount;
- (c) a single employee who is owed, or a group of employees who together are owed, a large amount.

Once a person exercises a right in one capacity to appoint a member, the person cannot exercise a right in another capacity to do so. A person can exercise the right in a particular capacity to appoint only one person (unless the person is filling a vacancy in that appointment).

If a company is in a related group of companies (called a pooled group), creditors of all the companies may decide together that there is to be a committee of inspection for the group and appoint members of the committee.

#### *Procedures and powers*

This Division also deals with the procedures and powers of committees of inspection (including requesting information, documents and reports from the external administrator and obtaining specialist advice).

An external administrator of a company must have regard to directions of the committee but is not obliged to comply.

*Review*

The Court may inquire into and make orders about the conduct of committees of inspection.

## **80-5 Application**

*Application of whole of Division*

- (1A) This Division does not apply to:
- (a) a company under restructuring; or
  - (b) a company that has made a restructuring plan that has not yet terminated.

*Application of sections 80-10 to 80-25*

- (1) The rules in sections 80-10 to 80-25 apply if the external administrator of a company convenes a meeting of creditors for the purpose of determining either or both of the following:
- (a) whether there is to be a committee of inspection for the company;
  - (b) if there is, or is to be, a committee of inspection—who are to be appointed members of the committee.
- (2) However, those rules do not apply if the company is a member of a pooled group.

Note: Committees of inspection for pooled groups are dealt with in sections 80-26 and 80-27.

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**80-10 Committee of inspection—company not a member of a pooled group**

The creditors of a company may, by resolution, determine that there is to be a committee of inspection in relation to the external administration of the company.

**80-15 Appointment and removal of members of committee of inspection by creditors generally**

- (1) The creditors of a company may, by resolution, appoint members of a committee of inspection in relation to the external administration of the company.
- (2) The creditors of a company may by resolution:
  - (a) remove a person appointed as a member of the committee under this section; and
  - (b) appoint another person to fill a vacancy in the office of a member of the committee of inspection appointed under this section.
- (3) A person is not entitled to vote on a resolution to appoint or remove a member of a committee of inspection under this section if:
  - (a) the person, acting either alone or with others, appoints a person as a member of the committee under section 80-20; or
  - (b) the person, acting either alone or with others, appoints a person as a member of the committee under section 80-25.

**80-20 Appointment of committee member by large creditor**

- (1) A creditor representing at least 10% in value of the creditors, or a group of creditors who together represent at least 10% in value of the creditors, of a company may appoint a person as a member of a committee of inspection in relation to the external administration of the company.



- (2) If a creditor or a group of creditors appoints a person as a member of a committee of inspection under this section, the creditor or group of creditors may:
  - (a) remove the person as a member of the committee; and
  - (b) appoint another person to fill a vacancy in the office of that member of the committee.
- (3) A creditor, acting either alone or with others, is not entitled to appoint a person as a member of a committee of inspection under subsection (1) if:
  - (a) the creditor votes on a resolution to appoint or remove a member of the committee under section 80-15; or
  - (b) the creditor, acting either alone or with others, appoints a member of the committee under subsection 80-25(1); or
  - (c) the creditor, acting either alone or with others, has already appointed a member of the committee under subsection (1) of this section.

#### **80-25 Appointment of committee member by employees**

- (1) Either:
  - (a) an employee of the company; or
  - (b) employees of the company;representing at least 50% in value of entitlements owed to or in respect of employees by the company may appoint a person as a member of the committee of inspection to represent the employees.
- (2) If an employee or a group of employees appoints a person as a member of a committee of inspection under this section, the employee or group of employees may:
  - (a) remove the person as a member of the committee; and
  - (b) appoint another person to fill a vacancy in the office of that member of the committee.
- (3) An employee, acting either alone or with others, is not entitled to appoint a person as a member of a committee of inspection under subsection (1) if:

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- (a) the employee votes on a resolution to appoint or remove a member of the committee under section 80-15; or
  - (b) the employee, acting either alone or with others, appoints a member of the committee under subsection 80-20(1); or
  - (c) the employee, acting either alone or with others, has already appointed a member of the committee under subsection (1) of this section.
- (4) In this section:

*employee* of a company has the same meaning as in Part 5.8A.

*entitlements* of an employee of a company has the same meaning as in Part 5.8A.

**80-26 Committee of inspection—pooled groups**

*Application of this section*

- (1) This section applies if each company that is a member of a pooled group is being wound up.

*Meeting to form a committee of inspection for a pooled group*

- (2) The external administrator or external administrators must, if directed to do so under section 80-27, convene a meeting, on a consolidated basis, of the creditors of all of the companies for the purposes of determining either or both of the following:
- (a) whether there is to be a committee of inspection for the pooled group;
  - (b) if there is, or is to be, a committee of inspection for the pooled group—who are to be appointed members of the committee.

*Committee of inspection for a pooled group becomes the committee of inspection for each member of the pooled group*

- (3) A committee of inspection for a pooled group is taken to be a committee of inspection for each company that is a member of the pooled group.

*Existing committee of inspection for a member of a pooled group ceases to exist*

- (4) If:
- (a) at the meeting, it is resolved that there is to be a committee of inspection for the pooled group; and
  - (b) immediately before the meeting, a committee of inspection was in existence for a company that is a member of the pooled group;
- the committee mentioned in paragraph (b) ceases to exist when the resolution mentioned in paragraph (a) is passed.

*Rules relating to companies under external administration who are members of a pooled group*

- (5) The Insolvency Practice Rules may provide for and in relation to meetings in relation to the external administration of companies that are members of a pooled group (***pooled group meetings***).
- (6) Without limiting subsection (5), the Insolvency Practice Rules may provide for and in relation to:
- (a) other circumstances in which pooled group meetings must or may be convened; and
  - (b) voting (including casting votes) at pooled group meetings; and
  - (c) the circumstances in which a resolution or a special resolution put to creditors or contributories in a pooled group meeting is passed; and
  - (d) costs in relation to pooled group meetings and security for those costs.

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**80-27 External administrator must convene meeting in certain circumstances**

- (1) The external administrator, or the external administrators, of the members of a pooled group must convene a meeting under section 80-26 if:
  - (a) where there is a committee of inspection for a member of the pooled group—the committee of inspection directs the external administrator, or external administrators, to do so; or
  - (b) the creditors of one of the members of the pooled group direct the external administrator, or external administrators, to do so, by resolution; or
  - (c) at least 25% in value of the creditors of one of the members of the pooled group, direct the external administrator, or external administrators, to do so in writing; or
  - (d) both of the following are satisfied:
    - (i) less than 25%, but more than 10%, in value of the creditors of one of the members of the pooled group direct the external administrator, or external administrators, to do so in writing;
    - (ii) security for the cost of holding the meeting is given to the external administrator, or external administrators, before the meeting is convened; or
  - (e) all of the following are satisfied:
    - (i) the members of the pooled group are each being wound up under a creditors' voluntary winding up;
    - (ii) less than 25%, but more than 5%, in value of the creditors of one of the members of the pooled group direct the external administrator, or external administrators, to do so in writing;
    - (iii) none of the creditors who give the direction is a related entity in relation to that member of the pooled group;
    - (iv) the direction is given no more than 20 business days after the last resolution for the voluntary winding up of the members of the pooled group is passed.

- (2) However, the external administrator, or external administrators, need not comply with the direction if the direction is not reasonable.
- (3) The Insolvency Practice Rules may prescribe circumstances in which a direction is, or is not, reasonable.
- (4) For the purposes of paragraphs (1)(c), (d) and (e), the value of the creditors is to be worked out by reference to the value of the creditors' claims (that are known at the time the direction is given) against the member of the pooled group.
- (5) This section does not apply if:
  - (a) one of the external administrators is a provisional liquidator of a member of the pooled group; or
  - (b) one of the external administrators is the administrator of a member of the pooled group and the member is under administration.

#### **80-30 Committees of inspection—procedures etc.**

- (1) Subject to subsection (2), a committee of inspection is to determine its own procedures.
- (2) The Insolvency Practice Rules may provide for and in relation to committees of inspection.
- (3) Without limiting subsection (2), the Insolvency Practice Rules may provide for and in relation to:
  - (a) eligibility to be appointed as a member of a committee of inspection; and
  - (b) the convening of, conduct of, and procedure and voting at, meetings; and
  - (c) resignation and removal of members; and
  - (d) vacancies in membership.

#### **80-35 Functions of committee of inspection**

- (1) A committee of inspection has the following functions:
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- (a) to advise and assist the external administrator of the company;
  - (b) to give directions to the external administrator of the company;
  - (c) to monitor the conduct of the external administration of the company;
  - (d) such other functions as are conferred on the committee by this Act;
  - (e) to do anything incidental or conducive to the performance of any of the above functions.
- (2) An external administrator of a company must have regard to any directions given to the external administrator by the committee of inspection, but the external administrator is not required to comply with such directions.
- (3) If an external administrator of a company does not comply with a direction, the external administrator must make a written record of that fact, along with the external administrator's reasons for not complying with the direction.

**80-40 Committee of inspection may request information etc.**

- (1) A committee of inspection may request the external administrator of a company to:
- (a) give information; or
  - (b) provide a report; or
  - (c) produce a document;
- to the committee.
- (2) The external administrator must comply with the request unless:
- (a) the information, report or document is not relevant to the external administration of the company; or
  - (b) the external administrator would breach his or her duties in relation to the external administration of the company if the external administrator complied with the request; or

- (c) it is otherwise not reasonable for the external administrator to comply with the request.
- (3) The Insolvency Practice Rules may prescribe circumstances in which it is, or is not, reasonable for an external administrator of a company to comply with a request of a kind mentioned in subsection (1).

### **80-45 Reporting to committee of inspection**

- (1) The Insolvency Practice Rules may provide for and in relation to the obligations of external administrators of companies:
  - (a) to give information; and
  - (b) to provide reports; and
  - (c) to produce documents;to committees of inspection.
- (2) Without limiting subsection (1), the Insolvency Practice Rules may provide for and in relation to:
  - (a) other circumstances in which the external administrator of a company must give information, provide a report or produce a document to a committee of inspection; and
  - (b) the manner and form in which information is to be given, a report provided or a document produced; and
  - (c) the timeframes in which information is to be given, a report provided or a document produced; and
  - (d) who is to bear the cost of giving information, providing a report or producing a document.
- (3) The Insolvency Practice Rules may:
  - (a) make different provision in relation to different classes of company or external administration of a company; and
  - (b) provide that specified requirements imposed under the Insolvency Practice Rules may be replaced or modified, by resolution, by:
    - (i) the creditors; or
    - (ii) the committee of inspection.

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**80-50 Committee of inspection may obtain specialist advice or assistance**

- (1) A committee of inspection may resolve that a member of the committee obtain, on behalf of the committee, such advice or assistance as the committee considers desirable in relation to the conduct of the external administration.
- (2) The committee of inspection must obtain the approval of the external administrator of the company or the Court before expenses are incurred in obtaining the advice or assistance.
- (3) To avoid doubt, an expense incurred under subsection (2) is to be taken to be an expense incurred by a person as a member of the committee, unless the Court orders otherwise.

**80-55 Obligations of members of committee of inspection**

*Deriving profit or advantage from the company*

- (1) A member of a committee of inspection must not directly or indirectly derive any profit or advantage from the external administration of the company.

*Circumstances in which profit or advantage is taken to be derived*

- (2) To avoid doubt, a member of a committee of inspection is taken to derive a profit or advantage from the external administration of the company if:
  - (a) the member directly or indirectly derives a profit or advantage from a transaction (including a sale or purchase) entered into for or on account of the company; or
  - (b) the member directly or indirectly derives a profit or advantage from a creditor of the company; or
  - (c) a related entity of the member directly or indirectly derives a profit or advantage from the external administration of the company.



*Exceptions*

- (3) Subsection (1) does not apply if the creditors resolve otherwise.
- (4) The member of the committee is not entitled to vote on the resolution referred to in subsection (3).
- (5) Subsection (1) does not apply to the extent that:
  - (a) another provision of this Act, or of another law, requires or permits the member of the committee of inspection to derive the profit or advantage; or
  - (b) the Court gives leave to the member of the committee to derive the profit or advantage.

Note: Subsection (1) would not, for example, prevent a creditor from recovering debts proved in a winding up, as this is permitted under Part 5.6 of Chapter 5.

- (6) Despite paragraph (2)(c), subsection (1) does not apply to the extent that:
  - (a) the profit or advantage arises because the external administrator employs or engages a person to provide services in connection with the external administration of the company; and
  - (b) the person is a related entity of a member of the committee of inspection; and
  - (c) one of the following applies:
    - (i) the member does not know, and could not reasonably be expected to know, that the external administrator has employed or engaged a related entity of the member;
    - (ii) the creditors, by resolution, agree to the related entity being employed or engaged.

*Offence*

- (7) A person commits an offence of strict liability if:
  - (a) the person is subject to a requirement under subsection (1); and
  - (b) the person fails to comply with the requirement.

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Penalty: 50 penalty units.

Note: A defendant bears an evidential burden in relation to the matters in subsections (3), (5) and (6) (see subsection 13.3(3) of the *Criminal Code*).

*Effect of contravention of this section*

- (8) A transaction or any other arrangement entered into in contravention of this section may be set aside by the Court.

**80-60 Obligations of creditor appointing a member of committee of inspection**

*Application of this section*

- (1) This section applies if a creditor representing at least 10% in value of the creditors of a company appoints a person under section 80-20 as a member of a committee of inspection in relation to the external administration of the company.
- (2) The creditor must not directly or indirectly become the purchaser of any part of the property of the company.

*Exceptions*

- (3) Subsection (2) does not apply if the creditors resolve otherwise.
- (4) The creditor is not entitled to vote on the resolution referred to in subsection (3).
- (5) Subsection (2) does not apply to the extent that:
- (a) another provision of this Act, or of another law, requires or permits the creditor to purchase the property; or
  - (b) the Court gives leave to the creditor to purchase the property.

*Offence*

- (6) A person commits an offence of strict liability if:
- (a) the person is subject to a requirement under subsection (2); and

(b) the person fails to comply with the requirement.

Penalty: 50 penalty units.

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

*Effect of contravention of this section*

(7) A transaction or any other arrangement entered into in contravention of this section may be set aside by the Court.

### **80-65 ASIC may attend committee meetings**

ASIC is entitled to attend any meeting of a committee of inspection.

### **80-70 The Court may inquire into conduct of the committee**

The Court may inquire into the conduct of a committee of inspection and make such orders as it thinks fit to ensure the proper conduct of the committee.

## **Division 85—Directions by creditors**

### **85-1 Simplified outline of this Division**

The external administrator of a company must have regard to directions given to the administrator by the creditors of the company but is not obliged to comply with those directions.

### **85-5 External administrator to have regard to directions given by creditors**

- (1) The creditors of a company under external administration (other than a members' voluntary winding up) may, by resolution, give directions to the external administrator of the company in relation to the external administration.
- (2) An external administrator of a company must have regard to any directions mentioned in subsection (1), but the external administrator is not required to comply with such directions.
- (3) If the external administrator does not comply with a direction, the external administrator must make a written record of that fact, along with the external administrator's reasons for not complying with the direction.
- (4) If there is a conflict between directions given by the creditors under subsection (1) and by the committee of inspection under section 80-35, directions given by the creditors override any directions given by the committee.

## **Division 90—Review of the external administration of a company**

### **Subdivision A—Introduction**

#### **90-1 Simplified outline of this Division**

##### *Review by the Court*

The Court may inquire into the external administration of a company either on its own initiative or on the application of the company, the external administrator, ASIC or a person with a financial interest in the external administration of the company (such as a creditor of the company).

The Court has wide powers to make orders, including orders replacing the external administrator or dealing with losses resulting from a breach of duty by the external administrator.

##### *Review by another registered liquidator*

ASIC, the Court, creditors or members of a company may appoint a registered liquidator to review the external administration of the company in most cases. Such a review may look at a range of matters, including whether the remuneration of the external administrator is reasonable and whether costs and expenses have been properly incurred.

The Insolvency Practice Rules may set the powers and duties of a registered liquidator conducting such a review and may deal with issues relating to the review process.

If a provisional liquidator has been appointed for the company, review by another registered liquidator is not available.

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If the company is under restructuring or has made a restructuring plan that has not yet terminated, a reviewing liquidator can only be appointed by the Court.

*Removal of external administrator by creditors*

The creditors of a company under external administration (other than a company for which a provisional liquidator has been appointed) may remove the external administrator of the company and appoint another. However, the external administrator may apply to the Court to be reappointed.

**Subdivision B—Court powers to inquire and make orders**

**90-5 Court may inquire on own initiative**

- (1) The Court may, on its own initiative during proceedings before the Court, inquire into the external administration of a company.
- (2) The Court may, for the purposes of such an inquiry, require a person who is or has at any time been the external administrator of the company to:
  - (a) give information; or
  - (b) provide a report; or
  - (c) produce a document;to the Court in relation to the external administration of the company.
- (3) This section does not limit the Court's powers under any other provision of this Act, or under any other law.

**90-10 Court may inquire on application of creditors etc.**

- (1) The Court may, on the application of a person mentioned in subsection (2), inquire into the external administration of a company.

- (2) Each of the following persons may make an application for an inquiry:
- (a) a person with a financial interest in the external administration of the company;
  - (b) an officer of the company;
  - (c) if the committee of inspection (if any) so resolves—a creditor, on behalf of the committee;
  - (d) ASIC.
- (3) Paragraph (2)(b) has effect despite section 198G.
- Note: Section 198G deals with powers of officers etc. while a company is under external administration.
- (4) The Court may, for the purposes of such an inquiry, require a person who is or has at any time been the external administrator of the company to:
- (a) give information; or
  - (b) provide a report; or
  - (c) produce a document;
- to the Court in relation to the external administration of the company.
- (5) If an application is made by a person referred to in paragraph (2)(c), the reasonable expenses associated with the application are to be taken to be expenses incurred by a person as a member of the committee unless otherwise ordered by the Court.
- (6) This section does not limit the Court's powers under any other provision of this Act, or under any other law.

## **90-15 Court may make orders in relation to external administration**

### *Court may make orders*

- (1) The Court may make such orders as it thinks fit in relation to the external administration of a company.

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*Orders on own initiative or on application*

- (2) The Court may exercise the power under subsection (1):
- (a) on its own initiative, during proceedings before the Court; or
  - (b) on application under section 90-20.

*Examples of orders that may be made*

- (3) Without limiting subsection (1), those orders may include any one or more of the following:
- (a) an order determining any question arising in the external administration of the company;
  - (b) an order that a person cease to be the external administrator of the company;
  - (c) an order that another registered liquidator be appointed as the external administrator of the company;
  - (d) an order in relation to the costs of an action (including court action) taken by the external administrator of the company or another person in relation to the external administration of the company;
  - (e) an order in relation to any loss that the company has sustained because of a breach of duty by the external administrator;
  - (f) an order in relation to remuneration, including an order requiring a person to repay to a company, or the creditors of a company, remuneration paid to the person as external administrator of the company.

*Matters that may be taken into account*

- (4) Without limiting the matters which the Court may take into account when making orders, the Court may take into account:
- (a) whether the liquidator has faithfully performed, or is faithfully performing, the liquidator's duties; and
  - (b) whether an action or failure to act by the liquidator is in compliance with this Act and the Insolvency Practice Rules; and



- (c) whether an action or failure to act by the liquidator is in compliance with an order of the Court; and
- (d) whether the company or any other person has suffered, or is likely to suffer, loss or damage because of an action or failure to act by the liquidator; and
- (e) the seriousness of the consequences of any action or failure to act by the liquidator, including the effect of that action or failure to act on public confidence in registered liquidators as a group.

*Costs orders*

- (5) Without limiting subsection (1), an order mentioned in paragraph (3)(d) in relation to the costs of an action may include an order that:
  - (a) the external administrator or another person is personally liable for some or all of those costs; and
  - (b) the external administrator or another person is not entitled to be reimbursed by the company or its creditors in relation to some or all of those costs.

*Orders to make good loss sustained because of a breach of duty*

- (6) Without limiting subsection (1), an order mentioned in paragraph (3)(e) in relation to a loss may include an order that:
  - (a) the external administrator is personally liable to make good some or all of the loss; and
  - (b) the external administrator is not entitled to be reimbursed by the company or creditors in relation to the amount made good.

*Section does not limit Court's powers*

- (7) This section does not limit the Court's powers under any other provision of this Act, or under any other law.

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**90-20 Application for Court order**

- (1) Each of the following persons may apply for an order under section 90-15:
  - (a) a person with a financial interest in the external administration of the company;
  - (b) if the committee of inspection (if any) so resolves—a creditor, on behalf of the committee;
  - (c) ASIC;
  - (d) an officer of the company;
  - (e) if the application is in relation to a company that is a friendly society within the meaning of the *Life Insurance Act 1995* and which may be wound up voluntarily under subsection 180(2) of that Act—APRA.
- (2) Paragraph (1)(d) has effect despite section 198G.

Note: Section 198G deals with powers of officers etc. while a company is under external administration.
- (3) If an application is made by a person referred to in paragraph (1)(b), the reasonable expenses associated with the application are to be taken to be expenses incurred by a person as a member of the committee.

**90-21 Meetings to ascertain wishes of creditors or contributories**

- (1) The Court may, as to all matters relating to the external administration of a company, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.
- (2) The Court may, if it thinks fit for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be convened, held and conducted in such manner as the Court directs, and may appoint a person to act as chair of any such meeting and to report the result of the meeting to the Court.
- (3) In the case of creditors, regard is to be had to the value of each creditor's debt.

- (4) In the case of contributories, regard is to be had to the number of votes conferred on each contributory by this Act or the company's constitution.

### **Subdivision C—Review by another registered liquidator**

#### **90-22 Application of this Subdivision**

This Subdivision applies in relation to a company that is under external administration, other than a company in relation to which a provisional liquidator has been appointed.

#### **90-23 Appointment of reviewing liquidator by ASIC or the Court**

##### *Appointment by ASIC*

- (1) A registered liquidator may be appointed by ASIC to carry out a review into a matter that relates to the external administration of the company, if ASIC considers it appropriate to do so.
- (2) ASIC may exercise the power under subsection (1):
- (a) on its own initiative; or
  - (b) on application by a person with a financial interest in the external administration of the company; or
  - (c) on the application of an officer of the company.
- (3) An application under paragraph (2)(b) or (c) must be lodged with ASIC in the approved form.
- (4) Paragraph (2)(c) has effect despite section 198G.
- Note: Section 198G deals with powers of officers etc. while a company under external administration.
- (5) If ASIC appoints a registered liquidator to carry out a review, ASIC must specify:
- (a) the matters in relation to the external administration of the company which the liquidator is appointed to review; and

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- (b) the way in which the cost of carrying out the review is to be determined.
- (5A) Subsections (1) to (5) do not apply to:
- (a) a company under restructuring; or
  - (b) a company that has made a restructuring plan that has not yet terminated.

*Appointment by the Court*

- (6) A registered liquidator may be appointed by the Court to carry out a review into a matter that relates to the external administration of the company.
- (7) The Court may exercise the power under subsection (6):
  - (a) on application under subsection (8); and
  - (b) if the Court considers it appropriate to do so.
- (8) Either of the following may make an application under this subsection:
  - (a) ASIC;
  - (b) a person with a financial interest in the external administration of the company.
- (9) If the Court appoints a registered liquidator to carry out a review, the Court must specify:
  - (a) the matters in relation to the external administration of the company which the liquidator is appointed to review; and
  - (b) the way in which the cost of carrying out the review is to be determined.

*Appointments by ASIC or by the Court—limit*

- (10) A matter referred to in paragraph (5)(a) or (9)(a) must not relate to remuneration which an external administrator of the company is entitled to receive under subsection 60-5(2) (remuneration if no remuneration determinations made).

## **90-24 Appointment of reviewing liquidator by creditors etc.**

### *Appointment to carry out review*

- (1) A registered liquidator may be appointed to carry out a review into either or both of the following matters:
  - (a) remuneration of the external administrator of the company;
  - (b) a cost or expense incurred by the external administrator of the company.

### *Appointment by resolution*

- (2) The appointment may be made by resolution of:
  - (a) the creditors; or
  - (b) if the company is being wound up under a members' voluntary winding up—the company;
- (3) If the appointment is made by resolution, the resolution must specify:
  - (a) the remuneration, costs or expenses which the liquidator is appointed to review; and
  - (b) the way in which the cost of carrying out the review is to be determined.

### *Appointment by one or more creditors or members*

- (4) The appointment may be made by:
  - (a) one or more of the creditors; or
  - (b) if the company is being wound up under a members' voluntary winding up—one or more of the members.
- (5) However, an appointment may only be made under subsection (4) if the external administrator of the company agrees to the appointment.
- (6) The agreement must:
  - (a) be in accordance with the Insolvency Practice Rules; and
  - (b) specify:

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- (i) the remuneration, costs or expenses which the liquidator is appointed to review; and
- (ii) the way in which the cost of carrying out the review is to be determined.

*Appointments by creditors etc.—limit*

- (7) Despite subsection (1), a registered liquidator appointed under this section has no power to review the remuneration to which the external administrator of a company is entitled under subsection 60-5(2) (remuneration if no remuneration determinations made).

*Restructuring and restructuring plans*

- (8) This section does not apply to:
  - (a) a company under restructuring; or
  - (b) a company that has made a restructuring plan that has not yet terminated.

**90-25 Reviewing liquidator must consent to appointment**

A registered liquidator cannot be appointed under this Subdivision as a reviewing liquidator in relation to a matter unless:

- (a) the liquidator has consented in writing to the appointment; and
- (b) as at the time of the appointment, the liquidator has not withdrawn the consent.

**90-26 Review**

*Review—general*

- (1) If a reviewing liquidator is appointed under this Subdivision in relation to a matter, the reviewing liquidator must carry out a review into that matter.

*Reviews relating to remuneration, costs or expenses*

- (2) If the matter is, or includes, remuneration of the external administrator of the company, the review may (but need not) include an assessment of whether the remuneration is reasonable.
- (3) If the matter is, or includes, a cost or expense incurred by the external administrator of the company, the review must include an assessment of whether the cost or expense was properly incurred by the external administrator.

Note: Insolvency Practice Rules made under section 90-29 may provide for the meaning of *properly incurred*.

- (4) A reviewing liquidator must not review:
  - (a) remuneration of an external administrator of the company that relates to a period; or
  - (b) a cost or expense incurred by the external administrator of the company incurred during a period;unless the period is:
  - (c) for a reviewing liquidator appointed by the Court under subsection 90-23(6) or paragraph 90-28(2)(c) or (3)(b)—the period determined by the Court; or
  - (d) otherwise—the prescribed period.

*Report of review*

- (5) A reviewing liquidator must prepare a report on the review.

**90-27 Who pays for a review?**

- (1) The cost of carrying out a review under this Subdivision:
  - (a) in the case of a reviewing liquidator appointed with the agreement of the external administrator of the company under subsection 90-24(5)—is to be borne by the creditors or members referred to in that subsection; or
  - (b) in any other case—forms part of the expenses of the external administration of the company.

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- (2) Subsection (1) has effect subject to an order of the Court under section 90-28.

**90-28 Court orders in relation to review**

*Application of this section*

- (1) This section applies if:
- (a) a reviewing liquidator has been appointed under this Subdivision in relation to one or more matters; and
  - (b) the review has not been completed.

*Court orders on application by the reviewing liquidator*

- (2) On application by the reviewing liquidator, the Court may make any or all of the following orders in relation to the review:
- (a) requiring the external administrator of the company or any other person to provide books, information or assistance to the reviewing liquidator;
  - (b) requiring the reviewing liquidator to carry out a review of one or more matters that relate to the external administration of the company and that are specified in the order instead of, or in addition to, the matters referred to in paragraph (1)(a);
  - (c) accepting the resignation of the reviewing liquidator, and appointing another registered liquidator as reviewing liquidator for the matter or matters;
  - (d) any other order that the Court thinks fit.

*Court orders on application by a person with a financial interest*

- (3) On application by a person mentioned in subsection (4), the Court may make any or all of the following orders in relation to the review:
- (a) requiring the reviewing liquidator to carry out a review of one or more matters that relate to the external administration and that are specified in the order instead of, or in addition to, the matters referred to in paragraph (1)(a) of this section;



- (b) removing from office the reviewing liquidator, and appointing another registered liquidator as reviewing liquidator for the matter or matters;
  - (c) any other order that the Court thinks fit.
- (4) The persons who may make an application under subsection (3) are:
- (a) a person with a financial interest in the external administration of the company; or
  - (b) an officer of the company.
- (5) Paragraph (4)(b) has effect despite section 198G.

Note: Section 198G deals with powers of officers etc. while a company is under external administration.

### 90-29 Rules about reviews

- (1) The Insolvency Practice Rules may provide for and in relation to reviews under this Subdivision.
- (2) Without limiting subsection (1), the Insolvency Practice Rules may provide for and in relation to any or all of the following matters:
  - (a) the giving of notice to the external administrator of a company before appointing, or making an application for the appointment of, a reviewing liquidator under this Subdivision;
  - (b) the meaning, for the purposes of section 90-26, of **properly incurred** in relation to costs or expenses incurred by an external administrator of a company;
  - (c) the appointment of reviewing liquidators, including requirements as to who may be appointed and the provision of declarations of relevant relationships;
  - (d) the powers and duties of reviewing liquidators in carrying out a review;
  - (e) the form and content of reports by reviewing liquidators;
  - (f) the preparation and provision of reports by reviewing liquidators.

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**Subdivision D—Removal by creditors**

**90-30 Application of this Subdivision**

This Subdivision applies in relation to a company that is under external administration, other than a company in relation to which a provisional liquidator has been appointed.

**90-35 Removal by creditors**

*Creditors may remove external administrator and appoint another*

- (1) The creditors may:
  - (a) by resolution at a meeting, remove the external administrator of a company; and
  - (b) by resolution at the same or a subsequent meeting, appoint another person as the external administrator of the company.

Note: For the general rules relating to meetings, see Division 75.

- (2) However, the creditors may not do so unless at least 5 business days' notice of the meeting is given to all persons who are entitled to receive notice of creditors' meetings.
- (3) The removal of an external administrator does not take effect until another person is appointed as external administrator of the company.

*Former administrator may apply to Court to be reappointed*

- (4) A person (the **former administrator**) who has been removed as external administrator of the company by resolution of the creditors may apply to the Court to be reappointed as external administrator of the company.
- (5) However, if the former administrator makes such an application, the former administrator must:
  - (a) record all costs incurred by the former administrator and the company in relation to the application; and

- (b) do so in a way that separates those costs from the costs incurred by the former administrator and the company in relation to other matters.
- (6) The Court may order that the former administrator be reappointed as external administrator of the company if the Court is satisfied that the removal of the former administrator was an improper use of the powers of one or more creditors.
- (7) The Court may make such other orders in relation to the application as it thinks fit including orders in relation to:
  - (a) the costs of the application; and
  - (b) the remuneration of the former administrator.

## **Part 4—Other matters**

### **Division 95—Introduction**

#### **95-1 Simplified outline of this Part**

This Part deals with a variety of matters:

- (a) an external administrator of a company may assign a right to sue; and
- (b) forms are approved by ASIC (provision is made for what may be required in the form or to accompany the form); and
- (c) the Minister has power to make rules to be called the Insolvency Practice Rules.

## **Division 100—Other matters**

### **100-5 External administrator may assign right to sue under this Act**

- (1) Subject to subsections (2) and (3), an external administrator of a company may assign any right to sue that is conferred on the external administrator by this Act.
- (2) If the external administrator's action has already begun, the external administrator cannot assign the right to sue unless the external administrator has the approval of the Court.
- (3) Before assigning any right under subsection (1), the external administrator must give written notice to the creditors of the proposed assignment.
- (4) If a right is assigned under this section, a reference in this Act to the external administrator in relation to the action is taken to be a reference to the person to whom the right has been assigned.

### **100-6 Approved forms**

- (1) A document that this Schedule requires to be lodged with ASIC in an approved form must:
  - (a) be in the form approved by ASIC for the document; and
  - (b) include the information, statements, explanations or other matters required by the form; and
  - (c) be accompanied by any other material required by the form.
- (2) A reference in this Schedule to a document that has been lodged (being a document to which subsection (1) applies), includes a reference to any other material lodged with the document as required by the relevant form.
- (3) If:
  - (a) this Schedule requires a document to be lodged with ASIC in an approved form; and

**Schedule 2** Insolvency Practice Schedule (Corporations)

**Part 4** Other matters

**Division 100** Other matters

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- (b) a provision of this Schedule specifies information, statements, explanations or other matters that must be included in the document, or other material that must accompany the document;

that other provision is not taken to exclude or limit the operation of subsection (1) in relation to the approved form (and so the approved form may also require information etc. to be included in the form or material to accompany the form).

- (4) The Insolvency Practice Rules may provide for and in relation to:
  - (a) methods of verifying any information required by or in approved forms; and
  - (b) the manner in which, the persons by whom, and the directions or requirements in accordance with which, approved forms are required or permitted to be signed, prepared, or completed.

## **Division 105—The Insolvency Practice Rules**

### **105-1 The Insolvency Practice Rules**

- (1) The Minister may, by legislative instrument, make rules providing for matters:
  - (a) required or permitted by this Schedule to be provided by the rules; or
  - (b) necessary or convenient to be provided in order to carry out or give effect to this Schedule.
- (2) Rules made under subsection (1) may include offences.
- (3) The penalties for offences described in subsection (2) must not be more than 50 penalty units for an individual or 500 penalty units for a body corporate.
- (4) To avoid doubt, the rules may not do the following:
  - (a) create a civil penalty;
  - (b) provide powers of:
    - (i) arrest or detention; or
    - (ii) entry, search or seizure;
  - (c) impose a tax;
  - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
  - (e) directly amend the text of this Act.
- (5) Rules that are inconsistent with the regulations have no effect to the extent of the inconsistency, but rules are taken to be consistent with the regulations to the extent that the rules are capable of operating concurrently with the regulations.
- (6) Despite subsection 1345A(1), the Minister's power to make rules under this section may not be delegated to any other person.

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## Schedule 3—Penalties

Note: See sections 1311 to 1311E.

<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsection 110F(3)	30 penalty units
Subsection 110G(3)	30 penalty units
Subsection 110J(2)	30 penalty units
Subsection 110K(1)	30 penalty units
Subsection 110K(2)	30 penalty units
Subsection 110K(2A)	30 penalty units
Subsection 110K(3)	30 penalty units
Section 111AU	5 years imprisonment
Subsection 113(1)	1 year imprisonment
Subsection 113(3)	20 penalty units
Subsection 115(1)	20 penalty units
Subsection 117(5)	30 penalty units
Subsection 123(3)	30 penalty units
Subsection 136(5)	20 penalty units
Subsection 139(1)	20 penalty units
Subsections 142(1) and (2)	60 penalty units
Subsection 143(1)	20 penalty units
Subsections 144(1) and (2)	30 penalty units
Subsections 145(1) and (3)	60 penalty units
Subsection 146(1)	60 penalty units
Subsections 148(2), (3), (4) and (5)	30 penalty units
Subsection 150(2)	20 penalty units
Subsection 151(2)	20 penalty units
Subsections 153(1) and (2)	30 penalty units
Subsection 156(1)	30 penalty units
Subsection 157(2)	20 penalty units



<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsection 158(2)	120 penalty units
Subsections 161A(2) and (3)	30 penalty units
Subsection 162(3)	20 penalty units
Subsection 163(5)	30 penalty units
Subsection 165(2)	120 penalty units
Section 168	30 penalty units
Subsection 170(3)	30 penalty units
Subsections 172(1), (1A) and (2)	30 penalty units
Subsections 173(1), (3) and (9)	30 penalty units
Subsection 174(1)	30 penalty units
Subsection 177(1)	50 penalty units
Subsection 177(1AA)	50 penalty units
Subsection 178A(1)	60 penalty units
Subsection 178C(1)	60 penalty units
Subsection 184(1)	15 years imprisonment
Subsection 184(2)	15 years imprisonment
Subsection 184(3)	15 years imprisonment
Subsection 191(1)	30 penalty units
Subsection 195(1)	20 penalty units
Subsection 199B(1)	20 penalty units
Subsection 200B(1)	(a) for an individual—6 months imprisonment, 180 penalty units, or both; and (b) for a body corporate—1,800 penalty units
Subsection 200C(1)	(a) for an individual—6 months imprisonment, 180 penalty units, or both; and (b) for a body corporate—1,800 penalty units
Section 200D	180 penalty units
Subsection 201D(1)	30 penalty units
Subsection 201D(2)	20 penalty units
Subsections 201R(2) and (3)	30 penalty units
Subsection 202B(1)	20 penalty units

### Schedule 3 Penalties

<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsection 203AA(6)	120 penalty units
Subsections 203D(3) and (5)	20 penalty units
Subsections 204A(1) and (2)	20 penalty units
Subsections 204C(1) and (2)	20 penalty units
Subsections 205B(1), (2), (4) and (5)	120 penalty units
Subsections 205C(1) and (2)	30 penalty units
Subsection 205E(2)	30 penalty units
Subsection 205F(1)	30 penalty units
Subsection 205G(9)	2 years imprisonment
Subsection 205G(10)	30 penalty units
Subsection 206A(1)	5 years imprisonment
Subsections 206J(4), (6) and (7)	60 penalty units
Subsection 206K(4)	60 penalty units
Subsections 206L(3) and (4)	60 penalty units
Subsection 206M(2)	60 penalty units
Subsection 209(3)	(a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and (b) for a body corporate—20,000 penalty units
Section 224	5 years imprisonment
Subsections 225(3), (4) and (5)	20 penalty units
Subsection 235(1)	120 penalty units
Section 237	6 months imprisonment
Section 242	3 months imprisonment
Subsection 246B(3)	20 penalty units
Subsection 246D(6)	20 penalty units
Subsections 246F(1) and (3)	20 penalty units
Subsection 246G(1)	20 penalty units
Subsection 247C(1)	20 penalty units
Subsections 249E(3) and (4)	20 penalty units
Subsection 249K(1)	20 penalty units
Subsection 249Z(1)	20 penalty units

<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsections 249L(1) and (2)	30 penalty units
Subsections 250BB(2), (3) and (4)	20 penalty units
Subsection 250BD(1)	5 years imprisonment
Subsections 250N(1) and (2)	30 penalty units
Subsections 250P(3) and (4)	30 penalty units
Subsection 250PA(3)	30 penalty units
Subsections 250PA(4) and (6)	20 penalty units
Subsection 250PA(9)	30 penalty units
Subsection 250R(2)	30 penalty units
Subsection 250R(7)	5 years imprisonment
Subsections 250RA(1) and (3)	20 penalty units
Subsection 250S(1)	20 penalty units
Subsection 250SA(1)	20 penalty units
Subsection 250T(1)	20 penalty units
Subsection 250T(4)	30 penalty units
Subsection 250W(5)	20 penalty units
Subsections 251A(1) to (5)	30 penalty units
Subsections 251B(1), (3) and (4)	20 penalty units
Subsections 252C(3) and (4)	20 penalty units
Subsection 252H(1)	20 penalty units
Subsection 252X(1)	20 penalty units
Subsection 252Y(5)	20 penalty units
Subsections 253M(1), (2) and (3)	30 penalty units
Subsections 253N(1), (3) and (4)	20 penalty units
Subsection 253UB(3)	40 penalty units
Subsection 253UC(4)	40 penalty units
Subsection 253UD(3)	40 penalty units
Subsection 253UE(4)	40 penalty units
Subsection 253UF(2)	40 penalty units
Subsection 253UF(3)	40 penalty units
Subsection 253UG(1)	40 penalty units

**Schedule 3 Penalties**

<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsection 253UG(2)	40 penalty units
Subsection 254H(4)	20 penalty units
Subsection 254L(3)	(a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and (b) for a body corporate—20,000 penalty units
Subsection 254N(2)	20 penalty units
Subsection 254Q(13)	20 penalty units
Section 254SA	2 years imprisonment
Section 254T	2 years imprisonment
Subsections 254X(1) and (2)	60 penalty units
Subsection 254Y(1)	20 penalty units
Subsection 256D(4)	(a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and (b) for a body corporate—20,000 penalty units
Subsection 259B(6)	20 penalty units
Subsection 259D(4)	20 penalty units
Subsection 259F(3)	(a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and (b) for a body corporate—20,000 penalty units
Subsection 260D(3)	(a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and (b) for a body corporate—20,000 penalty units
Subsection 283AA(1)	60 penalty units
Subsection 283AA(3)	6 months imprisonment
Subsection 283AB(1)	60 penalty units
Subsection 283AC(1)	60 penalty units
Subsection 283AC(2)	60 penalty units
Subsection 283BH(1)	5 years imprisonment
Section 283BI	6 months imprisonment
Section 283CE	6 months imprisonment
Subsection 286(3)	2 years imprisonment
Subsection 286(4)	60 penalty units

<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsection 287(2)	60 penalty units
Subsection 288(1)	60 penalty units
Subsection 289(2)	60 penalty units
Subsection 294(1)	30 penalty units
Subsection 294B(1)	30 penalty units
Subsection 307A(3)	2 years imprisonment
Subsection 307A(4)	50 penalty units
Subsection 307B(1)	50 penalty units
Subsection 307B(3)	50 penalty units
Subsections 307C(1) and (3)	20 penalty units
Subsections 308(1), (2), (3), (3AA), (3AB), (3A), (3C) and (4)	50 penalty units
Subsections 309(1), (2), (3), (4), (5), (5A) and (6)	50 penalty units
Subsections 311(1), (2) and (3)	1 year imprisonment
Subsection 312(1)	60 penalty units
Subsections 313(1) and (2)	30 penalty units
Subsection 314(1)	30 penalty units
Subsections 314A(1), (3) and (7)	30 penalty units
Subsections 316(2) and (3)	30 penalty units
Subsections 316A(3) and (4)	30 penalty units
Subsection 317(1)	30 penalty units
Subsections 318(1), (3) and (4)	60 penalty units
Subsections 319(1) and (1AA)	120 penalty units
Subsection 320(1)	120 penalty units
Subsections 321(1) and (1AA)	30 penalty units
Subsections 322(1), (1A) and (2)	30 penalty units
Subsection 323(1)	60 penalty units
Subsection 323B(1)	60 penalty units
Subsection 323D(3)	30 penalty units
Subsection 323DB(1)	60 penalty units

### Schedule 3 Penalties

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<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsection 323DB(4)	60 penalty units
Section 324BA	6 months imprisonment
Subsection 324BB(1)	6 months imprisonment
Subsection 324BB(2)	30 penalty units
Subsections 324BC(1) and (2)	6 months imprisonment
Subsection 324BC(3)	30 penalty units
Subsection 324CA(1)	6 months imprisonment
Subsections 324CA(1A) and (2)	30 penalty units
Subsection 324CB(1)	6 months imprisonment
Subsections 324CB(1A), (2) and (4)	30 penalty units
Subsection 324CC(1)	6 months imprisonment
Subsections 324CC(1A), (2) and (4)	30 penalty units
Subsection 324CE(1)	6 months imprisonment
Subsections 324CE(1A) and (2)	30 penalty units
Subsection 324CF(1)	6 months imprisonment
Subsections 324CF(1A) and (2)	30 penalty units
Subsection 324CG(1)	6 months imprisonment
Subsections 324CG(1A) and (2)	30 penalty units
Subsection 324CG(5)	6 months imprisonment
Subsections 324CG(5A) and (6)	30 penalty units
Section 324CI	6 months imprisonment
Section 324CJ	6 months imprisonment
Section 324CK	6 months imprisonment
Subsections 324CM(1), (2) and (3)	6 months imprisonment
Section 324DB	6 months imprisonment
Subsection 324DC(1)	6 months imprisonment
Subsection 324DC(2)	30 penalty units
Subsections 324DD(1) and (2)	6 months imprisonment
Subsection 324DD(3)	30 penalty units
Subsection 325(4)	6 months imprisonment

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<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsection 327A(3)	6 months imprisonment
Subsections 327B(1) and (3)	6 months imprisonment
Subsection 327C(3)	6 months imprisonment
Subsection 328A(4)	6 months imprisonment
Subsection 328B(2)	6 months imprisonment
Subsection 328C(3)	6 months imprisonment
Subsection 328D(3)	6 months imprisonment
Subsections 331AAA(1) and (3)	6 months imprisonment
Subsections 331AAB(1) and (2)	6 months imprisonment
Subsection 332A(2)	20 penalty units
Subsection 332A(3)	20 penalty units
Subsection 342B(1)	30 penalty units
Subsection 344(2)	15 years imprisonment
Subsections 346C(1) and (2)	60 penalty units
Subsection 347A(1)	20 penalty units
Subsections 347B(1) and (2)	20 penalty units
Subsection 348D(1)	60 penalty units
Subsection 349A(1)	60 penalty units
Subsections 428(1), (2), (2B) and (2C)	20 penalty units
Paragraph 429(2)(b)	50 penalty units
Subsection 437D(5)	6 months imprisonment
Subsection 438B(4)	(a) if the offence relates to a contravention of a provision other than subsection 438B(2A)—120 penalty units; and (b) if the offence relates to a contravention of subsection 438B(2A)—20 penalty units
Subsection 438C(5)	120 penalty units
Subsection 446C(4)	60 penalty units
Subsection 448B(1)	60 penalty units
Subsection 448C(1)	60 penalty units
Subsections 450E(1) and (2)	20 penalty units

### Schedule 3 Penalties

<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsections 453D(1), (2), (3), (4), (5) and (6)	20 penalty units
Subsection 453L(1)	6 months imprisonment
Subsection 456B(1)	50 penalty units
Subsection 456C(1)	50 penalty units
Subsections 456F(2), (3), (4), (5) and (6)	20 penalty units
Subsection 457B(1)	20 penalty units
Section 458H	20 penalty units
Subsection 475(9)	(a) if the offence relates to a contravention of a provision other than subsection 475(4)—60 penalty units; and (b) if the offence relates to a contravention of subsection 475(4)—50 penalty units
Subsection 486A(8)	2 years imprisonment
Section 494	1 year imprisonment
Subsections 496(4), (5), (6), (7) and (8)	20 penalty units
Subsection 497(1)	3 months imprisonment
Subsection 497(4)	50 penalty units
Subsection 497(7)	20 penalty units
Subsection 530A(6)	120 penalty units
Subsection 530B(3)	1 year imprisonment
Subsection 530B(6)	120 penalty units
Subsections 532(1), (2), (8) and (9)	30 penalty units
Subsection 541(1)	30 penalty units
Section 588FGAC	60 penalty units
Subsection 588G(3)	(a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and (b) for a body corporate—20,000 penalty units
Subsection 588GAB(1)	10 years imprisonment
Subsection 588GAC(1)	10 years imprisonment



<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsection 590(1)	2 years imprisonment
Subsection 590(5)	1 year imprisonment
Subsection 592(1)	120 penalty units
Subsection 592(6)	2 years imprisonment
Subsection 595(1)	30 penalty units
Subsection 596(1)	2 years imprisonment
Subsections 596AB(1), (1A), (1B) and (1C)	15 years imprisonment
Subsection 596F(3)	2 years imprisonment
Subsections 597(6), (7), (10A) and (13)	2 years imprisonment
Subsection 597A(3)	2 years imprisonment
Subsection 601AD(5)	20 penalty units
Subsection 601BC(5)	30 penalty units
Subsections 601BH(1) and (2)	20 penalty units
Subsection 601BJ(3)	20 penalty units
Subsection 601BK(1)	20 penalty units
Subsection 601BP(1)	20 penalty units
Subsection 601BR(1)	20 penalty units
Subsections 601CW(9) and (10)	30 penalty units
Subsection 601CZB(1)	30 penalty units
Section 601CZC	30 penalty units
Subsection 601DD(1)	20 penalty units
Subsection 601DE(1)	30 penalty units
Subsection 601DH(1)	20 penalty units
Subsection 601ED(5)	5 years imprisonment
Subsection 601FD(4)	15 years imprisonment
Subsection 601FE(4)	15 years imprisonment
Subsection 601FF(3)	5 years imprisonment
Subsection 601FG(3)	(a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and (b) for a body corporate—20,000 penalty units

**Schedule 3 Penalties**

<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsection 601FL(4)	2 years imprisonment
Subsection 601FM(3)	2 years imprisonment
Subsection 601FQ(6)	2 years imprisonment
Subsection 601HD(1)	60 penalty units
Subsections 601HG(1) and (3)	20 penalty units
Subsections 601HG(4), (4A) and (4B)	1 year imprisonment
Subsection 601HG(6)	60 penalty units
Subsection 601HG(7)	20 penalty units
Subsection 601JA(3)	2 years imprisonment
Subsection 601JA(4)	60 penalty units
Subsection 601JB(5)	60 penalty units
Subsection 601JB(6)	20 penalty units
Subsection 601JD(4)	(a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and (b) for a body corporate—20,000 penalty units
Subsection 601KA(3)	60 penalty units
Subsection 601SBB(1)	50 penalty units
Subsection 601SBC(2)	50 penalty units
Subsection 601SCB(1)	50 penalty units
Subsection 601SCB(2)	50 penalty units
Subsection 601SCB(3)	1 year imprisonment
Subsection 601SCD(1)	(a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and (b) for a body corporate—20,000 penalty units
Section 601TAA	1 year imprisonment
Subsection 601TAB(1)	1 year imprisonment
Subsection 601TBA(2)	1 year imprisonment
Subsection 601UAA(1)	15 years imprisonment
Subsection 601UAB(1)	15 years imprisonment
Section 601VAB	2 years imprisonment

<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsection 601VBD(8)	1 year imprisonment
Subsection 601VCC(2)	2 years imprisonment
Subsection 601WBE(5)	50 penalty units
Section 601WCF	1 year imprisonment
Section 601WCG	1 year imprisonment
Subsection 601WDA(1)	2 years imprisonment
Subsection 601WDA(2)	2 years imprisonment
Subsection 601WDA(3)	2 years imprisonment
Section 601XAB	1 year imprisonment
Subsection 606(4A)	5 years imprisonment
Subsection 606(4B)	60 penalty units
Subsection 622(1)	60 penalty units
Subsection 623(1)	60 penalty units
Subsection 624(2)	60 penalty units
Subsections 630(2), (3) and (4)	60 penalty units
Subsection 631(1)	2 years imprisonment
Subsection 631(2)	5 years imprisonment
Subsection 633(1) (table items 4, 5, 7, 8, 9, 11, 12, 13 and 14)	60 penalty units
Subsection 635(1) (table items 5, 7, 8, 10, 11, 12, 13 and 14)	60 penalty units
Subsection 636(3)	60 penalty units
Subsection 636(4)	20 penalty units
Subsection 637(1)	60 penalty units
Subsection 637(2)	20 penalty units
Subsection 638(1)	60 penalty units
Subsection 638(3)	60 penalty units
Subsection 638(5)	60 penalty units
Subsection 638(6)	20 penalty units
Subsection 639(1)	60 penalty units
Subsection 639(2)	20 penalty units

### Schedule 3 Penalties

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<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsection 640(1)	60 penalty units
Subsection 641(1)	60 penalty units
Section 643	6 months imprisonment
Section 644	6 months imprisonment
Subsections 647(1), (2) and (3)	60 penalty units
Subsection 648A(1)	60 penalty units
Subsections 648E(1) and (2)	60 penalty units
Subsections 648G(5) and (9)	120 penalty units
Subsection 649C(2)	60 penalty units
Subsection 650B(3)	60 penalty units
Subsections 650E(5) and (6)	60 penalty units
Subsection 650F(3)	60 penalty units
Subsection 651A(4)	60 penalty units
Subsection 651C(1)	60 penalty units
Subsection 652C(3)	60 penalty units
Subsection 654A(1)	60 penalty units
Subsection 654C(1)	60 penalty units
Subsection 654C(3)	60 penalty units
Subsection 657F(1)	60 penalty units
Subsections 661B(1) and (2)	20 penalty units
Subsection 661D(1)	60 penalty units
Subsection 662A(1)	60 penalty units
Subsection 663A(1)	60 penalty units
Subsections 664D(1), (2) and (3)	60 penalty units
Subsections 664E(2), (3) and (4)	60 penalty units
Subsection 665A(2)	60 penalty units
Subsection 666A(1)	60 penalty units
Subsections 666B(2) and (3)	60 penalty units
Subsection 667A(3)	60 penalty units
Subsection 668A(1)	60 penalty units

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<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsection 668A(2)	20 penalty units
Subsections 668A(3) and (4)	60 penalty units
Subsection 668B(1)	60 penalty units
Subsection 670A(3)	5 years imprisonment
Subsections 670C(1), (2) and (3)	60 penalty units
Subsection 671B(8)	2 years imprisonment
Subsection 671B(9)	60 penalty units
Subsection 672B(1)	60 penalty units
Subsection 672DA(1)	30 penalty units
Subsections 672DA(2), (3), (3A) and (4)	20 penalty units
Subsections 672DA(6), (7), (8) and (9)	30 penalty units
Subsection 674(2)	5 years imprisonment
Subsection 674(5)	2 years imprisonment
Subsection 675(2)	5 years imprisonment
Subsection 708AA(10)	2 years imprisonment
Subsection 708A(9)	2 years imprisonment
Subsection 721(5)	5 years imprisonment
Subsection 722(1)	60 penalty units
Subsection 722(2)	20 penalty units
Subsections 723(1), (2) and (3)	20 penalty units
Subsection 724(1)	60 penalty units
Subsection 725(1)	60 penalty units
Section 726	5 years imprisonment
Subsection 727(1)	15 years imprisonment
Subsection 727(2)	5 years imprisonment
Subsection 727(3)	5 years imprisonment
Subsection 727(4)	5 years imprisonment
Subsection 728(3)	15 years imprisonment
Subsection 730(1)	120 penalty units

### Schedule 3 Penalties

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<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsection 734(1)	60 penalty units
Subsection 734(2)	60 penalty units
Subsection 735(1)	30 penalty units
Subsection 738L(3)	5 years imprisonment
Subsections 738M(1), (2) and (3)	20 penalty units
Subsection 738N(4)	6 months imprisonment
Subsection 738P(1)	6 months imprisonment
Subsection 738Q(1)	50 penalty units
Subsection 738Q(5)	1 year imprisonment
Subsection 738Q(7)	6 months imprisonment
Subsections 738R(1) and (2)	5 years imprisonment
Subsections 738V(1), (2) and (3)	50 penalty units
Subsections 738X(2) and (3)	50 penalty units
Subsection 738X(7)	30 penalty units
Subsection 738Y(4)	5 years imprisonment
Subsections 738ZA(1), (3), (4), (5), (6), (8) and (9)	1 year imprisonment
Subsections 738ZB(2), (3) and (4)	50 penalty units
Subsection 738ZC(1)	30 penalty units
Subsection 738ZE(2)	5 years imprisonment
Section 738ZF	5 years imprisonment
Subsection 738ZG(1)	30 penalty units
Subsection 791A(1)	5 years imprisonment
Section 791B	5 years imprisonment
Subsection 792B(1)	2 years imprisonment
Subsection 792B(2)	2 years imprisonment
Subsection 792B(3)	2 years imprisonment
Subsection 792B(4)	2 years imprisonment
Subsection 792B(5)	2 years imprisonment
Subsection 792C(1)	2 years imprisonment

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<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsection 792D(1)	2 years imprisonment
Section 792E	2 years imprisonment
Subsection 792F(1)	2 years imprisonment
Subsection 792F(2)	50 penalty units
Subsection 792F(3)	2 years imprisonment
Subsection 792G(1)	2 years imprisonment
Subsection 792G(2)	2 years imprisonment
Section 792I	50 penalty units
Subsection 793D(3)	2 years imprisonment
Subsection 794B(3)	2 years imprisonment
Subsection 794D(3)	(a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and (b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed
Subsection 794E(2)	(a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and (b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed
Subsection 798C(3)	2 years imprisonment
Subsection 798C(6)	2 years imprisonment
Subsection 798D(4)	2 years imprisonment
Subsection 798DA(4)	2 years imprisonment
Subsection 820A(1)	5 years imprisonment
Section 820B	5 years imprisonment
Subsection 821B(1)	2 years imprisonment
Subsection 821B(2)	2 years imprisonment
Subsection 821B(3)	2 years imprisonment
Subsection 821B(4)	2 years imprisonment
Subsection 821BA(1)	2 years imprisonment

### Schedule 3 Penalties

<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsection 821C(1)	2 years imprisonment
Subsection 821C(3)	2 years imprisonment
Section 821D	2 years imprisonment
Subsection 821E(1)	2 years imprisonment
Subsection 821E(2)	2 years imprisonment
Subsection 821E(3)	2 years imprisonment
Subsection 822D(3)	2 years imprisonment
Subsection 823B(3)	2 years imprisonment
Subsection 823D(5)	(a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and (b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed
Subsection 823E(3)	(a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and (b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed
Section 850C	4 years imprisonment
Subsection 851D(8)	2 years imprisonment
Subsection 852B(2)	4 years imprisonment
Subsection 853F(1)	5 years imprisonment
Subsection 853F(2)	5 years imprisonment
Subsection 854A(4)	2 years imprisonment
Subsection 892B(1)	5 years imprisonment
Subsection 892B(3)	5 years imprisonment
Subsection 892H(1)	5 years imprisonment
Subsection 892H(2)	5 years imprisonment
Subsection 892H(3)	5 years imprisonment
Subsection 892H(6)	1 year imprisonment



<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsection 892H(7)	1 year imprisonment
Subsection 892K(2)	5 years imprisonment
Subsections 904B(1) and (5)	1,000 penalty units
Subsections 904C(1) and (3)	100 penalty units
Subsection 904D(2)	100 penalty units
Section 904E	100 penalty units
Subsection 904G(5)	(a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and (b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed
Subsection 904H(3)	100 penalty units
Subsection 904K(4)	(a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and (b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed
Subsection 905A(2)	(a) for an individual—2 years imprisonment, or 500 penalty units, or both; and (b) for a body corporate—5,000 penalty units
Section 907A	2 years imprisonment
Subsection 911A(1)	5 years imprisonment
Subsection 911B(1)	5 years imprisonment
Section 911C	2 years imprisonment
Subsection 912C(3)	2 years imprisonment
Subsection 912DAA(1)	2 years imprisonment
Subsection 912DAC(1)	1 year imprisonment
Subsection 912DA(1)	30 penalty units
Subsection 912DB(1)	30 penalty units
Subsection 912E(1)	2 years imprisonment
Subsection 912EC(1)	5 years imprisonment

### Schedule 3 Penalties

<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsection 912F(1)	20 penalty units
Subsection 916A(3A)	2 years imprisonment
Subsection 916B(2A)	2 years imprisonment
Subsection 916B(5A)	1 year imprisonment
Subsection 916C(3)	2 years imprisonment
Subsection 916D(2A)	2 years imprisonment
Subsection 916F(1)	6 months imprisonment
Subsection 916F(1A)	6 months imprisonment
Subsection 916F(3)	60 penalty units
Subsection 916G(2)	1 year imprisonment
Subsection 916G(3)	1 year imprisonment
Subsection 920C(3)	5 years imprisonment
Subsection 921Z(3)	20 penalty units
Subsection 922M(3)	50 penalty units
Subsection 923A(1)	(a) for an individual—10 penalty units for each day, or part of a day, in respect of which the offence is committed; and (b) for a body corporate—100 penalty units for each day, or part of a day, in respect of which the offence is committed
Subsection 923B(1)	(a) for an individual—10 penalty units for each day, or part of a day, in respect of which the offence is committed; and (b) for a body corporate—100 penalty units for each day, or part of a day, in respect of which the offence is committed
Subsection 923C(1)	(a) for an individual—10 penalty units for each day, or part of a day, in respect of which the offence is committed; or (b) for a body corporate—100 penalty units for each day, or part of a day, in respect of which the offence is committed
Subsection 923C(2)	(a) for an individual—10 penalty units for each day, or part of a day, in respect of which the

<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
	offence is committed; and (b) for a body corporate—100 penalty units for each day, or part of a day, in respect of which the offence is committed
Subsection 942B(8)	1 year imprisonment
Subsection 942C(8)	1 year imprisonment
Section 942E	2 years imprisonment
Section 943F	2 years imprisonment
Subsection 946AA(4)	50 penalty units
Subsections 946B(3A) and (9)	50 penalty units
Subsection 949A(2)	2 years imprisonment
Subsection 949A(5)	5 years imprisonment
Subsection 949B(2)	1 year imprisonment
Subsection 949B(4)	1 year imprisonment
Subsection 952C(1)	50 penalty units
Subsection 952C(3)	5 years imprisonment
Subsection 952D(1)	15 years imprisonment
Subsection 952D(2)	15 years imprisonment
Subsection 952E(6)	2 years imprisonment
Subsection 952F(2)	15 years imprisonment
Subsection 952F(3)	15 years imprisonment
Subsection 952F(4)	15 years imprisonment
Subsection 952G(2)	2 years imprisonment
Subsection 952G(4)	2 years imprisonment
Subsection 952G(6)	2 years imprisonment
Subsection 952H(2)	5 years imprisonment
Subsection 952I(1)	30 penalty units
Subsection 952I(2)	30 penalty units
Subsection 952I(3)	30 penalty units
Subsection 952I(4)	30 penalty units
Subsection 952J(1)	30 penalty units
Subsection 952JA(1)	30 penalty units

**Schedule 3 Penalties**

<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Section 952K	5 years imprisonment
Subsection 952L(1)	15 years imprisonment
Subsection 952L(2)	5 years imprisonment
Subsection 952L(3)	5 years imprisonment
Section 952M	5 years imprisonment
Subsection 962X(1)	5 years imprisonment
Subsection 982C(1)	2 years imprisonment
Subsection 982C(2)	2 years imprisonment
Section 982D	2 years imprisonment
Section 983C	6 months imprisonment
Subsection 984B(1)	(a) if the offence relates only to a contravention of the requirements referred to in paragraph 984B(1)(a)—50 penalty units; and (b) otherwise—2 years imprisonment
Subsection 985D(1)	50 penalty units
Subsection 985J(1)	50 penalty units
Subsection 985J(2)	50 penalty units
Subsection 985J(4)	50 penalty units
Subsection 985K(1)	2 years imprisonment
Subsection 988A(1)	5 years imprisonment
Subsection 989B(1)	5 years imprisonment
Subsection 989B(2)	5 years imprisonment
Subsection 989B(3)	5 years imprisonment
Subsection 989CA(3)	2 years imprisonment
Subsection 989CA(4)	50 penalty units
Subsection 990B(1)	5 years imprisonment
Subsection 990B(2)	5 years imprisonment
Subsection 990B(6)	6 months imprisonment
Subsection 990D(1)	2 years imprisonment
Subsection 990D(2)	2 years imprisonment
Paragraph 990F(a)	2 years imprisonment

<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsection 990I(3)	2 years imprisonment
Subsection 990K(1)	1 year imprisonment
Subsection 991B(2)	1 year imprisonment
Subsection 991E(1)	1 year imprisonment
Subsection 991E(3)	1 year imprisonment
Subsection 991F(1)	6 months imprisonment
Subsection 991F(2)	6 months imprisonment
Subsection 991F(3)	6 months imprisonment
Subsection 992A(1)	6 months imprisonment
Subsection 993B(1)	50 penalty units
Subsection 993B(3)	15 years imprisonment
Subsection 993C(1)	50 penalty units
Subsection 993C(3)	5 years imprisonment
Subsection 993D(2)	5 years imprisonment
Subsection 993D(3)	50 penalty units
Subsection 994B(2)	5 years imprisonment
Subsection 994B(9)	1 year imprisonment
Subsection 994C(2)	1 year imprisonment
Subsections 994C(3), (5) and (6)	5 years imprisonment
Section 994D	5 years imprisonment
Subsections 994E(1) and (3)	5 years imprisonment
Subsections 994F(1), (3), (4), (5), (6) and (8)	1 year imprisonment
Section 994G	2 years imprisonment
Subsection 994H(3)	2 years imprisonment
Subsections 994J(7) and (8)	2 years imprisonment
Subsection 1012DAA(10)	2 years imprisonment
Subsection 1012DA(9)	2 years imprisonment
Subsection 1012H(2)	2 years imprisonment
Subsection 1013I(4)	2 years imprisonment
Subsection 1013IA(5)	2 years imprisonment

### Schedule 3 Penalties

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<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsection 1013K(1)	2 years imprisonment
Subsection 1013K(2)	2 years imprisonment
Subsection 1015B(1)	2 years imprisonment
Subsection 1015D(2)	2 years imprisonment
Subsection 1015D(3)	2 years imprisonment
Subsection 1015D(4)	2 years imprisonment
Subsection 1015E(1)	2 years imprisonment
Subsection 1016A(2)	5 years imprisonment
Subsection 1016A(3)	5 years imprisonment
Subsection 1016B(1)	2 years imprisonment
Section 1016C	2 years imprisonment
Subsection 1016D(1)	2 years imprisonment
Paragraph 1016D(2)(d)	2 years imprisonment
Subsection 1016E(2)	2 years imprisonment
Subsection 1017B(1)	5 years imprisonment
Subsection 1017C(2)	2 years imprisonment
Subsection 1017C(2A)	2 years imprisonment
Subsection 1017C(3)	2 years imprisonment
Subsection 1017C(3A)	2 years imprisonment
Subsection 1017C(5)	2 years imprisonment
Subsection 1017D(1)	2 years imprisonment
Subsection 1017DA(3)	50 penalty units
Subsection 1017E(3)	5 years imprisonment
Subsection 1017E(4)	5 years imprisonment
Subsection 1017F(2)	2 years imprisonment
Subsection 1017G(1)	5 years imprisonment
Subsection 1018A(1)	2 years imprisonment
Subsection 1018A(2)	2 years imprisonment
Subsection 1018B(1)	2 years imprisonment
Subsection 1020AB(3)	6 months imprisonment

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<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsection 1020AC(2)	6 months imprisonment
Subsection 1020AD(2)	6 months imprisonment
Section 1020AE	6 months imprisonment
Subsection 1020AI(3)	50 penalty units
Subsection 1020AI(5)	2 years imprisonment
Subsection 1020AI(7)	5 years imprisonment
Section 1020AJ	2 years imprisonment
Subsection 1020A(4)	5 years imprisonment
Subsection 1020BAA(1)	5 years imprisonment
Subsection 1020B(2)	(a) for a first offence—6 months imprisonment; and (b) for a further offence—2 years imprisonment
Subsection 1020E(8)	2 years imprisonment
Subsection 1020E(9)	2 years imprisonment
Subsection 1021C(1)	50 penalty units
Subsection 1021C(3)	5 years imprisonment
Subsection 1021D(1)	15 years imprisonment
Subsection 1021D(2)	15 years imprisonment
Subsection 1021E(5)	2 years imprisonment
Subsection 1021F(1)	5 years imprisonment
Subsection 1021FA(1)	5 years imprisonment
Subsection 1021FA(2)	2 years imprisonment
Subsection 1021FB(1)	5 years imprisonment
Subsection 1021FB(2)	5 years imprisonment
Subsection 1021FB(3)	2 years imprisonment
Subsection 1021FB(6)	2 years imprisonment
Subsection 1021G(2)	5 years imprisonment
Subsection 1021H(1)	30 penalty units
Subsection 1021I(1)	5 years imprisonment
Subsection 1021J(1)	5 years imprisonment
Subsection 1021J(2)	5 years imprisonment

### Schedule 3 Penalties

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<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsection 1021J(3)	5 years imprisonment
Subsection 1021K(1)	5 years imprisonment
Subsection 1021L(1)	5 years imprisonment
Subsection 1021L(2)	5 years imprisonment
Subsection 1021M(1)	50 penalty units
Subsection 1021M(3)	2 years imprisonment
Section 1021N	2 years imprisonment
Subsection 1021NA(1)	2 years imprisonment
Subsection 1021NA(2)	5 years imprisonment
Subsection 1021NA(3)	2 years imprisonment
Subsection 1021NB(1)	2 years imprisonment
Subsection 1021NB(2)	5 years imprisonment
Subsection 1021NB(3)	2 years imprisonment
Subsection 1021O(1)	60 penalty units
Subsection 1021O(3)	5 years imprisonment
Subsection 1021P(1)	2 years imprisonment
Subsection 1021P(2)	2 years imprisonment
Subsection 1021P(3)	50 penalty units
Subsection 1021P(4)	2 years imprisonment
Subsection 1021P(5)	50 penalty units
Subsection 1021P(6)	50 penalty units
Subsections 1023P(1), (2) and (4)	5 years imprisonment
Section 1041A	15 years imprisonment
Subsection 1041B(1)	15 years imprisonment
Subsection 1041C(1)	15 years imprisonment
Section 1041D	15 years imprisonment
Subsection 1041E(1)	15 years imprisonment
Subsection 1041F(1)	15 years imprisonment
Section 1041G	15 years imprisonment
Subsection 1043A(1)	15 years imprisonment

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<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsection 1043A(2)	15 years imprisonment
Subsection 1052B(3)	(a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and (b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed
Subsection 1052BA(4)	(a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and (b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed
Subsection 1052C(6)	(a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and (b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed
Subsection 1070B(1)	30 penalty units
Subsection 1070C(1)	30 penalty units
Subsection 1070D(3)	30 penalty units
Subsection 1071B(2)	30 penalty units
Section 1071E	30 penalty units
Subsection 1072E(11)	30 penalty units
Subsection 1072H(1)	30 penalty units
Subsection 1072H(3)	30 penalty units
Subsection 1072H(4)	30 penalty units
Subsection 1072H(5)	30 penalty units
Subsection 1072H(6)	30 penalty units
Subsection 1100ZE(1)	60 penalty units
Subsection 1100ZE(2)	20 penalty units
Subsection 1100ZF(1)	60 penalty units
Subsection 1100ZF(2)	20 penalty units

### Schedule 3 Penalties

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<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsection 1100ZH(4)	5 years imprisonment
Subsection 1100ZI(4)	5 years imprisonment
Subsection 1100ZJ(2)	50 penalty units
Subsection 1100ZM(2)	60 penalty units
Subsection 1101B(10)	2 years imprisonment
Subsection 1101C(1)	1 year imprisonment
Subsection 1101C(2)	1 year imprisonment
Subsection 1101C(3)	1 year imprisonment
Subsection 1101E(1)	2 years imprisonment
Subsection 1101F(1A)	2 years imprisonment
Subsection 1101F(1)	2 years imprisonment
Section 1101G	1 year imprisonment
Subsection 1200N(7)	2 years imprisonment
Subsection 1200N(8)	2 years imprisonment
Subsection 1200Q(1)	5 years imprisonment
Subsection 1200Q(2)	5 years imprisonment
Section 1200S	2 years imprisonment
Subsection 1200U(6)	2 years imprisonment
Subsection 1200U(7)	2 years imprisonment
Subsection 1212C(1)	60 penalty units
Subsection 1215D(2)	2 years imprisonment
Subsection 1215D(3)	2 years imprisonment
Subsection 1215D(4)	2 years imprisonment
Subsection 1222L(3)	20 penalty units
Subsection 1222L(7)	20 penalty units
Subsection 1222W(1)	30 penalty units
Subsection 1222Z(2)	120 penalty units
Subsection 1223B(3)	20 penalty units
Subsection 1223C(4)	20 penalty units
Subsection 1223C(5)	20 penalty units

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<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsection 1223D(3)	20 penalty units
Subsection 1224(1)	2 years imprisonment
Subsection 1224(5)	2 years imprisonment
Subsection 1224A(1)	2 years imprisonment
Subsection 1224A(2)	2 years imprisonment
Subsection 1224G(4)	2 years imprisonment
Subsection 1224G(5)	20 penalty units
Subsection 1224G(6)	60 penalty units
Subsection 1224P(3)	(a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and (b) for a body corporate—20,000 penalty units
Subsection 1224Q(4)	30 penalty units
Subsection 1224Q(5)	20 penalty units
Subsection 1224T(3)	20 penalty units
Subsection 1224U(4)	20 penalty units
Subsection 1224V(3)	20 penalty units
Subsection 1224W(2)	20 penalty units
Subsection 1224W(8)	20 penalty units
Subsection 1224Z(1)	20 penalty units
Subsection 1225(2)	5 years imprisonment
Subsection 1225F(2)	5 years imprisonment
Subsection 1226(3)	20 penalty units
Subsection 1226C(2)	60 penalty units
Subsection 1226D(3)	20 penalty units
Subsection 1226D(4)	20 penalty units
Subsection 1226E(3)	20 penalty units
Subsection 1226F(1)	20 penalty units
Subsection 1226G(1)	20 penalty units
Subsection 1226G(3)	60 penalty units
Subsection 1226G(4)	20 penalty units
Subsection 1226H(6)	1 year imprisonment

### Schedule 3 Penalties

<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Paragraph 1226J(1)(a)	20 penalty units
Subsection 1226K(1)	20 penalty units
Subsection 1228D(4)	20 penalty units
Subsection 1230F(4)	(a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and (b) for a body corporate—20,000 penalty units
Subsection 1230G(1)	20 penalty units
Subsection 1230G(2)	20 penalty units
Subsection 1230G(3)	20 penalty units
Subsection 1230J(5)	20 penalty units
Subsection 1230J(8)	20 penalty units
Subsection 1230M(1)	2 years imprisonment
Subsection 1230S(3)	(a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and (b) for a body corporate—20,000 penalty units
Subsection 1231B(3)	(a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and (b) for a body corporate—20,000 penalty units
Subsection 1231J(6)	(a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and (b) for a body corporate—20,000 penalty units
Subsection 1233B(4)	2 years imprisonment
Subsection 1233B(5)	60 penalty units
Subsection 1233C(2)	60 penalty units
Subsection 1233D(5)	2 years imprisonment
Subsection 1233D(6)	60 penalty units
Subsection 1233E(5)	2 years imprisonment
Subsection 1233E(6)	60 penalty units
Subsection 1233F(4)	20 penalty units
Subsection 1233G(3)	2 years imprisonment
Subsection 1233G(4)	60 penalty units

<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsection 1233J(6)	2 years imprisonment
Subsection 1233K(5)	2 years imprisonment
Subsection 1233M(6)	2 years imprisonment
Subsection 1233N(5)	2 years imprisonment
Subsection 1233P(3)	20 penalty units
Subsection 1234F(3)	2 years imprisonment
Subsection 1234F(4)	60 penalty units
Subsections 1234J(1), (2) and (3)	60 penalty units
Subsection 1237P(4)	50 penalty units
Subsection 1239D(3)	20 penalty units
Subsection 1239L(1)	20 penalty units
Subsection 1240H(1)	5 years imprisonment
Subsection 1240H(2)	5 years imprisonment
Subsection 1272C(1)	60 penalty units
Subsection 1272D(1)	60 penalty units
Subsection 1272G(1)	1 year imprisonment
Subsection 1272H(1)	1 year imprisonment
Subsections 1274(1) and (2)	1 year imprisonment
Subsections 1274(9), (13) and (16)	120 penalty units
Subsections 1299F(1), (3) and (5)	30 penalty units
Subsection 1299G(1)	20 penalty units
Subsection 1299G(4)	30 penalty units
Subsection 1300(2A)	30 penalty units
Subsection 1300(3)	20 penalty units
Subsection 1307(1)	5 years imprisonment
Subsection 1307(2)	5 years imprisonment
Subsection 1308B(1)	20 penalty units
Subsection 1308(1)	5 years imprisonment
Subsection 1308(3)	20 penalty units
Subsection 1309(11)	(a) in relation to a contravention of subsection 1309(1)—5 years imprisonment;

**Schedule 3 Penalties**

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<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
	and (b) in relation to a contravention of subsection 1309(2)—2 years imprisonment
Section 1310	2 years imprisonment
Subsection 1317AAE(1)	6 months imprisonment
Subsections 1317AC(1), (2) and (3)	2 years imprisonment
Subsections 1317AI(1), (2) and (3)	60 penalty units
Subsection 1323(9)	60 penalty units
Subsection 1412(3)	2 years imprisonment
Subsection 1424(3)	2 years imprisonment
Section 1432	30 penalty units
Subsection 1436(2)	30 penalty units
Subsection 1438(6)	50 penalty units

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

## **Schedule 4—Transfer of financial institutions and friendly societies**

Note: See section 1465A.

### **Part 1—Preliminary**

#### **1 Definitions**

In this Schedule, except so far as the contrary intention appears:

***AFIC Code*** of a State or Territory means the Australian Financial Institutions Commission Code as set out in the *Australian Financial Institutions Commission Act 1992* of Queensland as in force immediately before the transfer date and as applied as a law of the State or Territory.

***building society*** of a State or Territory means a transferring financial institution authorised under the Financial Institutions Code of the State or Territory to operate as a building society immediately before the transfer date.

***Financial Institutions Code*** of a State or Territory means the Financial Institutions Code set out in the *Financial Institutions (Queensland) Act 1992* as in force immediately before the transfer date and as applied as a law of the State or Territory.

***Friendly Societies Code*** means the Friendly Societies Code set out in Schedule 1 to the **Friendly Societies (Victoria) Act 1996** as in force immediately before the transfer date.

***Friendly Societies Code*** of a State or Territory means:

- (a) the Friendly Societies Code as applied as a law of the State or Territory; or
- (b) if the State is Western Australia—the Friendly Societies (Western Australia) Code set out in the *Friendly Societies (Western Australia) Act 1999*.

Clause 1

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***member of a transferring financial institution*** means a person who, immediately before the transfer date, is a member of the institution under:

- (a) the previous governing Code; or
- (b) the rules of the institution.

***membership share*** means a share in a company that was a transferring financial institution:

- (a) that was taken to have been issued under clause 12 of the transfer provisions; and
- (b) that carries the rights and obligations that were conferred or imposed on the person in a capacity other than that of shareholder, by:
  - (i) the institution's rules (as in force immediately before the transfer date); and
  - (ii) the previous governing Code; and
- (c) on which no amount is paid; and
- (d) on which no amount is unpaid; and
- (e) that is not:
  - (i) transferable or transmissible; or
  - (ii) capable of devolution by will or by operation of law; and
- (f) that can be cancelled as set out in subclause 12(3).

***previous governing Code*** for a transferring financial institution means the Code or law under which the institution is registered immediately before the transfer date.

***State Supervisory Authority (SSA)*** for a transferring financial institution means:

- (a) the SSA for the institution within the meaning of the previous governing Code; or
- (b) in the case of The Cairns Cooperative Weekly Penny Savings Bank Limited—the Queensland Office of Financial Supervision.



**transfer date** means the date that is the transfer date for the purposes of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*.

**transfer provisions** of a State or Territory means Schedule 4 to the Corporations Law of the State or Territory.

**transferring financial institution** of a State or Territory means:

- (a) a building society of the State or Territory (that is, a society that was registered under the Financial Institutions Code of the State or Territory, and authorised to operate as a building society, immediately before the transfer date); or
- (b) a credit union of the State or Territory (that is, a society that was registered under the Financial Institutions Code of the State or Territory, and authorised to operate as a credit union, immediately before the transfer date); or
- (c) a friendly society of the State or Territory (that is, a body that was registered as a friendly society under the Friendly Societies Code of the State or Territory immediately before the transfer date); or
- (d) a body registered as an association under Part 12 of the Financial Institutions Code of the State or Territory immediately before the transfer date; or
- (e) a body registered as a Special Services Provider under the AFIC Code of the State or Territory immediately before the transfer date; or
- (f) a body registered as an association under Part 12 of the Friendly Societies Code of the State or Territory immediately before the transfer date; or
- (g) The Cairns Cooperative Weekly Penny Savings Bank Limited referred to in section 263 of the *Financial Intermediaries Act 1996* of Queensland if:
  - (i) the State is Queensland; and
  - (ii) a determination by APRA under subitem 7(2) of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999* is in force immediately before the transfer date.

**Schedule 4** Transfer of financial institutions and friendly societies  
**Part 1** Preliminary

Clause 1

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Note: If a determination is made, the Bank will be covered by the *Banking Act 1959* from the transfer date. APRA may only make a determination if the Treasurer and the Queensland Minister responsible for the administration of the *Financial Intermediaries Act 1996* of Queensland have agreed that the Bank should be covered by the *Banking Act 1959*.

***transition period*** means the period of 18 months starting on the transfer date.

***withdrawable share*** of a transferring financial institution of a State or Territory means a withdrawable share within the meaning of the Financial Institutions Code of the State or Territory as in force immediately before the transfer date.

## **Part 2—Financial institutions that became companies**

### **Division 1—Registration and its consequences**

#### **3 Background (registration of transferring financial institution as company)**

- (1) On the transfer date, each transferring financial institution of a State or Territory was taken to be registered as a company under the Corporations Law of the State or Territory under the name under which the institution was registered under the previous governing Code immediately before the transfer date.
- (2) Subclause 3(2) of the transfer provisions governed the kind of company the transferring financial institution was registered as.
- (3) Under clause 7 of the transfer provisions, ASIC:
  - (a) gave the company an ACN; and
  - (b) kept a record of the company's registration; and
  - (c) issued a certificate to the company that stated:
    - (i) the company's name; and
    - (ii) the company's ACN; and
    - (iii) the company's type; and
    - (iv) that the company is registered as a company under the Corporations Law of the State or Territory.

#### **4 Rules applied to transferring institution that was registered as a company under the transfer provisions**

##### *Application of section 1274 to registration documents*

- (1) Subsections 1274(2) and (5) apply to the record of the company's registration referred to in paragraph 3(3)(b) of this Schedule as if it were a document lodged with ASIC.

**Schedule 4** Transfer of financial institutions and friendly societies

**Part 2** Financial institutions that became companies

**Division 1** Registration and its consequences

**Clause 11**

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*ASIC may keep documents relating to company lodged while it was a registered body*

- (2) ASIC may keep any of the documents relating to the company that were lodged because the company used to be a registered body.

*Application of replaceable rules*

- (3) The replaceable rules (as described in section 135) do not apply to the company, despite section 135, unless the company:
- (a) repealed its constitution after the transfer date and before the commencement of this Act; or
  - (b) repeals its constitution on or after the commencement of this Act.

**11 Transferring financial institution under external administration**

*Background*

- (1) Clause 11 of the transfer provisions provided that if, immediately before the transfer date, provisions of Chapter 5 of the Corporations Law of a State or Territory applied to:
- (a) a compromise or arrangement between a transferring financial institution of the State or Territory and its creditors; or
  - (b) a reconstruction of a transferring financial institution of the State or Territory; or
  - (c) a receiver or other controller of property of a transferring financial institution of the State or Territory; or
  - (d) the winding-up or dissolution of a transferring financial institution of the State or Territory;

because of Part 9 of the Financial Institutions Code, or Part 9 of the Friendly Societies Code, of the State or Territory, those provisions of Chapter 5 continued to apply to that matter after the transfer date.

Note: Clause 11 of the transfer provisions also provided that:

- (a) a matter referred to in paragraph (1)(a), (b) or (d) included an application or other step preliminary to the matter; and

- (b) any act done before the transfer date under or for the purposes of the provisions of Chapter 5 as applied by the Code were to have effect as if it had been done under or for the purposes of Chapter 5 as it applied after the transfer date.
- (2) Clause 11 of the transfer provisions also provided that if, before the transfer date, a liquidator of a transferring financial institution of a State or Territory had been appointed under:
- (a) section 341 of the Financial Institutions Code of the State or Territory; or
  - (b) section 402 of the Friendly Societies Code of the State or Territory;
- the institution could be wound up in accordance with the provisions of Chapter 5 of the Corporations Law of the State or Territory.

*Continuing external administration under Chapter 5 of the Corporations Act 2001*

- (3) If, immediately before the commencement of this Act, provisions of Chapter 5 of the Corporations Law of a State or Territory applied to:
- (a) a compromise or arrangement between a transferring financial institution of the State or Territory and its creditors; or
  - (b) a reconstruction of a transferring financial institution of the State or Territory; or
  - (c) a receiver or other controller of property of a transferring financial institution of the State or Territory; or
  - (d) the winding-up or dissolution of a transferring financial institution of the State or Territory;
- because of clause 11 of the transfer provisions, the corresponding provisions of Chapter 5 of this Act apply (as a law of the Commonwealth) to that matter after the commencement of this Act.
- (4) Subclause (3) does not limit the regulations that may be made under clause 28.

**Schedule 4** Transfer of financial institutions and friendly societies

**Part 2** Financial institutions that became companies

**Division 1** Registration and its consequences

Clause 11

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- (5) Any act done:
- (a) before the transfer date under or for the purposes of the provisions of Chapter 5 of the Corporations Law of the State or Territory as applied by the Code; or
  - (b) on or after the transfer date and before the commencement of this Act for the purposes of the provisions of Chapter 5 of the Corporations Law of the State or Territory as applied by clause 11 of the transfer provisions;
- has effect as if it had been done under or for the purposes of Chapter 5 of this Act as it applies after the commencement of this Act.

## **Division 2—Membership**

### **12 Institution that became a company limited by shares**

#### *Background*

- (1) Clause 12 of the transfer provisions applied to a transferring financial institution of a State or Territory if the institution was taken to be registered as a company limited by shares under clause 3 of the transfer provisions.
- (2) Clause 12 of the transfer provisions provided that:
  - (a) any shares in the institution on issue immediately before the transfer date (other than withdrawable shares) became shares of the company; and
  - (b) any withdrawable shares of the institution on issue immediately before the transfer date became redeemable preference shares of the company; and
  - (c) in the case of a building society—each person who was a member of the society immediately before the transfer date, other than by virtue of only holding shares in the society, was taken to have been issued with a membership share on the transfer date; and
  - (d) in any case other than that of a building society—any person:
    - (i) who was a member of the institution immediately before the transfer date; and
    - (ii) who did not hold any shares in the institution; was taken to have been issued with a membership share on the transfer date.

#### *Joint members of institution that became a company limited by shares*

- (3) If a person who was taken to have been issued with a membership share was a joint member, they hold the membership share jointly with the other member or members of the joint membership. This

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**Division 2** Membership

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is so, even if the other member, or another member, held shares in the institution immediately before the transfer date. However, the joint membership does not have any more votes because of the membership share or shares than it had immediately before the transfer date.

*Cancellation shares*

- (4) A membership share can be cancelled at the option of the holder or the company in the circumstances (if any):
- (a) set out in the company's constitution; or
  - (b) in which the member who holds the share could have had their membership of the institution cancelled immediately before the transfer date.

Part 2J.1 does not apply to the cancellation of a membership share.

**13 Institution that became a company limited by guarantee**

*Background*

- (1) Clause 13 of the transfer provisions applied to a transferring financial institution of a State or Territory if the institution was taken to be registered as a company limited by guarantee under clause 3 of the transfer provisions.
- (2) Clause 13 of the transfer provisions provided that each person who was a member of the institution immediately before the transfer date was taken to have given a guarantee (but only for the purpose of determining whether the person is a member of the company).

*Guarantees*

- (3) Each person who becomes a member of the company after the commencement of this Act and before the amount of the relevant guarantee is determined is taken to have given a guarantee (but only for the purpose of determining whether the person is a member of the company).

Note: Someone who became a member after the transfer date and this Act commences was taken to have given a guarantee by clause 13 of the



transfer provisions. This guarantee is preserved by sections 1373 and 1399.

- (4) If a person who is taken to have given a guarantee by subclause (2) is a joint member, they are taken to have given the guarantee jointly with the other member or members of the joint membership. However, the joint membership does not have any more votes because of giving the guarantee or guarantees than it had immediately before the transfer date.

## **14 Institution becoming a company limited by shares and guarantee**

### *Background*

- (1) Clause 14 of the transfer provisions applied to a transferring financial institution of a State or Territory if the institution was taken to be registered as a company limited by shares and guarantee under clause 3 of the transfer provisions.
- (2) Clause 14 of the transfer provisions provided that each person who was a member of the institution immediately before the transfer date was taken to have given a guarantee (but only for the purpose of determining whether the person is a member of the company).

### *Guarantees*

- (3) Each person who becomes a member of the company after this Act commences and before the amount of the relevant guarantee is determined is taken to have given a guarantee (but only for the purpose of determining whether the person is a member of the company).

Note: Someone who became a member after the transfer date and this Act commences was taken to have given a guarantee by clause 13 of the transfer provisions. This guarantee is preserved by sections 1373 and 1399.

- (4) If a person who is taken to have given a guarantee by subclause (2) is a joint member, they are taken to have given the guarantee jointly with the other member or members of the joint membership. However, the joint membership does not have any more votes

Clause 15

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because of giving the guarantee or guarantees than it had immediately before the transfer date.

**15 Redeemable preference shares that were withdrawable shares**

- (1) This Act applies to a redeemable preference share that was a withdrawable share of a transferring financial institution of a State or Territory immediately before the transfer date, except that:
  - (a) the share is redeemable on the same terms that the withdrawable share was withdrawable under the Financial Institutions Code of the State or Territory and the institution's rules or constitution; and
  - (b) the holder of the share continues to have the same rights and obligations that they had by holding the withdrawable share.
- (2) The provisions of this Act that apply to redeemable preference shares apply:
  - (a) subject to subclause (1), to redeemable preference shares of a company registered under clause 3 of the transfer provisions; and
  - (b) to redeemable preference shares of a company (other than a company referred to in paragraph (a)) that is permitted to use the expression *building society*, *credit union* or *credit society* under section 66 of the *Banking Act 1959*;  
even if the shares are the only class of shares issued by the company.

**16 Liability of members on winding up**

- (1) If a transferring financial institution of a State or Territory that was registered under clause 3 of the transfer provisions is wound up, each person:
  - (a) who was a past member of the institution at the time it became registered; and
  - (b) who did not again become a member; and
  - (c) who had not held shares in the institution;is not liable under Division 2 of Part 5.6 on the winding up.

Note: A person who was a past member at the time of registration and who held shares in the institution may be liable as a past member under Division 2 of Part 5.6.

- (2) If a company that is registered under clause 3 of the transfer provisions is wound up, a person who is taken to have given a guarantee by subclause 13(1) or 14(1) of the transfer provisions, or clause 13 or 14 of this Schedule, is not liable under:
- (a) section 515 merely because the person is or was a member who is taken to have given a guarantee; or
  - (b) section 517 or paragraph 518(b) merely because the person is taken to have given a guarantee.

## Division 3—Share capital

### 17 Share capital

*Background (transfer of certain amounts to share capital)*

- (1) On registration of a transferring financial institution of a State or Territory as a company under clause 3 of the transfer provisions:
  - (a) any amount of withdrawable share capital (within the meaning of the Financial Institutions Code of the State or Territory); and
  - (b) any amount standing to the credit of its share premium account; and
  - (c) any amount standing to the credit of its capital redemption reserve;immediately before the transfer date became part of the company's share capital under clause 17 of the transfer provisions.

*Use of amount standing to credit of share premium account*

- (2) The company may use the amount standing to the credit of its share premium account immediately before the transfer date (if any) to:
  - (a) provide for the premium payable on redemption of debentures or redeemable preference shares issued before the transfer date; or
  - (b) write off:
    - (i) the preliminary expenses of the institution incurred before the transfer date; or
    - (ii) expenses incurred, payments made, or discounts allowed before the transfer date, in respect of any issue of shares in, or debentures of, the institution.

## **18 Application of no par value rule**

- (1) Section 254C applies to shares issued by a transferring financial institution of a State or Territory before the transfer date as well as shares issued on and after that.
- (2) In relation to a share issued by the institution before the transfer date:
  - (a) the amount paid on the share is the sum of all amounts paid to the institution at any time for the share (but not including any premium); and
  - (b) the amount unpaid on the share is the difference between the issue price of the share (but not including any premium) and the amount paid on the share (see paragraph (a)).

## **19 Calls on partly-paid shares**

The liability of a shareholder for calls in respect of money unpaid on shares issued before the transfer date by a transferring financial institution of a State or Territory (whether on account of the par value of the shares or by way of premium) is not affected by the share ceasing to have a par value.

## **20 References in contracts and other documents to par value**

- (1) This clause applies for the purpose of interpreting and applying the following after the commencement of this Act:
  - (a) a contract entered into by a transferring financial institution of a State or Territory before the transfer date (including the institution's constitution);
  - (b) a trust deed or other document executed by or in relation to the institution before the transfer date.

Note: The interpretation and application of contracts and deeds before this Act commences was governed by clause 20 of the transfer provisions.

- (2) A reference to the par value of a share issued by a transferring financial institution of a State or Territory is taken to be a reference to:

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**Division 3** Share capital

Clause 20

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- (a) if the share is issued before the transfer date—the par value of the share immediately before then; or
- (b) if the share is issued on or after the transfer date but shares of the same class were on issue immediately before then—the par value that the share would have had if it had been issued then; or
- (c) if the share is issued on or after the transfer date and shares of the same class were not on issue immediately before then—the par value determined by the directors.

A reference to share premium is taken to be a reference to any residual share capital in relation to the share.

- (3) A reference to a right to a return of capital on a share issued by the institution is taken to be a reference to a right to a return of capital of a value equal to the amount paid in respect of the share's par value.
- (4) A reference to the aggregate par value of the institution's issued share capital is taken to be a reference to that aggregate as it existed immediately before the transfer date and:
  - (a) increased to take account of the par value of any shares issued after then; and
  - (b) reduced to take account of the par value of any shares cancelled after then.

## **Part 4—The transition period**

### **25 ASIC may direct directors of a company to modify its constitution**

- (1) If a company registered under clause 3 of the transition provisions has not modified its constitution so that it complies with subclause 24(1) of the transition provisions by the end of the transition period, ASIC may direct, in writing, the directors of the company to:
  - (a) take the necessary or specified steps to:
    - (i) ensure that the company modifies its constitution so that it does comply; or
    - (ii) ensure that the company makes the modifications to its constitution that ASIC specifies; and
  - (b) take those steps within a specified time (which must be more than 28 days).

A direction may require the directors to take steps that are inconsistent with the company's constitution.

- (2) ASIC may issue a direction under subclause (1) before the end of the transition period if requested by a majority of directors of the company.
- (3) No civil or criminal liability arises from action taken by a director in good faith and in accordance with a direction issued under subclause (1).
- (4) A person contravenes this subclause if, without reasonable excuse, they contravene a direction under subclause (1).
- (5) A person who intentionally or recklessly contravenes a direction under subclause (1) is guilty of an offence.

Penalty: 2 years imprisonment.

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**27 When certain modifications of a company's constitution under an exemption or declaration take effect**

- (1) If the constitution of a company registered under clause 3 of the transition provisions was modified under an exemption or declaration made under clause 26 of the transition provisions, and that modification varies or cancels, or allows the variation or cancellation of:
  - (a) rights attached to shares in a class of shares; or
  - (b) rights of members in a class of members;the following provisions apply, and to the exclusion of section 246D if it would otherwise apply.
- (2) If the company is not required to lodge a copy of the modification with ASIC by or under any other provision of this Act, the company must lodge a copy of the modification with ASIC within 14 days of the modification being made.
- (3) If:
  - (a) members in the class do not all agree (whether by resolution or written consent) to the modification of the company's constitution; or
  - (b) the members in the class did not have an opportunity to vote on or consent to the modification;10% or more of the members in the class may apply to the Court to have the modification set aside.

Note: If a company has only 1 class of shares, all members are members of the class.
- (4) An application may only be made within 1 month after the modification is lodged.
- (5) The modification takes effect:
  - (a) if no application is made to the Court to have it set aside—1 month after the modification is lodged; or
  - (b) if an application is made to the Court to have it set aside—when the application is withdrawn or finally determined.



- (6) The members of the class who want to have the modification set aside may appoint 1 or more of themselves to make the application on their behalf. The appointment must be in writing.
- (7) The Court may set aside the modification if it is satisfied that it would unfairly prejudice the applicants. However, the Court must confirm the modification if the Court is not satisfied of unfair prejudice.
- (8) Within 14 days after the Court makes an order, the company must lodge a copy of it with ASIC.

## Part 5—Disclosure of the proposed demutualisation

### 29 Disclosure for proposed demutualisation

- (1) If:
- (a) a modification of the constitution of an unlisted company registered under clause 3 of the transfer provisions is proposed; and
  - (b) the unlisted company is a mutual entity; and
  - (c) the modification would have the effect that the unlisted company would cease to be a mutual entity;
- the following rules apply:
- (f) notice of the meeting of the company's members at which the proposed modification is to be considered must be accompanied by the documents listed in subclause (4);
  - (g) notice of the meeting may not be shortened under subsection 249H(2);
  - (h) the company must lodge with ASIC the notice and the documents referred to in paragraphs (4)(a) and (c) within 7 days after notice of the meeting is given.
- (3) ASIC may exempt a company from this Part under clause 30.
- (4) The documents that must accompany the notice are:
- (a) a disclosure statement that:
    - (i) satisfies clause 31; and
    - (ii) ASIC has registered under clause 32; and
  - (b) an estimate of the financial benefits (if any) the member will be offered if the proposed modification occurs; and
  - (c) a report by an expert that:
    - (i) states whether, in the expert's opinion, the proposed modification is in the best interests of the members of the company as a whole; and
    - (ii) gives the expert's reasons for forming that opinion; and

(iii) complies with subclauses 33(2) and (3).

(5) If the company contravenes subclause (1) it is not guilty of an offence.

(6) A person contravenes this subclause if they are involved in a contravention of subclause (1).

Note 1: This subclause is a civil penalty provision.

Note 2: Section 79 defines *involved*.

(7) A person commits an offence if they are involved in a contravention of subclause (1) and the involvement is dishonest.

Penalty:

(a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and

(b) for a body corporate—20,000 penalty units.

(8) In this clause:

*reserves* includes general reserves and retained earnings of the company.

*unlisted company* means a company (registered under clause 3) that does not have voting shares quoted on a prescribed financial market.

### **30 ASIC's exemption power**

(1) If ASIC is satisfied that a company is not a mutual entity, it may exempt the company from this Part.

(6) The exemption must be in writing and ASIC must publish notice of it in the *Gazette*.

### **31 Coverage of disclosure statement**

The disclosure statement must give all the information that members would reasonably require and expect to be given to make an informed decision about the proposed modification.

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**32 Registration of disclosure statement**

- (1) ASIC must register the disclosure statement if satisfied that the statement adequately sets out or explains the following (if relevant):
  - (a) the variation or cancellation of members' rights;
  - (b) that the proposed modification will allow the variation or cancellation of members' rights;
  - (d) what financial benefits (if any) members will be offered if the proposed modification occurs and why the benefits are considered to be appropriate;
  - (e) the basis upon which members' entitlement to the financial benefits will be determined, including:
    - (i) any minimum period of membership that a member must satisfy to receive benefits; or
    - (ii) whether members must pay an amount or provide other value to receive benefits;
  - (f) any preferential allocation of benefits to members, or a class of members, and how that allocation is to be determined;
  - (g) any benefits officers of the company (including retiring officers) may receive (whether directly or indirectly) in connection with the proposed modification;
  - (h) any other proposed changes to the company that are related to the proposed modification (for example, whether the company proposes to list its securities for quotation on a prescribed financial market or merge with another company);
  - (i) the new name of the company, if the company's name is to be changed in connection with the proposed modification, or that it is not proposed to change the company's name;
  - (j) the procedural steps required to vary or cancel the members' rights;
  - (l) how voting on the proposed modification will take place.
- (2) In deciding whether the disclosure statement adequately sets out or explains the matters in subclause (1), ASIC may also have regard to:

- (a) the readability of the statement; and
  - (b) whether the statement would be readily comprehensible by the members of the company concerned.
- (3) The disclosure statement must include a statement to the effect that registration of the disclosure statement:
- (a) is on the basis that the statement adequately sets out or explains the matters in subclause (1); and
  - (b) does not mean that ASIC has considered whether the proposed modification is in the best interests of the members of the company as a whole.
- (4) Subclause (1) does not limit clause 31.

### **33 Expert's report**

- (1) If the company obtains 2 or more reports each of which could be used for the purposes of paragraph 29(4)(c), a copy of each report must:
- (a) be lodged with ASIC; and
  - (b) be given to each member entitled to receive a disclosure statement.

Penalty: 6 months imprisonment.

- (2) The report must be by an expert who is not an associate of the company.
- (3) The report must set out details of:
- (a) any relationship between the expert and the company, including any circumstances in which the expert gives it advice, or acts on its behalf, in the proper performance of the functions attaching to the expert's professional capacity or business relationship with the company; and
  - (b) any financial or other interest of the expert that could reasonably be regarded as being capable of affecting the expert's ability to give an unbiased opinion; and

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- (c) any fee, payment or other benefit (whether direct or indirect) that the expert has received or will or may receive in connection with making the report.

**34 Unconscionable conduct in relation to demutualisations**

- (1) A person must not engage in:
  - (a) conduct that is, in all the circumstances, unconscionable; or
  - (b) conduct that is misleading or deceptive or is likely to mislead or deceive;in relation to:
  - (c) a modification of the constitution of an unlisted company that is a modification to which this Part applies; or
  - (d) anything done in reliance on, in conjunction with or in connection with the modification.
- (2) In determining whether a person has engaged in conduct that contravenes paragraph (1)(a), have regard to:
  - (a) whether the person, or someone acting for the person, exerted undue influence or pressure on, or used unfair tactics against, members of the company; and
  - (b) whether the person, or someone acting for the person, engaged in conduct that resulted in a member or someone else gaining, or being in a position to gain, a benefit that the members generally did not, or would not be in a position to, gain.This subclause does not limit subclause (1).
- (3) A person who contravenes subclause (1) is not guilty of an offence.

**35 Orders the Court may make**

- (1) Without limiting the Court's powers under Part 9.5, if the Court is satisfied that a person has engaged in conduct constituting a contravention of subclause 34(1), the Court may make 1 or more of the following orders:

- (a) an order requiring the person or a person involved in the contravention to disclose to the public, to a particular person or to a particular class of persons, in the manner specified in the order, specified information, or information of a specified kind, (being information that is in the possession of the person to whom the order is directed or to which that person has access);
- (b) an order requiring the person or a person involved in the contravention to publish, at their own expense, in a manner and at times specified in the order, advertisements the terms of which are specified in, or are to be determined in accordance with, the order;
- (c) any order that it thinks necessary or desirable:
  - (i) to protect the rights or interests of any person affected by the conduct; or
  - (ii) to ensure, as far as possible, that a proposed modification proceeds in the manner in which it would have proceeded if the conduct had not been engaged in;
- (d) without limiting the generality of paragraph (c):
  - (i) an order prohibiting the exercise of voting or other rights attached to specified shares; or
  - (ii) an order directing a company not to make payment, or to defer making payment, of any amount or amounts due from the company in respect of specified shares; or
  - (iii) an order prohibiting the acquisition or disposal of, or of an interest in, specified shares; or
  - (iv) an order directing the disposal of, or of an interest in, specified shares; or
  - (v) an order directing a company not to register a transfer or transmission of specified shares; or
  - (vi) an order that an exercise of the voting or other rights attached to specified shares be disregarded; or
  - (vii) an order directing a company not to issue shares to a person who holds shares in the company, being shares that were proposed to be issued to the person because the person holds shares in the company or pursuant to

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an offer or invitation made or issued to the person because the person holds shares in the company.

- (2) Without limiting the Court's powers under Part 9.5, if, in a proceeding, the Court is satisfied that:
- (a) a person has engaged in conduct constituting a contravention of subclause 34(1); and
  - (b) a member of the company has suffered, or is likely to suffer, loss or damage because of that conduct;
- the Court may make the orders that it thinks are appropriate to compensate the member (in whole or in part) or to prevent or reduce the loss or damage, including:
- (c) an order directing the person or a person who was involved in the contravention to refund money or return property to the member; and
  - (d) an order directing the person or a person who was involved in the contravention to pay to the member the amount of the loss or damage; and
  - (e) an order listed in paragraph (1)(d).
- (3) An application for an order under this clause may be made by ASIC or a member of the company.



## **Part 6—Continued application of fundraising provisions of the Friendly Societies Code**

### **36 Friendly Societies Code to apply to offers of interests in benefit funds**

- (1) The following apply as a law of the Commonwealth as from the transfer date:
  - (a) Divisions 2 and 3 of Part 4B of the Friendly Societies Code;
  - (b) Division 2 of Part 1, and Division 1 of Part 4B, of that Code to the extent to which they provide for the interpretation of terms used in the Divisions referred to in paragraph (a);
  - (c) sections 28, 29 and 128 of that Code to the extent to which they apply for the purposes of the Divisions referred to in paragraph (a);
  - (d) the regulations in force immediately before the transfer date under Part 4B of that Code to the extent to which they were made for the purposes of the provisions referred to in paragraphs (a), (b) and (c);
  - (e) standards adopted by that Code for the purposes of the provisions referred to in paragraphs (a), (b) and (c).
- (2) The provisions referred to in subclause (1) apply as if:
  - (a) references in the provisions to a society were references to a friendly society within the meaning of the *Life Insurance Act 1995*; and
  - (b) references to a benefit fund were references to an approved benefit fund within the meaning of the *Life Insurance Act 1995*; and
  - (c) references in the provisions to an SSA were references to ASIC; and
  - (d) references in the provisions to lodging a document were references to lodging the document with ASIC; and

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- (e) references in the provisions to the Code were references to this Act; and
  - (f) references in the provisions to Part 4B of the Code were references to the provisions applied by this clause; and
  - (g) references to a penalty of \$20,000 were references to a penalty of 200 penalty units; and
  - (h) references to a penalty of \$5,000 were references to a penalty of 50 penalty units; and
  - (i) references to a penalty of \$2,500 were references to a penalty of 30 penalty units; and
  - (j) references to a penalty of \$1,000 were references to a penalty of 30 penalty units; and
  - (k) subsection 135(2) of the Friendly Societies Code were omitted; and
  - (l) paragraph 137(1)(e) of the Friendly Societies Code were omitted and replaced with a provision that requires a disclosure document to contain any other information that ASIC requires to be included in the document; and
  - (m) subsection 137(3) of the Friendly Societies Code were omitted and replaced with a provision that requires each copy of a disclosure document to:
    - (i) state that the document has been lodged with ASIC; and
    - (ii) specify the date of lodgment; and
    - (iii) state that ASIC takes no responsibility as to the contents of the document.
- (3) If there is an inconsistency between:
- (a) the provisions of Division 2 of Part 1, or Division 1 of Part 4B, of the Friendly Societies Code; and
  - (b) the provisions of Chapter 1 of this Act;
- the provisions of the Code prevail for the purposes of interpreting the provisions applied by subclause (1).

## Part 7—Transitional provisions

### 37 Unclaimed money

- (1) On and from the transfer date, section 414 applies to a sum or other property that, immediately before the transfer date, is covered by section 414 as applied by:
  - (a) section 337 of the Financial Institutions Code of a State or Territory; or
  - (b) section 399 of the Friendly Societies Code of a State or Territory.
- (2) On and from the transfer date, section 544 applies to an amount of money that, immediately before the transfer date, is covered by section 544 as applied by:
  - (a) section 342 of the Financial Institutions Code of a State or Territory; or
  - (b) section 403 of the Friendly Societies Code of a State or Territory.
- (3) Sections 414 and 544, as applied by this clause, apply as if:
  - (a) references to Part 9.7 were references to the unclaimed money law of the State or Territory; and
  - (b) references to the Commission or ASIC were references to the Minister administering the unclaimed money law of the State or Territory.
- (4) In this clause:

***unclaimed money law*** means:

  - (a) the *Unclaimed Money Act 1995* of New South Wales; or
  - (b) the **Unclaimed Moneys Act 1962** of Victoria; or
  - (c) Part 8 of the *Public Trustee Act 1978* of Queensland; or
  - (d) the *Unclaimed Money Act 1990* of Western Australia; or
  - (e) the *Unclaimed Moneys Act 1891* of South Australia; or

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- (f) the *Unclaimed Moneys Act 1918* of Tasmania; or
- (g) the *Unclaimed Moneys Act 1950* of the Australian Capital Territory; or
- (h) the *Companies (Unclaimed Assets and Moneys) Act* of the Northern Territory.

**38 Modification by regulations**

- (1) The regulations may modify the operation of this Act (including the provisions applied by clause 36) in relation to:
  - (a) a company registered under clause 3; or
  - (b) a company that is permitted to use the expression ***building society, credit union*** or ***credit society*** under section 66 of the *Banking Act 1959*; or
  - (c) a company that is a friendly society for the purposes of the *Life Insurance Act 1995*; or
  - (d) a specified class of any of those companies.
- (2) Regulations made for the purposes of this clause may only modify this Act in relation to the following matters:
  - (a) issuing, cancelling or redeeming membership shares or redeemable preference shares;
  - (b) inspection of the register of members required by section 169;
  - (c) giving notice of a meeting of a company's members;
  - (d) members' rights to request the directors to hold a general meeting or to move a resolution at a general meeting;
  - (e) issuing share certificates for membership shares or redeemable preference shares, or numbering those shares;
  - (f) the publication of the names and addresses of members in the annual return;
  - (g) the report to members required by section 314;
  - (h) disposing of securities in a company if the whereabouts of the holder of the securities is unknown as described in section 1343;

- (i) the treatment of members who hold shares jointly or who have jointly given a guarantee;
  - (j) selective buy-backs.
- (3) Regulations made for the purposes of this clause may not:
- (a) create an offence with a penalty greater than 10 penalty units; or
  - (b) increase the penalty for an existing offence; or
  - (c) substitute for an existing offence an offence with a penalty greater than the penalty for the existing offence; or
  - (d) modify an obligation, contravention of which will result in committing an offence, so as to make it more difficult to comply with.

### **39 Regulations may deal with transitional, saving or application matters**

- (1) The regulations may deal with matters of a transitional, saving or application nature relating to:
- (a) the transfer of the registration of transferring financial institutions to this Act; or
  - (b) the amendments made by Schedule 3 to the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*.
- (2) Without limiting subclause (1), the regulations may provide for a matter to be dealt with, wholly or partly, in any of the following ways:
- (a) by applying (with or without modifications) to the matter:
    - (i) provisions of a law of the Commonwealth, or of a State or Territory; or
    - (ii) provisions of a repealed or amended law of the Commonwealth, or of a State or Territory, in the form that those provisions took before the repeal or amendment; or
    - (iii) a combination of provisions referred to in subparagraphs (i) and (ii);

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- (b) by otherwise specifying rules for dealing with the matter;
  - (c) by specifying a particular consequence of the matter, or of an outcome of the matter, for the purposes of this Act.
- (3) Without limiting subclause (1) or (2), the regulations may provide for the continued effect, for the purposes of this Act, of a thing done or instrument made, or a class of things done or instruments made, before the transfer date under or for the purposes of a provision of a previous governing Code of a transferring financial institution of a State or Territory. In the case of an instrument, or class of instruments, the regulations may provide for the instrument or instruments to continue to have effect subject to modifications.
- (4) Without limiting subclause (3), regulations providing for the continued effect of things done or instruments made may permit all or any of the following matters to be determined in writing by a specified person, or by a person in a specified class of persons:
- (a) the identification of a thing done or instrument made, or a class of them, that is to continue to have effect;
  - (b) the purpose for which a thing done or instrument made, or a class of them, is to continue to have effect;
  - (c) any modifications subject to which an instrument made, or a class of instruments made, is to continue to have effect.
- (5) Without limiting subclause (1) or (2), the regulations may provide for the application of Chapter 5 of this Act or a similar law about external administration (in whole or in part and with or without modification) to a transferring financial institution of a State or Territory if, immediately before the transfer date:
- (a) the institution is under external administration (however described); and
  - (b) the provisions of Chapter 5 are not already applied to it, or in relation to it, by a law of the State or Territory.
- (6) In this clause, a reference to a **law**, whether of the Commonwealth or of a State or Territory, includes a reference to an instrument made under such a law.