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Chapter 8—The Futures Industry

Part 8.1—Interpretation

1120 Business rules: futures association

For the purposes of this Chapter, the business rules of a body corporate that is, or proposes to be, a futures association are such of the rules, regulations and by-laws made by the body or contained in its constitution as govern the activities and conduct of the body and its members in relation to the body's operation as a futures association.

1121 Business rules: clearing house

For the purposes of this Chapter, the business rules of a body corporate that provides, or proposes to provide, clearing house facilities for a futures market are such of the rules, regulations and by-laws made by the body or contained in its constitution as govern:

- (a) the activities and conduct of the body and its members; and
- (b) the activities and conduct of other persons in relation to the body's provision of clearing house facilities for a futures market.

1122 Business rules: futures exchange

For the purposes of this Chapter, the business rules of a body corporate that conducts, or proposes to establish or conduct, a futures market are such of the rules, regulations and by-laws made by the body corporate or contained in its constitution as govern:

- (a) the activities and conduct of the body and its members; and

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- (b) the activities and conduct of each clearing house for the body; and
- (c) the activities and conduct of other persons in relation to each futures market run by the body.

Part 8.2—Futures exchanges, clearing houses and futures associations

Division 1—Futures exchanges and exempt futures markets

1123 Conducting unauthorised futures markets

A person must not establish or conduct, assist in establishing or conducting, or hold out that the person conducts, an unauthorised futures market.

1126 Approval of futures exchange

- (1) A body corporate may apply to ASIC in writing for approval by the Minister as a futures exchange.
- (2) Where a body applies under subsection (1) of this section, the Minister may by writing approve the body as a futures exchange if, and only if, he or she is satisfied that:
 - (c) the body's business rules make satisfactory provision:
 - (i) for the admission as members of persons licensed, or proposing to apply to be licensed, under Part 8.3, or of a specified class of such persons; and
 - (ii) for the qualifications for membership, including the necessary standards of training and experience for:
 - (A) responsible officers of bodies corporate that;
and
 - (B) natural persons who;
are, or propose to be, members;
 - (iii) for the manner in which members are to conduct their business of dealing in futures contracts so as to ensure efficiency, honesty and fair practice in relation to such dealing; and

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Part 8.2 Futures exchanges, clearing houses and futures associations

Division 1 Futures exchanges and exempt futures markets

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- (iiia) for the exclusion of a body corporate from membership where a responsible officer of the body corporate would be excluded from membership; and
- (iv) for the exclusion of a person from membership where:
 - (A) if the person is a body corporate—a responsible officer, or an employee, of the body corporate; or
 - (B) otherwise—the person or an employee of the person;is not of good character and high business integrity; and
- (v) for the expulsion, suspension or disciplining of a member for conduct inconsistent with just and equitable principles in the transaction of business or for a contravention of the body's business rules or of this Chapter; and
- (vi) for an appropriate mechanism whereby a person whose application for membership of the body is refused, or whose membership of the body is cancelled or suspended, in circumstances where the person does not have a right to appeal to the Court under subsection 1135(1) against the decision to refuse the application, or to cancel or suspend the membership, as the case may be, may appeal against the decision; and
- (vii) for an appropriate mechanism whereby a person who has been disciplined by the body otherwise than by way of cancellation or suspension of the person's membership of the body may appeal against the decision to discipline the person; and
- (viii) for the inspection and audit of the financial records that this Chapter requires members to keep; and
- (ix) with respect to the classes of futures contracts that may be dealt in by members; and
- (xi) prohibiting a member from accepting or executing, otherwise than in accordance with the business rules, instructions from another person to deal in futures contracts; and

- (xii) prohibiting a member from dealing in futures contracts on behalf of another person otherwise than in accordance with instructions accepted by the member from the person; and
 - (xiii) prohibiting a member from dealing in futures contracts, on behalf of another person, on a futures market of a futures exchange or of a recognised futures exchange, otherwise than in accordance with the business rules of the futures exchange or recognised futures exchange, as the case may be; and
 - (xiv) prohibiting a member, except as permitted by the business rules, from executing the instructions of another person to deal in futures contracts unless the instructions are executed in such a manner that the dealing is effected on a futures market of a futures exchange or of a recognised futures exchange or on an exempt futures market; and
 - (xv) with respect to the conditions under which members may deal in futures contracts; and
 - (xvi) for the equitable and expeditious settlement of claims and grievances between members, being claims and grievances relating to the transaction of business by members in their capacity as members; and
 - (xvii) for appropriate mechanisms for the conciliation and settlement of disputes between members and their clients, being disputes concerning dealings in futures contracts by members on behalf of their clients or concerning transactions between members and their clients in connection with such dealings; and
 - (xviii) generally for carrying on the business of the proposed futures exchange with due regard for the interests and protection of the public; and
- (d) there will be enough money in the body's fidelity fund to make the payments out of the fund that may reasonably be expected to be necessary for the purposes of Part 8.6; and
- (e) the interests of the public will be served by granting the application.

Section 1127

1127 Exempt futures market

- (1) The Minister may by writing declare a specified futures market to be, subject to any specified conditions, an exempt futures market.
- (1A) A person must not contravene a condition specified in a declaration in force under this section.
- (1B) If a person has contravened a condition specified in a declaration in force under this section, the Court may, on ASIC's application, order the person to comply with the condition.
- (2) Without limiting the matters to which the Minister may have regard in considering whether to vary or revoke a declaration in force under this section, he or she may, in so considering, have regard to a breach of a condition specified in the declaration.

Division 2—Clearing houses

1128 When a person may provide clearing house facilities

A person must not provide, or hold out that the person provides, clearing house facilities for a futures market (other than an exempt futures market) unless:

- (a) the futures market is conducted by a futures exchange; and
- (b) the person is a body corporate; and
- (c) an approval of the person under section 1131 as a clearing house for that futures exchange is in force.

1131 Approval of clearing house

- (1) A body corporate that proposes to provide clearing house facilities for a futures market of a futures exchange may apply to ASIC in writing for approval by the Minister as a clearing house for that futures exchange.
- (2) Where a body applies under subsection (1), the Minister may by writing approve the body as a clearing house for the futures exchange if, and only if, he or she is satisfied that:
 - (b) the body's business rules are satisfactory, in particular such of those business rules as relate to the registration of futures contracts made on a futures market of the futures exchange; and
 - (c) the body's business rules make satisfactory provision for the expulsion, suspension or disciplining of members for a contravention of the business rules or for a contravention of this Chapter; and
 - (d) the interests of the public will be served by granting the application.
- (3) Without limiting the matters to which the Minister may have regard in considering an application under subsection (1), he or she may, in considering the application, have regard to any business rules of the applicant that relate to the guaranteeing, to members of

Chapter 8 The Futures Industry

Part 8.2 Futures exchanges, clearing houses and futures associations

Division 2 Clearing houses

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the applicant, of the performance of futures contracts made on a futures market of the futures exchange.

Division 3—Futures associations

1132 Approval of futures association

- (1) A body corporate that proposes to be a futures association may apply to ASIC in writing for approval by the Minister as a futures association.
- (2) Where a body applies under subsection (1), the Minister may by writing approve the body as a futures association if, and only if, he or she is satisfied:
 - (c) that the body's nature is such that the body may properly exercise its functions as a futures association, being the functions of:
 - (i) regulating the association's affairs in the interests of the public; and
 - (ii) administering and enforcing the association's business rules; and
 - (d) that the body's business rules make satisfactory provision:
 - (i) for the admission as members of persons licensed, or proposing to apply to be licensed, under Part 8.3, or of a specified class of such persons; and
 - (ii) for the qualifications for membership, including the necessary standards of training and experience for:
 - (A) responsible officers of bodies corporate that; and
 - (B) natural persons who; are, or propose to be, members; and
 - (iii) for the manner in which members are to conduct their business of dealing in futures contracts so as to ensure efficient, honest and fair practices in relation to such dealing; and
 - (iiia) for the exclusion of a body corporate from membership where a responsible officer of the body corporate would be excluded from membership; and
 - (iv) for the exclusion of a person from membership where:

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- (A) if the person is a body corporate—a responsible officer, or an employee, of the body corporate; or
 - (B) otherwise—the person or an employee of the person;
- is not of good character and high business integrity; and
- (v) for the expulsion, suspension or disciplining of a member for conduct inconsistent with just and equitable principles in the transaction of business or for a contravention of the body’s business rules or of this Chapter; and
 - (vi) for an appropriate mechanism whereby a person whose application for membership of the body is refused, or whose membership of the body is cancelled or suspended, in circumstances where the person does not have a right to appeal to the Court under subsection 1135(1) against the decision to refuse the application, or to cancel or suspend the membership, as the case may be, may appeal against the decision; and
 - (vii) for an appropriate mechanism whereby a person who has been disciplined by the body otherwise than by way of cancellation or suspension of the person’s membership of the body may appeal against the decision to discipline the person; and
 - (viii) for the inspection and audit of the financial records that this Chapter requires members to keep; and
 - (x) prohibiting a member from accepting or executing, otherwise than in accordance with the business rules, instructions from another person to deal in futures contracts; and
 - (xi) prohibiting a member from dealing in futures contracts on behalf of another person otherwise than in accordance with instructions accepted by the member from the person; and
 - (xii) prohibiting a member from dealing in futures contracts, on behalf of another person, on a futures market of a futures exchange or of a recognised futures exchange,

- otherwise than in accordance with the business rules of the futures exchange or recognised futures exchange, as the case may be; and
- (xiii) prohibiting a member, except as permitted by the business rules, from executing the instructions of another person to deal in futures contracts unless the instructions are executed in such a manner that the dealing is effected on a futures market of a futures exchange or of a recognised futures exchange or on an exempt futures market; and
 - (xiv) for the equitable and expeditious settlement of claims and grievances between members, being claims and grievances relating to the transaction of business by members in their capacity as members; and
 - (xv) for appropriate mechanisms for the conciliation and settlement of disputes between members and their clients, being disputes concerning dealings in futures contracts by members on behalf of their clients or concerning transactions between members and their clients in connection with such dealings;
- (e) if the body is expected to be a futures organisation within the meaning of Part 8.6—that:
- (i) there will be enough money in the body's fidelity fund to make the payments out of the fund that may reasonably be expected to be necessary for the purposes of Part 8.6; or
 - (ii) the body will enter into a contract, in a form approved by the Minister, with an insurer approved by the Minister, under which the insurer undertakes to supplement the fund, if a claim is made on the fund, so that the total amount available to satisfy the claim will be not less than an amount so approved; and
- (f) that the interests of the public will be served by granting the application.

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1133 Suspension or cancellation of approval

- (1) The Minister may cause to be served on a body corporate a written notice requiring the body to show cause, at a hearing before a specified person, why the body's approval as a futures association should not be suspended or cancelled on specified grounds.
- (2) A notice under subsection (1) must specify, and give reasonable notice of, the time and place at which the hearing is to occur, but the specified person may, with the body's consent, fix a different time, a different place, or both, for the hearing.
- (3) Where a notice is served under subsection (1), the specified person must, after giving the body an opportunity to be heard at the hearing, submit to the Minister a report about the hearing and a recommendation about the matters to which the notice related.
- (4) After considering a report and recommendation under subsection (3), the Minister may:
 - (a) decide to take no further action in relation to the matter; or
 - (b) by writing, suspend for a specified period, or cancel, the body's approval as a futures association.
- (5) A body corporate is taken not to be a futures association at any time during a period for which the body's approval as a futures association is suspended.
- (6) A body corporate's approval as a futures association must not be suspended or cancelled except under this section.

Division 4—General

1134 Publication of certain instruments

ASIC must cause a copy of an instrument executed under subsection 1126(2), 1127(1), 1131(2), 1132(2) or 1133(4) to be published in the *Gazette*.

1135 Appeal to the Court against certain decisions of futures exchanges and futures associations

- (1) Where a body corporate, being a futures exchange or futures association:
 - (a) decides, at a time when a person is a member of no futures organisation, to refuse an application by the person for membership of the body corporate; or
 - (b) decides, at a time when a person is a member of no other futures organisation, to suspend or cancel the person's membership of the body corporate;the body corporate must, within 14 days after so deciding, give to the person, and to ASIC, a notice in writing setting out the decision and the reasons for the decision, and the person may, within the period of 21 days beginning when the notice is so given or within that period as extended by the Court, appeal to the Court against the decision by filing a written notice of appeal.
- (2) A person whose membership of a futures organisation is suspended for a period:
 - (a) is taken, for the purposes of paragraph (1)(a), to be a member of that futures organisation throughout that period; and
 - (b) is taken, for the purposes of paragraph (1)(b), not to be a member of that futures organisation at any time during that period.
- (3) A person must, on the day on which the person files a notice of appeal with the Court under subsection (1), lodge a copy of the notice.

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- (4) Where a body corporate decides as mentioned in paragraph (1)(b), then:
- (a) subject to paragraph (c) of this subsection and to subsection (6), the decision takes effect at the end of the day on which a notice relating to the decision is given by the body corporate in accordance with subsection (1); and
 - (b) if the person to whom the decision relates appeals to the Court under subsection (1) against the decision—the Court may, at any time before it determines the appeal, make such order as it thinks fit concerning the effect, pending determination of the appeal, of the decision, including, without limiting the generality of the foregoing, an order that is subject to conditions specified in the order; and
 - (c) an order made by the Court under paragraph (b) has effect accordingly.
- (5) The Court may, after hearing an appeal under subsection (1), dismiss the appeal or:
- (a) in the case of an appeal against a decision to refuse an application for membership—decide that the application should be granted, or should be granted subject to specified conditions; or
 - (b) in the case of an appeal against a decision to suspend for a period a person's membership—decide that the person's membership:
 - (i) should not be suspended; or
 - (ii) should be suspended for a specified lesser period; or
 - (c) in the case of an appeal against a decision to cancel a person's membership—decide that the person's membership:
 - (i) should not be cancelled; or
 - (ii) should not be cancelled, but should be suspended for a specified period.
- (6) Where, on an appeal against a decision of a body corporate, the Court decides as mentioned in paragraph (5)(a), (b) or (c), then, as from the day on which the appeal is decided:
- (a) the first-mentioned decision ceases to have effect; and

- (b) the decision of the Court has effect, except for the purposes of subsection (1), as a decision of the body corporate and takes effect accordingly.

1136 ASIC to be notified of amendments of business rules

- (1) Where an amendment is made by way of rescission or alteration of, or addition to, the business rules of a futures exchange, of a clearing house for a futures exchange, or of a futures association, the futures exchange, clearing house or futures association, as the case may be, must, forthwith after the making of the amendment, give written notice of the amendment to ASIC.
- (2) A notice under subsection (1) must:
 - (a) set out the text of the amendment to which it relates; and
 - (b) specify the date on which the amendment was made; and
 - (c) contain an explanation of the purpose of the amendment.
- (3) If a notice required by subsection (1) to be given in relation to an amendment is not given within 21 days after the making of the amendment, the amendment ceases to have effect.
- (4) Where ASIC receives a notice under this section, ASIC must forthwith send a copy of the notice to the Minister.
- (5) The Minister may, within 28 days after the receipt by ASIC of a notice under this section, disallow the whole or a specified part of the amendment to which the notice relates.
- (6) Where the Minister disallows under this section the whole or a part of an amendment of the business rules of a body corporate, ASIC must forthwith give notice of the disallowance to the body corporate and, upon receipt by the body corporate of the notice of disallowance, the amendment ceases, to the extent of the disallowance, to have effect.

1137 Orderly markets in futures contracts—functions and powers of futures exchanges and clearing houses

- (1) A futures exchange, and a clearing house for a futures exchange, must, to the extent that it is reasonably practicable to do so, take all steps, and do all things, necessary to ensure an orderly and fair market for dealings in futures contracts on a futures market of the futures exchange.
- (2) A futures exchange may, for the purpose of performing its functions under subsection (1), give to a person who is not a member of the futures exchange but in whose name a futures contract entered into on a futures market of the futures exchange is registered a direction:
 - (a) to do a particular act or thing; or
 - (b) to refrain from doing a particular act or thing.
- (3) A person must comply with a direction given to the person in accordance with subsection (2), but a person who contravenes this subsection is not guilty of an offence.

1138 Orderly markets in futures contracts—ASIC's powers

- (1) Subject to subsections (2) and (6), ASIC may, in relation to a futures market of a futures exchange, give a direction in writing to the futures exchange:
 - (a) to close the futures market; or
 - (b) to suspend dealing on the futures market in a specified class of futures contracts; or
 - (c) to limit transactions on the futures market to the closing out of futures contracts; or
 - (d) to defer for a specified period the completion date for all futures contracts, or for a specified class of futures contracts, made on the futures market; or
 - (e) to cause a specified futures contract made on the futures market, or each futures contract included in a specified class of futures contracts so made, to be:

- (i) closed out forthwith as the result of the matching up of the futures contract with a futures contract of the same kind whose price or value is equal to a price or value determined by the futures exchange; or
 - (ii) invoiced back to a specified date at a price or value determined by the futures exchange; or
 - (f) to require a futures contract made on the futures market, or each futures contract included in a specified class of futures contracts so made, to be discharged by:
 - (i) the tendering of a merchantable lot of a commodity determined by the futures exchange, being a commodity of a quality or standard that is:
 - (A) different from the quality or standard of the commodity specified in the futures contract; and
 - (B) determined by the futures exchange; and
 - (ii) the tendering of a price adjusted by an amount that is:
 - (A) appropriate having regard to the quality or standard of the commodity referred to in subparagraph (i); and
 - (B) determined by the futures exchange; or
 - (g) to require a member of the futures exchange to act in a specified manner in relation to dealings in futures contracts on the futures market, or in relation to a specified class of such dealings.
- (2) ASIC must not give a direction under subsection (1) in relation to a futures market of a futures exchange unless:
- (a) it has determined that a direction should be so given because it is of the opinion that:
 - (i) subsection 1137(1) has not been complied with in relation to that futures market; and
 - (ii) it is necessary to protect the interests of persons on behalf of whom futures contracts are or may be dealt with on that futures market; and
 - (iii) it would be in the public interest for a direction to be so given; and
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- (b) it has given to the futures exchange a notice in writing stating that it has formed that opinion and specifying:
 - (i) its reasons for forming that opinion; and
 - (ii) the direction that it considers should be so given; and
 - (iii) a time, or a date and time, before which it will not so give the direction; and
 - (c) it has given a copy of the notice to each clearing house for that futures market; and
 - (d) the direction is so given after the time, or date and time, as the case may be, specified pursuant to subparagraph (b)(iii).
- (3) ASIC must, before determining in relation to a futures market of a futures exchange as mentioned in paragraph (2)(a), consult the futures exchange and each clearing house for that futures market.
- (4) A failure by ASIC to comply with subsection (3) does not affect the validity of:
- (a) a determination under paragraph (2)(a); or
 - (b) a direction given under subsection (1) pursuant to such a determination.
- (5) ASIC must, as soon as practicable after giving a notice under paragraph (2)(b) in relation to a futures market of a futures exchange:
- (a) give to the Minister a copy of the notice and a written report setting out the reasons for the giving of the notice; and
 - (b) give a copy of the report to the futures exchange; and
 - (c) give a copy of the report to each clearing house for that futures market.
- (6) ASIC must not give a direction under subsection (1) in relation to a futures market of a futures exchange if:
- (a) the Minister has directed ASIC not to give the direction; or
 - (b) the futures exchange has acted as if the direction had been given.
- (7) ASIC must, as soon as practicable after giving a direction under subsection (1) in relation to a futures market of a futures exchange:

- (a) give to the Minister a copy of the direction; and
 - (b) give to each clearing house for that futures market:
 - (i) a copy of the direction; and
 - (ii) a direction in writing prohibiting the clearing house from acting in a manner inconsistent with, and requiring the clearing house to do all that it is reasonably capable of doing to give effect to, the direction under subsection (1) while the last-mentioned direction remains in force.
- (8) The Minister may determine in writing the period throughout which a particular direction under subsection (1) is to remain in force.
- (9) A direction given under subsection (1) remains in force:
- (a) in a case where a determination under subsection (8) is in force—throughout the period specified in the determination; or
 - (b) in any other case—unless sooner revoked, until the end of the period of 21 days, or such shorter period (if any) as is specified in the direction, commencing when the direction is given.
- (10) A futures exchange must not, while a direction given under subsection (1) in relation to a futures market of the futures exchange remains in force, fail to comply with the direction.
- (11) A clearing house for a futures exchange must not fail to comply with a direction given to the clearing house under subparagraph (7)(b)(ii).
- (12) A document may be given to a person under this section by sending to the person, by telegraph, telex, facsimile service or other similar means of communication, a message to the effect of the document.

1139 Futures exchanges and others to assist ASIC

- (1) A futures exchange, a clearing house for a futures exchange, and a futures association, must each provide such assistance to ASIC, or to a person acting on behalf of, or with the authority of, ASIC, as ASIC reasonably requires for the performance of its functions under this Chapter.
- (2) Where:
 - (a) a body corporate, being a futures exchange, a clearing house for a futures exchange, or a futures association, decides to reprimand, fine, suspend, expel or otherwise take disciplinary action against, a member of the body corporate; and
 - (b) subsection 1135(1) does not require the body corporate to give to ASIC a notice relating to the decision;the body corporate must, within 14 days after so deciding, give to ASIC a notice in writing setting out particulars of the name of the member, the decision, the reasons for the decision and, in the case of a decision to fine a member, the amount of the fine.
- (2A) A futures exchange, a clearing house for a futures exchange or a futures association that believes that a person has committed, is committing or is about to commit a serious contravention of its business rules, or this Act, must, as soon as practicable, lodge a statement setting out:
 - (a) particulars of the contravention that it believes the person has committed, is committing or is about to commit; and
 - (b) its reasons for that belief.
- (3) Where a clearing house for a futures exchange:
 - (a) refuses to register a dealing in a futures contract; or
 - (b) closes out a futures contract because of a failure to meet a call for deposit or margin;it must forthwith give ASIC particulars of its action.
- (4) A person authorised by ASIC is entitled at all reasonable times to full and free access for any of the purposes of this Act to the trading floor of a futures market of a futures exchange.

- (5) A person who refuses or fails, without lawful excuse, to allow a person authorised by ASIC access in accordance with subsection (4) to the trading floor of a futures market of a futures exchange contravenes this subsection.

1140 Power of Court to order observance or enforcement of business rules of futures exchange, clearing house or futures association

Where a person who is under an obligation to comply with, observe, enforce or give effect to the business rules of a futures exchange, of a clearing house for a futures exchange, or of a futures association, fails to comply with, observe, enforce or give effect to those rules, the Court may, on the application of the futures exchange, clearing house or futures association, as the case may be, of ASIC, or of a person aggrieved by the failure, and after giving to the person against whom the order is sought an opportunity of being heard, make an order giving directions to the last-mentioned person concerning compliance with, observance or enforcement of, or giving effect to, those rules.

1141 Gaming and wagering laws not applicable to certain futures contracts and Chapter 8 agreements

- (1) Despite any law of a State or Territory in this jurisdiction about gaming or wagering:
- (a) a person may enter into a futures contract:
 - (i) on a futures market of a futures exchange or of a recognised futures exchange; or
 - (ii) on an exempt futures market; or
 - (iii) as permitted by the business rules of a futures association, of a futures exchange or of a recognised futures exchange; and
 - (b) the contract is valid and enforceable.
- (2) Despite any law of a State or Territory in this jurisdiction about gaming or wagering:

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- (a) a person may enter into a Chapter 8 agreement of a kind prescribed for the purposes of paragraph 72A(1)(b); and
- (b) the agreement is valid and enforceable.

1141A Qualified privilege in respect of disciplinary proceedings

- (1) In this section:

disciplinary proceeding, in relation to a futures organisation, means:

- (a) a proceeding under the business rules of the futures organisation that may result in the disciplining of a member of the futures organisation; or
- (b) an appeal under the business rules of the futures organisation from a proceeding of a kind referred to in paragraph (a).

disciplining, in relation to a member of a futures organisation, includes expulsion from, or suspension of, membership of the futures organisation.

member, in relation to a futures organisation, includes a person who is under an obligation to comply with or enforce the business rules of the futures organisation.

- (2) A futures organisation, or a member, officer or employee of a futures organisation, has qualified privilege in respect of a statement made by a person, orally or in writing, in the course of, or otherwise for the purposes of or in connection with, a disciplinary proceeding of the futures organisation.
- (3) A person has qualified privilege in respect of the publication of:
- (a) a statement made by a person, orally or in writing, in the course of, or otherwise for the purposes of or in connection with; or
 - (b) a document prepared, given or produced by a person, in the course of, or otherwise for the purposes of or in connection with;
- a disciplinary proceeding of a futures organisation.

Part 8.3—Participants in the futures industry

Division 1—Futures brokers and futures advisers

1142 Futures brokers

A person must not:

- (a) deal in a futures contract on another person's behalf; or
 - (b) hold out that the person carries on a futures broking business;
- unless the first-mentioned person holds a futures brokers licence or is an exempt broker.

1143 Futures advisers

A person must not:

- (a) carry on a futures advice business; or
 - (b) hold out that the person is a futures adviser;
- unless the person is a licensee or an exempt futures adviser.

1144 Application for a licence

- (1) A person may apply to ASIC, in the prescribed form and manner, for a futures brokers licence or a futures advisers licence.
- (2) ASIC may require an applicant for a licence to give ASIC such further information in relation to the application as ASIC thinks necessary.

1144A Grant of licence to natural person

- (1) This section applies where a natural person applies for a licence.
- (2) ASIC must grant the licence if:
 - (a) the application was made in accordance with section 1144; and
 - (b) the person is not an insolvent under administration; and

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- (c) if the application is for a futures brokers licence—the person is a member of a futures organisation; and
 - (d) ASIC is satisfied that the person’s educational qualifications and experience are adequate having regard to the nature of the duties of a holder of a licence of the kind applied for; and
 - (e) ASIC has no reason to believe that the person is not of good fame and character; and
 - (f) ASIC has no reason to believe that the person will not perform those duties efficiently, honestly and fairly.
- (3) Otherwise, ASIC must refuse the application.
- (4) In determining whether or not it has reason to believe as mentioned in paragraph (2)(e) or (f), ASIC must have regard to any conviction of the person, during the 10 years ending on the day of the application, of serious fraud.

1145 Grant of licence to body corporate

- (1) This section applies where a body corporate applies for a licence.
- (2) ASIC must grant the licence if:
- (a) the application was made in accordance with section 1144; and
 - (c) the applicant is not an externally-administered body corporate; and
 - (d) if the application is for a futures brokers licence—the applicant is a member of a futures organisation; and
 - (e) ASIC is satisfied that the educational qualifications and experience of each responsible officer of the applicant are adequate having regard to the duties that the officer would perform in connection with the holding of the licence; and
 - (f) ASIC has no reason to believe that the applicant will not perform efficiently, honestly and fairly the duties of a holder of a licence of the kind applied for.
- (3) Otherwise, ASIC must refuse the application.

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- (4) In determining whether or not it has reason to believe as mentioned in paragraph (2)(f), ASIC must have regard, in relation to each responsible officer of the applicant, to:
- (a) whether or not the officer is an insolvent under administration; and
 - (b) any conviction of the officer, during the 10 years ending on the day of the application, of serious fraud; and
 - (c) any reason ASIC has to believe that the officer is not of good fame and character; and
 - (d) any reason ASIC has to believe that the officer will not perform efficiently, honestly and fairly the duties that the officer would perform in connection with the holding of the licence.

1145A Effect of certain provisions

- (1) Sections 1144A and 1145 apply subject to sections 1199A, 1200 and 1202 and the regulations.
- (2) Nothing in subsection 1144A(4) or 1145(4) limits the matters to which ASIC may have regard:
 - (a) in deciding on an application for a licence; or
 - (b) in connection with performing or exercising any other function or power under this Part.

1147 Conditions of licence: general

A licence is subject to:

- (a) such conditions and restrictions as are prescribed; and
- (b) subject to section 1200, such conditions and restrictions as ASIC imposes when granting the licence or while it is in force.

1148 Conditions of futures brokers licence: membership of futures organisation

- (1) A futures brokers licence is subject to:

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- (a) a condition that the licensee be, throughout the currency of the licence, a member of a futures organisation; and
 - (b) a condition that the licence is suspended throughout a period throughout which the licensee:
 - (i) is a member of no futures organisation; and
 - (ii) would, but for the suspension of the licensee's membership of a futures organisation, be a member of the last-mentioned futures organisation.
- (2) A person whose membership of a futures organisation is suspended for a period:
- (a) is, for the purposes of paragraph (1)(a), a member of that futures organisation throughout that period; and
 - (b) is, for the purposes of paragraph (1)(b), a member of that futures organisation at no time during that period.

1149 Conditions of futures brokers licence: assets and liabilities

- (1) Without limiting the generality of section 1147, one or more of the following may be imposed under that section on a futures brokers licence:
- (a) a condition or restriction about limiting the liability that the licensee may incur in connection with a business of dealing in futures contracts;
 - (b) a condition or restriction about incurring, or a condition about disclosing, liabilities of the licensee that arise otherwise than in connection with such a business;
 - (c) a condition or restriction about the licensee's financial position, whether or not in relation to such a business;
 - (d) without limiting the generality of paragraph (c), a condition that the licensee's assets include, or not include, specified assets;
 - (e) without limiting the generality of paragraph (c), a condition that the sum of the values of specified assets included in the licensee's assets be not less than, or not greater than, an amount ascertained in accordance with the condition.

- (2) A condition imposed by virtue of paragraph (1)(e) may provide for the values of assets to be ascertained, for the purposes of applying the condition, in a manner specified in, or determined in accordance with, the condition.
- (3) Without limiting the generality of paragraph (1)(e), a condition imposed by virtue of that paragraph may provide for the amount referred to in that paragraph to be a specified percentage of the sum of:
 - (a) the values of all the licensee's assets; or
 - (b) the values of specified assets included in the licensee's assets; or
 - (c) the amounts of all the licensee's liabilities; or
 - (d) the amounts of specified liabilities included in the licensee's liabilities.

1150 Conditions of licence: supervision of representatives

Without limiting the generality of section 1147, one or more of the following may be imposed under that section on a licence:

- (a) a condition about what the licensee is to do to, by way of supervision or otherwise, in order to prevent the licensee's representatives from contravening:
 - (i) a futures law; or
 - (ii) other conditions of the licence;
- (b) a condition about what the licensee is to do to ensure that each representative of the licensee has adequate qualifications and experience having regard to what the representative will do on the licensee's behalf in connection with a futures broking business or futures advice business carried on by the licensee.

1151 Revocation and variation of licence conditions

Subject to section 1200, ASIC may at any time revoke or vary a condition of a licence unless it was imposed by the regulations.

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1152 Futures organisations to be informed about conditions of futures brokers licence

- (1) As soon as practicable after imposing a condition on, or revoking or varying a condition of, a futures brokers licence, ASIC must inform in writing:
 - (a) each futures organisation of which the licensee is a member; and
 - (b) each corporation that is a clearing house for a futures exchange of which the licensee is a member.
- (2) A contravention of subsection (1) does not affect the validity of an act done by ASIC.

1153 Licensee to notify breach of licence condition

- (1) Within one business day after the happening of an event constituting a contravention of a condition of a licence held by a corporation, the licensee must give to:
 - (a) ASIC; and
 - (b) each futures organisation of which the licensee is a member; a written notice setting out particulars of the event.
- (2) It is a defence to a prosecution for failing to give a particular notice to a person as required by this section if it is proved that:
 - (a) when the requirement arose, the defendant was unaware of the event that gave rise to the requirement; and
 - (b) the defendant:
 - (i) did not become aware of the event before the date of the information; or
 - (ii) did become so aware before that date but gave the notice to that person as soon as reasonably practicable after becoming so aware.

1154 ASIC may require licensed futures broker to give information

- (1) ASIC may, by writing given to the holder of a futures brokers licence, direct the holder to give ASIC specified information about,

or a specified statement relating to, a business of dealing in futures contracts that the holder carries on or has carried on.

- (2) A direction under subsection (1) to give a specified statement may also direct the holder to cause the statement to be audited by a registered company auditor before it is given to ASIC.
- (3) A person must comply with a direction under this section:
 - (a) if the direction specifies a reasonable period for compliance—within that period; or
 - (b) in any other case—within a reasonable period; or within that period as extended by ASIC by writing given to the person.

1155 Register of Futures Licensees

- (1) ASIC must keep a Register of Futures Licensees for the purposes of this Part.
- (2) ASIC must include in the Register, in relation to each licence, a copy of:
 - (a) the licence; and
 - (b) each instrument that imposes conditions on the licence, or revokes or varies conditions of the licence, after the licence is granted.
- (3) ASIC must enter in the Register, in relation to each licence:
 - (a) the name of the licensee; and
 - (b) if the licensee is a body corporate—the name of each director, and of each secretary, of the licensee; and
 - (c) the day on which the licence was granted; and
 - (d) in relation to each business to which the licence relates:
 - (i) the address of the principal place of business at which the business is carried on; and
 - (ii) the addresses of the other places (if any) at which the business is carried on; and
 - (iii) if the business is carried on under a name or style other than the name of the licensee—that name or style; and

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- (e) in the case of a futures brokers licence—the name, and the address of the principal place of business, of each futures organisation of which the licensee is a member; and
 - (f) particulars of any suspension of the licence; and
 - (g) such other matters (if any) as are prescribed.
- (4) Where a person ceases to hold a particular licence, ASIC must remove from the Register the documents included in it, and the particulars entered in it, in relation to that licence.
- (5) A person may inspect, and may make copies of, or take extracts from, the Register.

1156 Notifying change in particulars

Within 21 days after:

- (a) the holder of a futures brokers licence ceases to carry on the business to which the licence relates; or
- (b) the holder of a futures advisers licence ceases to act as, or to hold out that the holder is, a futures adviser; or
- (c) there is a change in a matter particulars of which are required by virtue of any of paragraphs 1155(3)(a) to (e), inclusive, to be entered, in relation to a licence, in the Register of Futures Licensees;

the holder of the licence must give ASIC written particulars, in the prescribed form, of that fact, or of that change, as the case may be.

1157 Annual statement of licensee

- (1) A person who is or has been a licensee must lodge, in respect of each year or part of a year during which the licence is or was in force, a statement in the prescribed form that complies with this section.
- (2) The statement must set out the number of persons:
- (a) who, when the statement is lodged, hold; or
 - (b) who, when the person last ceased to be a licensee, held;
- as the case may be, proper authorities from the person.

- (3) The statement must also contain such information as is prescribed.

1158 Time for lodging annual statement

A person required by section 1157 to lodge a statement must lodge the statement:

- (a) if the licence is a futures brokers licence—within the period within which the person must lodge with ASIC a profit and loss statement and balance sheet referred to in section 1218; or
- (b) if the licence is a futures advisers licence—within the period of 1 month immediately before the anniversary of the day on which the licence was granted;

or within that period as extended by ASIC by writing given to the person.

Division 2—Agreements with unlicensed persons

Subdivision A—Agreements affected

1159 Excluded clients

In this Division:

excluded client means a person who is:

- (a) a futures broker; or
- (b) a futures adviser; or
- (c) one of 2 or more persons who together constitute a futures broker or futures adviser.

1160 Agreement about a dealing in breach of section 1142

Where a person (in this section and Subdivision B called the *non-licensee*) and another person (in this section and Subdivision B called the *client*), not being an excluded client, enter into an agreement relating to a dealing or proposed dealing in a futures contract by the non-licensee on the client's behalf, being a dealing or proposed dealing involving a contravention by the non-licensee of section 1142, Subdivision B applies, whether or not anyone else is a party to the agreement.

1161 Agreement with corporation acting in breach of section 1143

Where, during a period when a person (in this section and Subdivision B called the *non-licensee*), in contravention of section 1143, carries on a futures advice business or holds out that the person is a futures adviser, the non-licensee and a client (other than an excluded client) of the non-licensee enter into an agreement that relates to advising the client about futures contracts or to giving the client futures reports, Subdivision B applies, whether or not anyone else is a party to the agreement.

Subdivision B—Effect on agreements

1164 Client may give notice of rescission

- (1) Subject to this section, the client may, whether before or after completion of the agreement, give to the non-licensee a written notice stating that the client wishes to rescind the agreement.
- (2) The client may only give a notice under this section within a reasonable period after becoming aware of the facts entitling the client to give the notice.
- (3) The client is not entitled to give a notice under this section if the client engages in conduct by engaging in which the client would, if the entitlement so to give a notice were a right to rescind the agreement for misrepresentation by the non-licensee, be taken to have affirmed the agreement.
- (4) The client is not entitled to give a notice under this section if, within a reasonable period before the agreement was entered into, the non-licensee informed the client (whether or not in writing) that:
 - (a) the non-licensee did not hold a futures brokers licence; or
 - (b) the non-licensee did not hold a futures brokers licence and did not hold a futures advisers licence;as the case requires.
- (5) If, at a time when a futures brokers licence or futures advisers licence held by the non-licensee was suspended, the non-licensee informed the client that the licence was suspended, the non-licensee is taken for the purposes of subsection (4) to have informed the client at that time that the non-licensee did not hold a futures brokers licence or futures advisers licence, as the case may be.
- (6) None of subsections (2), (3) and (4) limits the generality of either of the others.
- (7) Subject to this section, the client may give a notice under this section whether or not:

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- (a) the notice will result under section 1165 in rescission of the agreement; or
- (b) the Court will, if the notice so results, be empowered to make a particular order, or any order at all, under section 1166.

1165 Effect of notice under section 1164

A notice given under section 1164 rescinds the agreement unless rescission of the agreement would prejudice a right, or an estate in property, acquired by a person (other than the non-licensee) in good faith, for valuable consideration and without notice of the facts entitling the client to give the notice.

1165A Client may apply to Court for partial rescission

- (1) If the client gives a notice under section 1164 but the notice does not rescind the agreement because rescission of it would prejudice a right or estate of the kind referred to in section 1165, the client may, within a reasonable period after giving the notice, apply to the Court for an order under subsection (4) of this section.
- (2) The Court may extend the period for making an application under subsection (1).
- (3) If an application is made under subsection (1), the Court may make such orders expressed to have effect until the determination of the application as it would have power to make if the notice had rescinded the agreement under section 1165 and the application were for orders under section 1166.
- (4) On an application under subsection (1), the Court may make an order:
 - (a) varying the agreement in such a way as to put the client in the same position, as nearly as can be done without prejudicing such a right or estate acquired before the order is made, as if the agreement had not been entered into; and
 - (b) declaring the agreement to have had effect as so varied at and after the time when it was originally made.

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- (5) If the Court makes an order under subsection (4), the agreement is taken for the purposes of section 1166 to have been rescinded under section 1165.
- (6) An order under subsection (4) does not affect the application of section 1168 or 1170 in relation to the agreement as originally made or as varied by the order.

1166 Court may make consequential orders

- (1) Subject to subsection (2), on rescission of the agreement under section 1165, the Court may, on the application of the client or the non-licensee, make such orders as it would have power to make if the client had duly rescinded the agreement for misrepresentation by the non-licensee.
- (2) The Court is not empowered to make a particular order under subsection (1) if the order would prejudice a right, or an estate in property, acquired by a person (other than the non-licensee) in good faith, for valuable consideration and without notice of the facts entitling the client to give the notice.

1167 Agreement unenforceable against client

- (1) This section:
 - (a) applies while both of the following are the case:
 - (i) the client is entitled to give a notice under section 1164;
 - (ii) a notice so given will result under section 1165 in rescission of the agreement; and
 - (b) applies after the agreement is rescinded under section 1165; but does not otherwise apply.
- (2) The non-licensee is not entitled, as against the client:
 - (a) to enforce the agreement, whether directly or indirectly; or
 - (b) to rely on the agreement, whether directly or indirectly and whether by way of defence or otherwise.

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1168 Non-licensee not entitled to recover commission

- (1) Without limiting the generality of section 1167, this section:
 - (a) applies while the client is entitled to give a notice under section 1164; and
 - (b) applies after the client so gives a notice, even if the notice does not result under section 1165 in rescission of the agreement;but does not otherwise apply.
- (2) The non-licensee is not entitled to recover by any means (including, for example, set-off or a claim on a quantum meruit) any brokerage, commission or other fee for which the client would, but for this section, have been liable to the non-licensee under or in connection with the agreement.

1169 Onus of establishing non-application of section 1167 or 1168

For the purposes of determining, in a proceeding in a court, whether or not the non-licensee is, or was at a particular time, entitled as mentioned in subsection 1167(2) or 1168(2), it is presumed, unless the contrary is proved, that section 1167 or 1168, as the case may be, applies, or applied at that time, as the case may be.

1170 Client may recover commission paid to non-licensee

- (1) Without limiting the generality of section 1166, if the client gives a notice under section 1164, the client may, even if the notice does not result under section 1165 in rescission of the agreement, recover from the non-licensee as a debt the amount of any brokerage, commission or other fee that the client has paid to the non-licensee under or in connection with the agreement.
- (2) ASIC may, if it considers that it is in the public interest to do so, bring an action under subsection (1) in the name of, and for the benefit of, the client.

1171 Remedies under this Division additional to other remedies

The client's rights and remedies under this Division are additional to, and do not prejudice, any other right or remedy of the client.

Division 3—Futures representatives

1172 Representatives of futures brokers

A natural person must not do an act as a representative of a futures broker (other than an exempt broker) unless:

- (a) the broker holds a futures brokers licence; and
- (b) the person holds a proper authority from the broker.

1173 Representatives of futures advisers

A natural person must not do an act as a representative of a futures adviser (other than an exempt futures adviser) unless the futures adviser:

- (a) is also a futures broker and holds a futures brokers licence; or
 - (b) holds a futures advisers licence;
- and the person holds a proper authority from the futures adviser.

1174 Defence

It is a defence to a prosecution for a contravention of section 1172 or 1173 constituted by an act done by a person as a representative of another person if it is proved that:

- (a) but for the revocation or suspension of a licence held by the other person, the act would not have been such a contravention; and
- (b) when he or she did the act, the first-mentioned person:
 - (i) believed in good faith that the other person held the licence; and
 - (ii) was unaware of the revocation or suspension; and
- (c) in all the circumstances it was reasonable for the first-mentioned person so to believe and to be unaware of the revocation or suspension.

1175 Body corporate not to act as representative

A body corporate must not do an act as a representative of a person.

1176 Licensee to keep register of holders of proper authorities

- (1) A licensee must establish a register of the persons who hold proper authorities from the licensee and must keep it in accordance with this section.
- (2) The register must be in writing or in such other form as ASIC approves.
- (3) The register must contain, in relation to each person (if any) who holds a proper authority from the licensee:
 - (a) a copy of the proper authority; and
 - (b) the person's name; and
 - (c) the person's current residential address; and
 - (d) unless the person's current business address is the same as the licensee's—the person's current business address; and
 - (e) such other information (if any) as is prescribed.
- (4) A copy of a proper authority of a person from the licensee that subsection (3) requires the register to contain must be included in the register within 2 business days after the person begins to hold that proper authority.
- (5) Information that subsection (3) requires the register to contain in relation to a person must be entered in the register within 2 business days after:
 - (a) the person begins to hold a proper authority from the licensee; or
 - (b) the licensee receives the information;whichever happens later.
- (6) Within 2 business days after a person ceases to hold a proper authority from the licensee, the licensee must:
 - (a) in any case:

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- (i) include, in a part of the register separate from the part in which copies of proper authorities are included under subsection (4); and
 - (ii) remove from the last-mentioned part; the copy of the proper authority that was included in the last-mentioned part; and
 - (b) unless, at the end of those 2 business days, the person again holds a proper authority from the licensee:
 - (i) enter, in a part of the register separate from the part in which information is entered under subsection (5); and
 - (ii) remove from the last-mentioned part; the information that has been entered in the last-mentioned part in relation to the person.
- (7) Information that has been entered under paragraph (6) (b) in a separate part of the register is taken the purposes of subsections (3) and (5) not to be contained or entered in the register.
- (8) Where a licensee whom subsection (1) requires to establish a register already keeps one under this section, the licensee need not establish a new register but must keep the existing one in accordance with this section.

1177 Licensee to notify ASIC of location and contents of register

- (1) This section has effect where a licensee keeps a register under section 1176.
- (2) Within 14 days after establishing the register, the licensee must lodge written notice of where the register is kept.
- (3) As soon as practicable after changing the place where the register is kept, the licensee must lodge written notice of the new place where the register is kept.
- (4) Within 2 business days after the day on which a person begins to hold a particular proper authority from the licensee, the licensee must, whether or not the person has previously held a proper authority from the licensee, lodge:

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- (a) a copy of the first-mentioned proper authority; and
 - (b) a written notice stating that the person began to hold that proper authority on that day.
- (5) Within the period within which subsection 1176(5) requires the licensee to enter in the register information that the register is required by virtue of paragraph 1176(3)(b), (c), (d) or (e) to contain, the licensee must lodge a written notice setting out the information and stating that the information has been, or is to be, entered in the register.
- (6) Within 2 business days after a person ceases to hold a proper authority from the licensee, the licensee must, unless at the end of those 2 business days the person again holds a proper authority from the licensee, lodge a written notice stating that the person has ceased to hold such a proper authority.

1178 Inspection and copying of register

- (1) A licensee must ensure that a register kept by it under section 1176 is open for inspection without charge.
- (2) A person may by writing request a licensee to give the person a copy of the whole, or of a specified part, of a register kept by the licensee under section 1176.
- (3) A licensee must comply with a request under subsection (2) within 2 business days after:
- (a) if the licensee requires the person to pay for the copy an amount of not more than the prescribed amount—receiving the amount from the person; or
 - (b) otherwise—receiving the request.

1180 ASIC may require production of authority

- (1) Where ASIC has reason to believe that a person:
- (a) holds a proper authority from a licensee; or

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- (b) has done an act as a representative of another person; then, whether or not ASIC knows who the licensee or other person is, it may require the first-mentioned person to produce:
 - (c) any proper authority from a licensee; or
 - (d) any invalid futures authority from a person; that the first-mentioned person holds.
- (2) A person must not, without reasonable excuse, refuse or fail to comply with a requirement under this section.

1181 ASIC may give licensee information about representative

- (1) Where ASIC believes on reasonable grounds that:
 - (a) a person (in this section called the *holder*) holds, or will hold, a proper authority from a licensee; and
 - (b) having regard to that fact, ASIC should give to the licensee particular information that ASIC has about the person; and
 - (c) the information is true;ASIC may give the information to the licensee.
- (2) Where ASIC gives information under subsection (1), the licensee or an officer of the licensee may, for a purpose connected with:
 - (a) the licensee making a decision about what action (if any) to take in relation to the holder, having regard to, or to matters including, the information; or
 - (b) the licensee taking action pursuant to such a decision;or for 2 or more such purposes, and for no other purpose, give to another person, make use of, or make a record of, some or all of the information.
- (3) A person to whom information has been given, in accordance with subsection (2) or this subsection, for a purpose or purposes may, for that purpose or one or more of those purposes, and for no other purpose, give to another person, make use of, or make a record of, that information.

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- (4) Subject to subsections (2) and (3), a person must not give to another person, make use of, or make a record of, information given by ASIC under subsection (1).
- (4A) Subsection 8(3) does not apply in relation to a reference in subsection (2), (3) or (4) of this section to a provision of this section.
- (5) A person has qualified privilege in respect of an act done by the person as permitted by subsection (2) or (3).
- (6) A person to whom information is given in accordance with this section must not:
- (a) give any of the information to a court; or
 - (b) produce in a court a document that sets out some or all of the information;
- except:
- (c) for a purpose connected with:
 - (i) the licensee making a decision about what action (if any) to take in relation to the holder, having regard to, or to matters including, some or all of the information; or
 - (ii) the licensee taking action pursuant to such a decision; or
 - (iii) proving in a proceeding in that court that particular action taken by the licensee in relation to the holder was so taken pursuant to such a decision;or for 2 or more such purposes, and for no other purpose;
 - (d) in a proceeding in that court, in so far as the proceeding relates to an alleged contravention of this section; or
 - (e) in a proceeding in respect of an ancillary offence relating to an offence against this section; or
 - (f) in a proceeding in respect of the giving to a court of false information being or including some or all of the first-mentioned information.
- (7) A reference in this section to a person taking action in relation to another person is a reference to the first-mentioned person:
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- (a) taking action by way of making, terminating, or varying the terms and conditions of; or
 - (b) otherwise taking action in relation to;
a relevant agreement, in so far as the relevant agreement relates to the other person being employed by, or acting for or by arrangement with, the first-mentioned person in connection with a futures broking business or futures advice business carried on by the first-mentioned person.
- (8) In addition, and without prejudice, to the effect it has of its own force, subsection (6) has by force of this subsection the effect it would have if:
- (a) the reference in it to information being given in accordance with this section were a reference to information being given in accordance with section 1181; and
 - (b) a reference in it to a court were a reference to a court of an external Territory or of a country outside Australia and the external Territories; and
 - (c) paragraphs (6)(d) and (e) were omitted.

1182 Holder of authority may be required to return it

- (1) Where a person holds a proper authority from a licensee but is neither employed by, nor authorised to act for or by arrangement with, the licensee, the licensee may, by writing given to the person, require the person to give the proper authority to the licensee within a specified period of not less than 2 business days.
- (2) Where a person holds an invalid futures authority from another person, the other person may, by writing given to the first-mentioned person, require the first-mentioned person to give the invalid futures authority to the other person within a specified period of not less than 2 business days.
- (3) A person must not, without reasonable excuse, refuse or fail to comply with a requirement made of the person in accordance with subsection (1) or (2).

Division 4—Liability of principals for representatives' conduct

1183 Conduct engaged in as a representative

Where a person engages in conduct as a representative of another person (in this section called the *principal*), then, as between the principal and a third person (other than ASIC), the principal is liable in respect of that conduct in the same manner, and to the same extent, as if the principal had engaged in it.

1184 Liability where identity of principal unknown

- (1) This section applies for the purposes of a proceeding in a court where:
 - (a) in this jurisdiction or elsewhere, a person (in this section called the *representative*) engages in particular conduct while the person is a representative of 2 or more persons (in this section called the *indemnifying principals*); and
 - (b) it is proved for the purposes of the proceeding that the representative engaged in the conduct as a representative of some person (in this section called the *unknown principal*) but it is not proved for those purposes who the unknown principal is.
- (2) If only one of the indemnifying principals is a party to the proceeding, he, she or it is liable in respect of that conduct as if he, she or it were the unknown principal.
- (3) If 2 or more of the indemnifying principals are parties to the proceeding, each of those parties is liable in respect of that conduct as if he, she or it were the unknown principal.

1185 Liability of principals where act done in reliance on representative's conduct

- (1) This section applies where:
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- (a) at a time when a person (in this section called the *representative*) is a representative of only one person (in this section called the *indemnifying principal*) or of 2 or more persons (in this section called the *indemnifying principals*), the representative, in this jurisdiction or elsewhere:
 - (i) engages in particular conduct; or
 - (ii) proposes, or represents that the representative proposes, to engage in particular conduct; and
 - (b) another person (in this section called the *client*) does, or omits to do, a particular act, in this jurisdiction or elsewhere, because the client believes at a particular time in good faith that the representative engaged in, or proposes to engage in, as the case may be, that conduct:
 - (i) on behalf of some person (in this section called the *assumed principal*) whether or not identified, or identifiable, at that time by the client; and
 - (ii) in connection with a futures broking business or futures advice business carried on by the assumed principal; and
 - (c) it is reasonable to expect that a person in the client's circumstances would so believe and would do, or omit to do, as the case may be, that act because of that belief; whether or not that conduct is or would be within the scope of the representative's employment by, or authority from, any person.
- (2) If:
- (a) subparagraph (1)(a)(i) applies; or
 - (b) subparagraph (1)(a)(ii) applies and the representative engages in that conduct;
- then, for the purposes of a proceeding in a court:
- (c) as between the indemnifying principal and the client or a person claiming through the client, the indemnifying principal is liable; or

- (d) as between any of the indemnifying principals and the client or a person claiming through the client, each of the indemnifying principals is liable;
as the case may be, in respect of that conduct in the same manner, and to the same extent, as if he, she or it had engaged in it.
- (3) Without limiting the generality of subsection (2), the indemnifying principal, or each of the indemnifying principals, as the case may be, is liable to pay damages to the client in respect of any loss or damage that the client suffers as a result of doing, or omitting to do, as the case may be, the act referred to in paragraph (1)(b).
- (3A) Subsection (3) does not apply unless:
- (a) the conduct was engaged in, the proposed conduct would have been engaged in, or the representation was made, in this jurisdiction; or
 - (b) the act referred to in paragraph (1)(b) was done, or would have been done, as the case may be, in this jurisdiction; or
 - (c) some or all of the loss or damage was suffered in this jurisdiction.
- (4) If:
- (a) there are 2 or more indemnifying principals; and
 - (b) 2 or more of them are parties (in this subsection called the *indemnifying parties*) to a proceeding in a court; and
 - (c) it is proved for the purposes of the proceeding:
 - (i) that the representative engaged in that conduct as a representative of some person; and
 - (ii) who that person is; and
 - (d) that person is among the indemnifying parties;
- subsections (2) and (3) do not apply, for the purposes of the proceeding, in relation to the indemnifying parties other than that person.

1186 Presumptions about certain matters

- (1) Where it is proved, for the purposes of a proceeding in a court, that a person (in this subsection called the *representative*) engaged in

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particular conduct, in this jurisdiction or elsewhere, while the person was a representative of:

- (a) only one person (in this subsection called the *indemnifying principal*); or
- (b) 2 or more persons (in this subsection called the *indemnifying principals*);

then, unless the contrary is proved for the purposes of the proceeding, it is presumed for those purposes that the representative engaged in the conduct as a representative of:

- (c) the indemnifying principal; or
- (d) as a representative of some person among the indemnifying principals;

as the case may be.

- (2) Where, for the purposes of establishing in a proceeding in a court that section 1185 applies, it is proved that a person did, or omitted to do, a particular act because the person believed at a particular time in good faith that certain matters were the case, then, unless the contrary is proved for those purposes, it is presumed for those purposes that it is reasonable to expect that a person in the first-mentioned person's circumstances would so believe and would do, or omit to do, as the case may be, that act because of that belief.

1187 No contracting out of liability for representative's conduct

- (1) For the purposes of this section, a liability of a person:
 - (a) in respect of conduct engaged in by another person as a representative of the first-mentioned person; or
 - (b) arising under section 1185 because another person has engaged in, proposed to engage in, or represented that the other person proposed to engage in, particular conduct;is a liability of the first-mentioned person in respect of the other person.
- (2) Subject to this section, an agreement is void in so far as it purports to exclude, restrict or otherwise affect a liability of a person in respect of another person, or to provide for a person to be

indemnified in respect of a liability of the person in respect of another person.

- (3) Subsection (2) does not apply in relation to an agreement in so far as it:
- (a) is a contract of insurance; or
 - (b) provides for a representative of a person to indemnify the person in respect of a liability of the person in respect of the representative; or
 - (c) provides for a licensee from whom a person holds a proper authority to indemnify another such licensee in respect of a liability of the other licensee in respect of the person.
- (4) A person must not make, offer to make, or invite another person to offer to make, in relation to a liability of the first-mentioned person in respect of a person, an agreement that is or would be void, in whole or in part, by virtue of subsection (2).

1188 Effect of Division

- (1) Where 2 or more persons are liable under this Division in respect of the same conduct or the same loss or damage, they are so liable jointly and severally.
- (2) Nothing in section 1183, 1184 or 1185:
- (a) affects a liability arising otherwise than by virtue of this Division; or
 - (b) notwithstanding paragraph (a) of this subsection, entitles a person to be compensated twice in respect of the same loss or damage; or
 - (c) makes a person guilty of an offence.

Division 5—Excluding persons from the futures industry

1189A Power to revoke, without a hearing, licence held by natural person

ASIC may, by written order, revoke a licence held by a natural person if the person:

- (a) becomes an insolvent under administration; or
- (b) is convicted of serious fraud; or
- (c) becomes incapable, through mental or physical incapacity, of managing his or her affairs; or
- (d) asks ASIC to revoke the licence.

1190 Power to revoke, without a hearing, licence held by body corporate

ASIC may, by written order, revoke a licence held by a body corporate if:

- (a) the body ceases to carry on business; or
- (b) the body becomes an externally-administered body corporate; or
- (c) the body asks ASIC to revoke the licence; or
- (d) a director, secretary or executive officer of the body contravenes this Act because:
 - (i) he or she does not hold a licence; or
 - (ii) a licence he or she holds is suspended.

1191 Power to revoke licence after a hearing

- (1) Subject to section 1200, ASIC may, by written order, revoke a licence if:
 - (a) the application for the licence contained matter that was false in a material particular or materially misleading; or
 - (b) there was an omission of material matter from the application for the licence; or

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- (c) the licensee contravenes a futures law; or
 - (d) the licensee contravenes a condition of the licence; or
 - (ea) the licensee is a natural person and ASIC has reason to believe that he or she is not of good fame and character; or
 - (e) the licensee is a body corporate and ASIC is satisfied that the educational qualifications or experience of a person who:
 - (i) is an officer of the licensee; and
 - (ii) was not an officer of the licensee when the licence was granted;are or is inadequate having regard to the duties that the officer performs, or will perform, in connection with the holding of the licence; or
 - (f) the licensee is a body corporate and ASIC is satisfied that:
 - (i) an officer of the licensee performs, or will perform, in connection with the holding of the licence, duties that are or include duties (in this paragraph called the *different duties*) other than those having regard to which ASIC was satisfied, before granting the licence, that the officer's educational qualifications and experience were adequate; and
 - (ii) the officer's educational qualifications or experience are or is inadequate having regard to the different duties; or
 - (g) the licensee is a body corporate and:
 - (i) a licence held by a director, secretary or executive officer of the body is suspended or revoked; or
 - (ii) an order is made under section 1194 against such a director, secretary or executive officer; or
 - (h) ASIC has reason to believe that the licensee has not performed efficiently, honestly and fairly the duties of a holder of a futures brokers licence or a futures advisers licence, as the case requires; or
 - (j) ASIC has reason to believe that the licensee will not perform those duties efficiently, honestly and fairly.
- (2) In determining whether or not it has reason to believe as mentioned in paragraph (1)(ea) or (j) in relation to a licensee, ASIC is not precluded from having regard to a matter that arose before the time
-

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when the licence was granted unless ASIC was aware of the matter at that time.

1192 Power to suspend licence instead of revoking it

- (1) Subject to section 1200, where:
 - (a) section 1189A or 1190 empowers ASIC to revoke a licence otherwise than because the licensee has asked for the revocation; or
 - (b) ASIC is empowered by virtue of paragraph 1191(1)(c), (d), (e), (f), (g), (h) or (j) to revoke a licence;ASIC may, if it considers it desirable to do so, instead:
 - (c) by written order, suspend the licence for a specified period; or
 - (d) by written order, prohibit the licensee, either permanently or for a specified period, from doing specified acts, being acts that section 1142 or 1143 would prohibit the licensee from doing if the licensee did not hold the licence.
- (2) ASIC may at any time, by written order, vary or revoke an order in force under this section.
- (3) For the purposes of sections 1142, 1143, 1172 and 1173 a licensee is taken not to hold the licence at any time during a period for which the licence is suspended.
- (4) Where an order in force under this section prohibits the licensee as mentioned in paragraph (1)(d):
 - (a) the licensee must not contravene the order; and
 - (b) in relation to the doing by a person, as a representative of the licensee, of an act specified in the order, sections 1172 and 1173 apply, or apply during the period specified in the order, as the case requires, as if the licensee did not hold the licence.

1192A Power to make banning order where licence revoked or suspended

Subject to section 1200, where ASIC:

- (a) revokes under section 1189A; or
 - (b) revokes because of paragraph 1191(1)(a), (b), (c), (d), (h) or (j); or
 - (c) revokes because of paragraph 1191(1)(ea); or
 - (d) suspends because of paragraph 1192(1)(a); or
 - (e) suspends because of paragraph 1192(1)(b);
- a licence held by a natural person, it may also make a banning order against the person.

1193 Power to make banning order against unlicensed person

Subject to section 1200, ASIC may make a banning order against a natural person (other than a licensee) if:

- (a) he or she becomes an insolvent under administration; or
- (b) he or she is convicted of serious fraud; or
- (c) he or she becomes incapable, through mental or physical incapacity, of managing his or her affairs; or
- (d) he or she contravenes a futures law; or
- (e) ASIC has reason to believe that he or she is not of good fame and character; or
- (f) ASIC has reason to believe that he or she has not performed efficiently, honestly and fairly the duties of:
 - (i) a representative of a futures broker; or
 - (ii) a representative of a futures adviser; or
- (g) ASIC has reason to believe that he or she will not perform efficiently, honestly and fairly the duties of:
 - (i) a representative of a futures broker; or
 - (ii) a representative of a futures adviser.

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1194 Nature of banning order

- (1) Where this Division empowers ASIC to make a banning order against a person, ASIC may, by written order, prohibit the person:
 - (a) in any case—permanently; or
 - (b) except where ASIC is empowered by virtue of paragraph 1193(e) to make the order—for a specified period;from doing an act as:
 - (c) a representative of a futures broker; or
 - (d) a representative of a futures adviser; or
 - (e) a representative of a futures broker or a futures adviser;whichever the order specifies.
- (2) ASIC must not vary or revoke a banning order except under section 1195, 1196 or 1197.

1195 Exceptions to banning order

- (1) An order made against a person under subsection 1194(1) may include a provision that permits the person, subject to such conditions (if any) as are specified, to do, or to do in specified circumstances, specified acts that the order would otherwise prohibit the person from doing.
- (2) Subject to section 1200, ASIC may, at any time, by written order, vary a banning order against a person:
 - (a) by adding a provision that permits the person as mentioned in subsection (1); or
 - (b) by varying such a provision in relation to conditions, circumstances or acts specified in the provision; or
 - (c) by omitting such a provision and substituting another such provision; or
 - (d) by omitting such a provision.

1196 Variation or revocation of banning order on application

- (1) Subject to sections 1197 and 1200, this section has effect where a person applies to ASIC to vary or revoke a banning order relating to the person.
- (2) If:
 - (a) the person is not an insolvent under administration; and
 - (b) ASIC has no reason to believe that the person is not of good fame and character; and
 - (c) ASIC has no reason to believe that the person will not perform efficiently, honestly and fairly the duties of:
 - (i) a representative of a futures broker; or
 - (ii) a representative of a futures adviser;ASIC must, by written order:
 - (d) if only one of subparagraphs (c)(i) and (ii) applies—vary the banning order so that it no longer prohibits the person from doing an act as a representative of a futures broker or of a futures adviser, as the case may be; or
 - (e) in any other case—revoke the banning order.
- (3) Otherwise, ASIC must refuse the application.
- (4) In determining whether or not it has reason to believe as mentioned in paragraph (2)(b) or (c), ASIC must have regard to any conviction of the person, during the 10 years ending on the day of the application, of serious fraud.
- (5) Nothing in subsection (4) limits the matters to which ASIC may have regard:
 - (a) in deciding on the application; or
 - (b) in connection with performing or exercising any other function or power under this Part.

1197 Revocation of banning order in certain cases

Where:

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- (a) section 1196 requires ASIC to vary a banning order so that it no longer has a particular operation; and
 - (b) the order has no other operation;
- ASIC must, by written order, instead revoke the banning order.

1198 Effect and publication of orders under this Division

- (1) An order by ASIC under this Division takes effect when served on the person to whom the order relates.
- (2) As soon as practicable on or after the day on which an order by ASIC under this Division takes effect, ASIC must publish in the *Gazette* a notice that sets out a copy of:
 - (a) if the order is made under section 1189A, 1190, 1191, 1192 or 1194 or revokes a banning order—the first-mentioned order; or
 - (b) if the order varies a banning order—the banning order as in force immediately after the first-mentioned order takes effect;and states that the first-mentioned order, or the banning order as so in force, as the case may be, took effect on that day.
- (3) Where:
 - (a) but for this subsection, subsection (2) would require publication of a notice setting out a copy of a banning order as in force at a particular time; and
 - (b) the banning order as so in force includes a provision that permits a person as mentioned in subsection 1195(1); and
 - (c) in ASIC's opinion, the notice would be unreasonably long if it set out a copy of the whole of that provision;the notice may, instead of setting out a copy of that provision, set out a summary of the provision's effect.

1199 Contravention of banning order

A person must not contravene a banning order relating to the person.

1199A Banned person ineligible for licence

ASIC must not grant a futures brokers licence or a futures advisers licence to a person if a banning order prohibits the person (except as permitted by the order) from doing an act as a representative of a futures broker, or of a futures adviser, as the case may be.

1200 Opportunity for hearing

- (1) ASIC must not:
 - (a) refuse an application for a licence on the ground, or grounds including the ground, that paragraph 1144A(2)(d), (e) or (f) or 1145(2)(e) or (f) does not apply in relation to the applicant; or
 - (b) impose conditions on a licence; or
 - (c) vary the conditions of a licence; or
 - (d) revoke or suspend a licence otherwise than by virtue of section 1189A or 1190 or paragraph 1192(1)(a); or
 - (e) make, otherwise than by virtue of paragraph 1192A(a) or (d) or 1193(a), (b) or (c), an order under section 1194 against a person; or
 - (f) make under subsection 1195(2) an order varying a banning order against a person; or
 - (g) refuse an application by a person under section 1196;unless ASIC complies with subsection (2) of this section.
- (2) ASIC must give the applicant, licensee or person, as the case may be, an opportunity:
 - (a) to appear at a hearing before ASIC that takes place in private; and
 - (b) to make submissions and give evidence to ASIC in relation to the matter.

1201 Disqualification by the Court

- (1) Where ASIC:
-

Chapter 8 The Futures Industry

Part 8.3 Participants in the futures industry

Division 5 Excluding persons from the futures industry

Section 1202

- (a) revokes under section 1189A, 1190 or 1191 a licence held by a person; or
 - (b) makes under section 1194 against a person an order that is to operate otherwise than only for a specified period;
- ASIC may apply to the Court for an order or orders under this section in relation to the person.
- (2) On an application under subsection (1), the Court may make one or more of the following:
 - (a) an order disqualifying the person, permanently or for a specified period, from holding:
 - (i) a futures brokers licence;
 - (ii) a futures advisers licence; or
 - (iii) a futures brokers licence or a futures advisers licence; whichever the order specifies;
 - (b) an order prohibiting the person, permanently or for a specified period, from doing an act as:
 - (i) a representative of a futures broker;
 - (ii) a representative of a futures adviser; or
 - (iii) a representative of a futures broker or of a futures adviser; whichever the order specifies;
 - (c) such other order as it thinks fit;or may refuse the application.
 - (3) The Court may revoke or vary an order in force under subsection (2).

1202 Effect of orders under section 1201

- (1) ASIC must not grant a futures brokers licence or a futures advisers licence to a person whom an order in force under section 1201 disqualifies from holding a futures brokers licence or a futures advisers licence, as the case may be.
- (2) A person must not contravene an order that:
 - (a) is of a kind referred to in paragraph 1201 (2) (b); and

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- (b) is in force under section 1201; and
- (c) relates to the person.

Part 8.4—Conduct of futures business

1204 Certain representations prohibited

- (1) A person who is the holder of a licence must not represent or imply, or knowingly permit to be represented or implied, in any manner to a person that the abilities or qualifications of the holder of the licence have in any respect been approved by ASIC.
- (2) A statement that a person is the holder of a licence is not a contravention of this section.

1205 Undesirable advertising

- (1) In this section:

broadcast, in relation to a statement, means broadcast the statement by wireless transmission or television or cause it to be so broadcast.

publish, in relation to a statement, means:

- (a) insert the statement in a newspaper or periodical or cause it to be so inserted; or
 - (b) publicly exhibit the statement or cause it to be publicly exhibited; or
 - (c) include the statement, or cause it to be included, in a document that, whether or not in response to a request, is sent or delivered to a person, or thrown or left upon premises in the occupation of a person.
- (2) Where ASIC considers that, having regard to conduct that a person has engaged in, is engaging in, or proposes to engage in, it is in the public interest to do so, it may, by written order given to the person, prohibit the person from publishing or broadcasting statements about:
 - (a) futures contracts; or

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- (b) businesses carried on, or proposed to be carried on, by persons and involving dealing in futures contracts on behalf of other persons; or
 - (c) futures advice businesses or proposed futures advice businesses;
- unless the form and content of the statements have first been approved by ASIC.
- (3) An order under subsection (2) must not be made unless ASIC has first given the person in relation to whom it proposes to make the order an opportunity to appear at a hearing before ASIC (being a hearing that takes place in private) and make submissions and give evidence to ASIC in relation to the matter.
 - (4) A person the subject of an order under subsection (2) must comply with the order.
 - (5) For the purposes of this section, where a statement is published or broadcast and there is also published or broadcast in relation to the statement:
 - (a) the name or address of a person; or
 - (b) the telephone or telex number of a person; or
 - (c) the post office or other delivery box number of a person;it is presumed, unless the contrary is proved, that the statement was published or broadcast by that person.

1205A Application of sections 1206 and 1207: exempt brokers

Neither of sections 1206 and 1207 applies in relation to an exempt broker, except in so far as the exempt broker carries on a futures broking business as a personal representative of a dead futures broker.

1206 Issue of contract notes

- (1) A futures broker must, in respect of a transaction, being the acquisition or disposal of a futures contract, that is entered into by the broker on behalf of another person, give as soon as practicable:

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- (a) in a case where the transaction is not an operation by the broker on a discretionary account—to that other person; or
 - (b) in a case where the transaction is an operation by the broker on a discretionary account—to the person, or to each person, as the case requires, who gave instructions to the broker authorising the broker to operate on the discretionary account, other than a person who agrees in the prescribed manner to waive the operation of this paragraph;
- a contract note that complies with subsection (3), (4) or (5), as the case requires.
- (2) Subsection (1) does not require a futures broker to give a contract note to a person in respect of a transaction if the person was at the time of the transaction the holder of a futures brokers licence.
 - (3) A contract note given by a futures broker under subsection (1) in respect of a transaction, being the acquisition or disposal of a futures contract (other than a futures option or an eligible exchange-traded option), must include:
 - (a) the name or style under which the broker carries on business as a futures broker and the address of the principal place at which the broker so carries on business; and
 - (b) the name of the person to whom the broker gives the contract note; and
 - (c) the day on which the transaction took place; and
 - (d) a description of the futures contract sufficient to identify the nature of the transaction, including:
 - (i) in a case where the futures contract is a commodity agreement—a description of the commodity and a statement of the contract price; and
 - (ii) in a case where the futures contract is an adjustment agreement:
 - (A) a description of the class of adjustment agreements in which the futures contract is included; and
 - (B) a statement of the contract price; and
 - (C) if the transaction is the completion of the futures contract—the value or worth (as

- determined in accordance with the futures contract) of the futures contract at the time of that completion; and
- (iii) in a case where the transaction is a liquidating trade—details of the liquidating trade and of the futures contract that is intended to be closed out following the entering into of the liquidating trade; and
 - (e) the deposit paid or payable in respect of the transaction; and
 - (f) the month and year for the performance or settlement of the contract; and
 - (g) in a case where the transaction took place on a futures market of a futures exchange or of a recognised futures exchange, or on an exempt futures market—a name or abbreviation by which the futures exchange, recognised futures exchange or exempt futures market, as the case may be, is generally known; and
 - (h) a statement of the amount of commission charged or the rate (if any) at which ASIC was charged; and
 - (j) a statement of the amounts (if any) of all stamp duties and other duties and taxes payable in connection with the transaction.
- (4) A contract note given by a futures broker under subsection (1) in respect of a transaction, being the acquisition or disposal of a futures option, must include:
- (a) the matters specified in paragraphs (3)(a), (b), (c), (g), (h) and (j); and
 - (b) a description of the class of futures contracts in which is included the futures contract to which the futures option relates; and
 - (c) the month and year for performance or settlement of the futures contract to which the futures option relates; and
 - (d) the date by which the purchaser of the futures option, in order to exercise the futures option, must declare an intention to exercise the futures option; and
 - (e) a statement of the amount of the premium; and

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- (f) details of the price at which the purchaser of the futures option has, by virtue of the futures option, an option or Chapter 8 right to assume a bought position, or sold position, as the case requires, in relation to the futures contract to which the futures option relates.
- (5) A contract note given by a futures broker under subsection (1) in respect of a transaction, being the acquisition or disposal of an eligible exchange-traded option (in this subsection called the *option*), must include:
- (a) the matters specified in paragraphs (3)(a), (b), (c), (g), (h) and (j); and
 - (b) a description of the commodity or index to which the option relates; and
 - (c) the date by which the purchaser of the option, in order to exercise the option, must declare an intention to exercise the option; and
 - (d) a statement of the amount of the premium; and
 - (e) details of:
 - (i) in a case where the option relates to a commodity—the price at which the purchaser of the option has, by virtue of the option, an option or right to purchase, or sell, as the case requires, that commodity; or
 - (ii) in a case where the purchaser of the option has, by virtue of the option, an option or right to be paid an amount of money to be determined by reference to the amount by which a specified number is greater or less than the number of a specified index—the specified number and the manner in which that amount of money is to be determined.
- (6) A futures broker must not include in a contract note given under subsection (1), as the name of a person with or on behalf of whom the broker has entered into the transaction, a name that the broker knows, or could reasonably be expected to know, is not a name by which that person is ordinarily known.
- (7) For the purposes of this section, a futures contract is included in the same class of futures contracts as another futures contract if,

and only if, the first-mentioned futures contract is of the same kind as the other futures contract.

1207 Futures broker to give monthly statement to client

(1) Where:

- (a) a futures broker has, at any time during a particular month, held money or property on account of a client; or
- (b) a futures broker has, before or during a particular month, acquired a futures contract on behalf of a client, and, as at the end of that month, the futures contract has not been disposed of;

the broker must, within 7 days after the end of that month, send to the client a written statement setting out:

- (c) the name or style under which the broker carries on business as a futures broker and the address of the principal place at which the broker so carries on business; and
 - (d) the opening cash balance for that month in the client's account; and
 - (e) all deposits, credits, withdrawals and debits affecting the account during that month; and
 - (f) the cash balance in the account at the end of that month; and
 - (g) in relation to each futures contract that the broker has, before or during that month, acquired on behalf of the client and that, as at the end of that month, has not been disposed of, particulars of the futures contract, including the particulars required by virtue of paragraph 1206(3)(d), or paragraphs 1206(4)(b), (e) and (f) or (5)(b), (d) and (e), as the case requires, to be included in a contract note relating to the acquisition of the futures contract; and
 - (h) details of each outstanding call for a deposit or margin in respect of a futures contract that the broker has acquired on behalf of the client.
- (2) Where a futures broker has, during a particular month, authority to operate on a discretionary account, the broker must, within 7 days after the end of that month, send to the person, or to each person, as the case requires, who gave instructions to the broker

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authorising the broker to operate on the discretionary account a written statement setting out:

- (a) the name or style under which the broker carries on business as a futures broker and the address of the principal place at which the broker so carries on business; and
- (b) the opening cash balance for that month in the account (in this subsection called the *account*) maintained by the broker in respect of the discretionary account; and
- (c) all deposits, credits, withdrawals and debits affecting the account during that month; and
- (d) the cash balance in the account at the end of that month; and
- (e) in relation to each futures contract:
 - (i) that the broker has acquired before or during that month; and
 - (ii) the acquisition of which was an operation by the broker on the discretionary account; and
 - (iii) that, as at the end of that month, has not been disposed of;
particulars of the futures contract, including the particulars required by virtue of paragraph 1206(3)(d), or paragraphs 1206(4)(b), (e) and (f) or (5)(b), (d) and (e), as the case requires, to be included in a contract note relating to the acquisition of the futures contract; and
- (f) details of each outstanding call for a deposit or margin in respect of a futures contract that the broker has acquired on behalf of the client and the acquisition of which was an operation by the broker on the discretionary account.

1208 Dealings by futures broker on own account

- (1) A futures broker must maintain separately from other records such records as correctly record and explain dealings in futures contracts by the broker on the broker's own account including, but not limited to, records specifying:
 - (a) a description of each of those dealings together with the date on which and the time at which:

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- (i) the instructions (if any) for each of those dealings were received by the futures broker; and
 - (ii) the instructions (if any) for each of those dealings were transmitted to the futures market on which the dealing was effected; and
 - (iii) the dealing was effected; and
- (b) the source of the funds used for effecting those dealings.
- (2) A futures broker is taken not to have maintained records in compliance with subsection (1) unless the entries in the records are made in writing in the English language or are made in such a manner as will enable them to be readily accessible and to be readily converted into writing in the English language.
- (3) A futures broker must not knowingly take the other side of an order of a client of the broker in relation to a futures contract unless:
- (a) the client has consented to the broker taking the other side of the order in relation to that futures contract; or
 - (b) in dealing in that futures contract on behalf of the client, the broker is taken, for the purposes of this Act, to be dealing in that futures contract on the broker's own account.
- (4) For the purposes of subsection (3), a futures broker takes the other side of an order of a client of the broker in relation to a futures contract where the broker:
- (a) when dealing on the broker's own account, assumes a bought position or sold position in relation to the contract; and
 - (b) when dealing on the instructions of the client, assumes the opposite sold position or bought position in relation to the contract.

1209 Segregation of client money and property

- (1) In this section:

client, in relation to a futures broker, means a person on behalf of whom the broker deals, or from whom the broker accepts instructions to deal, in futures contracts, but does not include:

- (a) the broker; or

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- (b) if the broker is a body corporate—a director, or an officer, of the broker; or
- (c) an employee of the broker; or
- (d) if the broker is a body corporate—a body corporate that is related to the broker; or
- (e) a person who is associated with, or who is a partner of, the broker; or
- (f) a body corporate in which the broker has, or the broker and partners of the broker together have, a controlling interest.

credit facility means a document evidencing the right of a person to obtain money on credit from another person, and, without limiting the generality of the foregoing, includes a letter of credit and a bank guarantee.

property includes credit facilities and securities.

relevant credit balance, in relation to a client of a futures broker, means the total of:

- (a) the amounts deposited by the broker in respect of the client in a clients' segregated account, or clients' segregated accounts, of the broker, less so much of those amounts as has been withdrawn from the account or accounts; and
- (b) the values of the items of property that:
 - (i) have, in respect of the client, been deposited by the broker in safe custody pursuant to subsection (3); and
 - (ii) have not been withdrawn from safe custody; and
 - (iii) under the terms and conditions on which they were deposited with, or received by, the broker, are available to meet, or to provide security in connection with the meeting of, relevant liabilities of the client.

relevant liabilities, in relation to a client of a futures broker, means debts and liabilities of the client arising out of dealings in futures contracts effected by the broker on behalf of the client.

settling, in relation to a dealing in a futures contract, includes making delivery, or taking delivery, of a commodity to which the futures contract relates.

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- (2) For the purposes of the definition of *relevant credit balance* in subsection (1), the value of an item of property at a particular time is:
- (a) in the case of a credit facility—the amount of money that the person entitled to the right evidenced by the credit facility can, at that time or within a reasonable period after that time, obtain by virtue of that right; or
 - (b) in any other case—the market value of the property as at the end of the last business day before that time.
- (3) Where, in connection with:
- (a) dealings in futures contracts effected, whether in this jurisdiction or elsewhere or proposed to be effected, by a futures broker on behalf of a client of the broker; or
 - (b) instructions by a client of a futures broker to deal in futures contracts, whether in this jurisdiction or elsewhere;
- money or property (other than property to which section 1214 applies) is deposited with the broker by the client, or is received by the broker for, or on behalf of, the client, the broker must:
- (c) in the case of money—deposit the money in a clients' segregated account of the broker maintained in this jurisdiction or in the place where the money was deposited with, or received by, the broker; or
 - (d) in the case of property—deposit the property in safe custody, in this jurisdiction or in the place where the property was deposited with, or received by, the broker, in such a manner that the property is segregated from property other than property deposited by the broker in safe custody pursuant to this subsection;
- on or before the next day after the money or property is deposited with, or received by, the broker that is a day on which the money or property can be deposited as first mentioned in paragraph (c) or (d).
- (4) Without limiting the generality of subsection (3), where, in connection with dealings in futures contracts effected, whether in this jurisdiction or elsewhere, by a futures broker, the broker receives from a person an amount of money some or all of which is

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attributable to dealings in futures contracts so effected on behalf of clients of the broker, the broker must, on the next day on which the amount can be so deposited, deposit the amount in a clients' segregated account of the broker maintained in this jurisdiction or in the place where the broker receives the amount.

- (4A) A clients' segregated account of a futures broker must be designated as a clients' segregated account, unless it is maintained outside this jurisdiction and the law in force in the place where it is maintained requires it to be designated in some other way.
- (4B) If:
- (a) a clients' segregated account of a futures broker is required by subsection (4A) to be designated as a clients' segregated account; and
 - (b) the account is designated in a way that complies substantially, but not completely, with that requirement;
- subsection (4A) is taken to be complied with in relation to the account.
- (5) Where, pursuant to this section, a futures broker deposits money in respect of a client in a clients' segregated account of the broker, the broker must not withdraw any of the money except for the purpose of:
- (a) making a payment to, or in accordance with the written direction of, a person entitled to the money; or
 - (b) making a payment for, or in connection with, the entering into, margining, guaranteeing, securing, transferring, adjusting or settling of dealings in futures contracts effected by the broker on behalf of clients only; or
 - (c) defraying brokerage and other proper charges incurred in respect of dealings in futures contracts effected by the broker on behalf of the client; or
 - (d) investing it:
 - (i) in any manner in which trustees are for the time being authorised by law to invest trust funds; or
 - (ii) on deposit with an eligible money market dealer; or
 - (iii) on deposit at interest with:

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- (A) an Australian ADI; or
 - (B) an approved foreign bank in relation to the broker; or
 - (iv) on deposit with a clearing house for a futures exchange; or
 - (v) in the purchase of cash management trust interests; or
 - (e) paying to the broker the amount of a fee that the broker may charge, or an amount to which the broker is entitled, under an agreement with the client made under subsection (7); or
 - (f) making a payment that is otherwise authorised by law; or as permitted by subsection (10).
- (5A) If, under subsection (5), a broker (the *paying broker*) withdraws money from a clients' segregated account and pays it to another broker (the *receiving broker*):
- (a) the paying broker must ensure that the receiving broker is notified, at the same time as the payment is made or as close to that time as is practicable, of the fact that the money has been withdrawn from a clients' segregated account of the paying broker and should be paid into a clients' segregated account of the receiving broker; and
 - (b) on or before the next day after the receiving broker receives the payment, the receiving broker must pay the money into a clients' segregated account of the receiving broker.
- (5B) A notification under paragraph (5A)(a) may be in writing or in an electronic or other form and may convey its message by express words, or by a code or some other means understood by the brokers concerned.
- (6) A futures broker must not deal with property deposited by the broker in safe custody under subsection (3) except:
- (a) in accordance with the terms and conditions on which it was deposited with, or received by, the broker; or
 - (b) for the purpose of meeting obligations incurred by the broker in connection with margining, guaranteeing, securing, transferring, adjusting or settling dealings in futures contracts effected by the broker on behalf of clients only.

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- (7) A futures broker who invests as mentioned in paragraph (5)(d) money that was, in respect of a client of the broker, deposited by the broker under subsection (3):
- (a) may charge such fee (if any) for so investing the money; and
 - (b) is entitled to so much (if any) of the return on the money so invested;
- as the broker and the client agree in writing.
- (8) A futures broker must not invest an amount pursuant to paragraph (5)(d) by depositing it with a person for that person to invest unless:
- (a) the broker:
 - (i) has informed the person that the amount has been withdrawn from a clients' segregated account of the broker and is money to which clients of the broker are entitled; and
 - (ii) has obtained from the person a written statement that is signed by the person, sets out the amount and acknowledges that the broker has informed the person as mentioned in subparagraph (i); or
 - (b) the investment is made by the broker paying the amount into an account maintained with the person in relation to which the following conditions are satisfied:
 - (i) the account is maintained for the sole purpose of having amounts invested in it pursuant to paragraph (5)(d);
 - (ii) the broker has informed the person that amounts paid into the account will be amounts withdrawn from a clients' segregated account of the broker and will be moneys to which clients of the broker are entitled;
 - (iii) the broker has obtained from the person a written statement signed by the person that acknowledges that the broker has informed the person as mentioned in subparagraph (ii).
- (9) Where, at a particular time, the total amount of the relevant liabilities of a client of a futures broker exceeds the relevant credit balance of the client, the broker may, in respect of the client, deposit in a clients' segregated account of the broker an amount of

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money not greater than the amount of the excess, and, if the broker does so, the amount so deposited is, subject to subsection (10), taken to be money to which the client is entitled.

(10) Where:

- (a) a futures broker has, in respect of a client of the broker, deposited an amount pursuant to subsection (9) in a clients' segregated account of the broker; and
- (b) the relevant credit balance of the client exceeds by a particular amount the total amount of the relevant liabilities of the client;

the broker may withdraw from the account so much of the amount referred to in paragraph (a) as does not exceed the amount first referred to in paragraph (b).

(11) A futures broker must keep in relation to the clients' segregated account, or clients' segregated accounts, of the broker financial records that:

- (a) are separate from any other financial records of the broker; and
- (b) record separately in respect of each client of the broker particulars of the amounts deposited in, and the amounts withdrawn from, the account or accounts in respect of the client; and
- (c) record, separately from the particulars referred to in paragraph (b):
 - (i) particulars (including particulars of withdrawals) of so much of the amounts deposited as required by subsection (4) in the account or accounts as was not attributable to dealings in futures contracts effected by the broker on behalf of clients of the broker; and
 - (ii) particulars of all amounts deposited in the account or accounts pursuant to subsection (9); and
 - (iii) particulars of all amounts withdrawn from the account or accounts pursuant to subsection (10).

(12) A futures broker must keep records that:

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- (a) relate to deposits of property in safe custody by the broker pursuant to subsection (3); and
 - (b) record separately in respect of each client of the broker particulars of the property deposited in respect of the client.
- (13) Section 1213 applies, so far as it is capable of application, in relation to financial records, and other records, that are required by subsections (11) and (12), respectively, of this section to be kept by a futures broker, and so applies as if those accounting records and other records were financial records required by that section to be kept by the broker.
- (14) Subject to subsections (15) and (16), none of the following:
- (a) money deposited by a futures broker pursuant to this section in a clients' segregated account of the broker;
 - (b) property in which money deposited by a futures broker as mentioned in paragraph (a) of this subsection has been invested pursuant to paragraph (5)(d);
 - (c) property deposited by a futures broker in safe custody pursuant to subsection (3);
- is available for the payment of a debt or liability of the broker or is liable to be attached, or taken in execution, under the order or process of a court at the instance of a person suing in respect of such a debt or liability.
- (15) Nothing in subsection (14) affects the right of a client of a futures broker to recover money or property to which the client is entitled.
- (16) Where a futures broker is entitled to withdraw money from a clients' segregated account of the broker for the purpose of making a payment to the broker, subsection (14) does not apply in relation to that money.
- (17) Where a futures broker invests money pursuant to paragraph (5)(d) by depositing it with a person for the person to invest, neither that money, nor any property in which the person invests any of that money, is available for the payment of a debt or liability of the person or is liable to be attached, or taken in execution, under the order or process of a court at the instance of a person suing in respect of such a debt or liability.

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- (18) Nothing in this section affects a claim or lien that a futures broker has, under an agreement, under an Australian law or otherwise, against or on:
- (a) money deposited by the broker pursuant to this section in a clients' segregated account of the broker; or
 - (b) property in which such money has been invested pursuant to paragraph (5)(d); or
 - (c) property deposited by the broker in safe custody pursuant to subsection (3).
- (19) A futures broker must not pay an amount into a client's segregated account of the broker except as required or authorised by this section or the regulations.

1210 Futures broker to give certain information to prospective clients

A futures broker must, before accepting a person as a client of the broker, give to the person:

- (a) a document that:
 - (i) explains the nature of futures contracts; and
 - (ii) explains the nature of the obligations assumed by a person who instructs a futures broker to enter into a futures contract; and
 - (iii) sets out a risk disclosure statement in the prescribed form; and
 - (iv) sets out the specifications, and details of the essential terms, of each kind of futures contract in which the broker deals on behalf of clients; and
- (b) a copy of each agreement into which the broker proposes, if the broker agrees to accept instructions from the person in relation to dealings in futures contracts, to require the person to enter.

Part 8.5—Financial statements and audit

1211 Interpretation

In this Part, unless the contrary intention appears, a reference to a book, futures contract or business of or in relation to a futures broker who carries on business in partnership is a reference to such a book, futures contract or business of or in relation to the partnership.

1212 Application of Part

- (1) This Part applies in relation to a futures broker in relation to his, her or its business of dealing in futures contracts, whether carried on in this jurisdiction or elsewhere.
- (2) This Part does not affect the operation of Chapter 2M in relation to a company that holds a futures brokers licence or in relation to a business of dealing in futures contracts that such a company carries on.

1213 Accounts to be kept by futures brokers

- (1) A futures broker must:
 - (a) keep such financial records as correctly record and explain the transactions and financial position of the business of dealing in futures contracts carried on by the broker; and
 - (b) keep financial records in such a manner as will enable true and fair profit and loss statements and balance sheets to be prepared from time to time; and
 - (c) keep financial records in such a manner as will enable profit and loss statements and balance sheets of the business of dealing in futures contracts carried on by the broker to be conveniently and properly audited.

Section 1213

- (2) Without limiting the generality of subsection (1), a futures broker is taken not to have complied with that subsection in relation to records if those records:
- (a) are not kept in writing in the English language or in such a manner as will enable them to be readily accessible and readily converted into writing in the English language; or
 - (b) are not kept in sufficient detail to show particulars of:
 - (i) all money received or paid by the broker, including money paid to, or disbursed from, an account of the kind referred to in paragraph 1209(3)(c); and
 - (ii) all dealings in futures contracts made by the broker, the charges and credits arising from them, and the name of the person on whose behalf each dealing was effected; and
 - (iii) all income received from commissions, interest and other sources, and all expenses, commissions and interest paid, by the broker; and
 - (iv) all the assets and liabilities (including contingent liabilities) of the broker; and
 - (v) all futures contracts to which the broker has become a party as a result of trading on the broker's own account; and
 - (vi) all futures contracts dealt with by the broker pursuant to instructions given by another person, showing who gave the instructions; and
 - (vii) all property that is property of the broker and in respect of which the business rules of a futures exchange authorise the making of a futures contract in the futures market of the futures exchange, showing by whom the property is held and, if held by some other person, whether or not the property is so held as security against loans or advances; and
 - (viii) all such property that is not property of the broker and for which the broker or any nominee controlled by the broker is accountable, showing by whom, and for whom, the property is held and the extent to which the property is either held for safe custody or deposited with

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- a third party as security for loans or advances made to the broker; or
- (c) are not kept in sufficient detail to show separately particulars of every transaction by the broker; or
 - (d) do not specify the day on which or the period during which each transaction by the broker took place; or
 - (e) do not contain copies of acknowledgments of the receipts of property received by the broker from clients.
- (3) Without affecting the operation of subsections (1) and (2), a futures broker is taken not to have complied with subsection (1) in relation to records if, in respect of a discretionary account on which the broker operates, those records are not kept in sufficient detail to show the particulars that the broker is required to give to clients in order to comply with subsection 1207(2).
- (4) Without affecting the operation of subsection (2) or (3), a futures broker must keep records in sufficient detail to show separately particulars of all transactions by the broker:
- (a) with, on behalf of, or on the account of, clients of the broker, excluding, in a case where the broker carries on business in partnership, the partners in the firm; and
 - (b) in a case where the broker carries on business in partnership—on the broker's own account or with, on behalf of, or on the account of, the partners in the firm; and
 - (c) in a case where the broker does not carry on business in partnership—on the broker's own account; and
 - (d) with, on behalf of, or on the account of, other futures brokers; and
 - (e) with, on behalf of, or on the account of, representatives of the broker; and
 - (f) with, on behalf of, or on the account of, employees of the broker.
- (5) An entry in the financial and other records of a futures broker required to be kept in accordance with this section, and any matter recorded by a futures exchange in relation to a member pursuant to

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subsection 1270(3) is taken to have been made by, or with the authority of, the broker or member.

- (6) Where a record required by this section to be kept is not kept in writing in the English language, the futures broker must, if required to convert the record into writing in the English language by a person who is entitled to examine the record, comply with the requirement within a reasonable time.
- (7) Notwithstanding any other provision of this section, a futures broker is not taken to have failed to keep a record referred to in subsection (1) by reason only that the record is kept as a part of, or in conjunction with, the records relating to any business other than dealing in futures contracts that is carried on by the broker.
- (8) If financial records or other records are kept by a futures broker at a place outside this jurisdiction, the broker must cause to be sent to and kept at a place in this jurisdiction such particulars with respect to the business dealt with in those records as will enable true and fair profit and loss statements and balance-sheets to be prepared.
- (9) If any financial records of a futures broker are kept at a place outside this jurisdiction, the broker must, if required by ASIC to produce those records at a place in this jurisdiction, comply with the requirement not later than 28 days after the requirement is made.

1214 Property in custody of futures broker

- (1) Where a futures broker receives for safe custody property:
 - (a) that is the property of another person (in this section called the *client*); and
 - (b) that is, or is to be, delivered in accordance with a futures contract; and
 - (c) for which the broker or a nominee of the broker is accountable;the broker must forthwith:
 - (d) if the client requests that the property be deposited in safe custody with the broker's bankers—cause it to be so

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- deposited or notify the client of any failure to comply with the request, whether or not caused by a refusal by the bankers to comply with the request; or
- (e) if the client does not make, or the bankers refuse to comply with, such a request and the business rules of the futures exchange that maintained or provided the futures market on which the contract was made enable the property to be deposited in safe custody—cause the property to be so deposited in accordance with those rules.
- (2) A futures broker must not deposit as security for a loan or advance made to the broker property of a kind referred to in subsection (1) unless an amount is owed to the broker by the client in connection with a transaction entered into on the instructions of the client and the broker:
- (a) gives a written notice to the client identifying the property and stating that the broker intends to deposit the property as security for a loan or advance to the broker; and
- (b) deposits the property as security for a loan or advance to the broker, being a loan or advance of an amount that does not exceed the amount owed to the broker by the client on the day of the receipt by the broker of the property.
- (3) Where:
- (a) a futures broker has given a notice to a person as mentioned in subsection (2) and has deposited the property referred to in the notice as security for a loan or advance; and
- (b) the person:
- (i) has paid to the broker the amount owed by the person to the broker at the time the property was so deposited; and
- (ii) requests the broker to withdraw the property from deposit;
- the broker must, as soon as practicable after the request, withdraw the property from deposit, but nothing in this subsection prevents the broker from redepositing the property, as permitted by subsection (2), as a security for a loan or advance.

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- (4) Where a futures broker deposits as security for a loan or advance made to the broker property of a kind referred to in subsection (1), the broker must, at the end of the period of 3 months after the day on which the property is deposited, and at the end of each subsequent period of 3 months if the property is still on deposit, send to the person whose property it is written notice to that effect.

1215 Appointment of auditor by futures broker

- (1) Within 1 month after becoming the holder of a futures brokers licence, a futures broker (other than an Australian ADI) must appoint a person or persons, a firm or firms, or a person or persons and a firm or firms, as auditor or auditors to audit the broker's financial statements.
- (2) Subject to this section, a person must not:
- (a) consent to be appointed as auditor of a futures broker; or
 - (b) act as auditor of a futures broker; or
 - (c) prepare a report required by this Act to be prepared by an auditor of a futures broker;
- if:
- (d) the person is not a registered company auditor; or
 - (e) the person, or a body corporate in which the person has a substantial holding, is indebted in an amount exceeding \$5,000 to the futures broker or, if the futures broker is a body corporate, to a body corporate related to the futures broker; or
 - (f) the person is a partner or employee of the futures broker; or
 - (g) in a case where the futures broker is a body corporate—the person is:
 - (i) an officer of the body; or
 - (ii) a partner, employer or employee of an officer of the body; or
 - (iii) a partner or employee of an employee of an officer of the body.
- (3) Subject to this section, a firm must not:

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- (a) consent to be appointed as an auditor of a futures broker; or
- (b) act as auditor of a futures broker; or
- (c) prepare a report required by this Act to be prepared by an auditor of a futures broker;

unless:

- (d) at least one member of the firm is a registered company auditor who is ordinarily resident in Australia; and
 - (e) where the business name under which the firm is carrying on business is not registered under a law of a State or Territory relating to the registration of business names—there has been lodged a return in the prescribed form showing, in relation to each member of the firm, the member's full name and address as at the time when the firm so consents, acts or prepares a report; and
 - (f) no member of the firm, and no body corporate in which any member of the firm has a substantial holding, is indebted in an amount not exceeding \$5,000 to the futures broker or, if the futures broker is a body corporate, to a body corporate that is related to the futures broker; and
 - (ga) no member of the firm is a partner or employee of the futures broker; and
 - (g) in a case where the futures broker is a body corporate—no member of the firm is:
 - (i) an officer of the body; or
 - (ii) a partner, employer or employee of an officer of the body; or
 - (iii) a partner or employee of an employee of an officer of the body; and
 - (h) in a case where the futures broker is a body corporate—no officer of the body receives any remuneration from the firm for acting as a consultant to it on accounting or auditing matters.
- (4) For the purposes of paragraphs (2)(e) and (3)(f), disregard a debt owed by a natural person to a body corporate if:
- (a) the body corporate is:
 - (i) an Australian ADI; or

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- (ii) a body corporate registered under the *Life Insurance Act 1995*; and
 - (b) the debt arose because of a loan that the body corporate or entity made to the person in the ordinary course of its ordinary business; and
 - (c) the person used the amount of the loan to pay the whole or part of the purchase price of premises that the person uses as their principal place of residence.
- (5) For the purposes of subsections (2) and (3), a person is taken to be an officer of a body corporate if:
- (a) the person is an officer of a related body corporate; or
 - (b) except where ASIC, if it thinks fit in the circumstances of the case, directs that this paragraph not apply in relation to the person—the person has, at any time within the immediately preceding period of 12 months, been an officer or promoter of the body corporate or of a related body corporate.
- (6) For the purposes of this section, a person is not taken to be an officer of a body corporate by reason only of being or having been the liquidator of the body corporate or of a related body corporate.
- (7) For the purposes of this section, a person is not taken to be an officer of a body corporate by reason only of having been appointed as an auditor of that body corporate or of a related body corporate or, for any purpose relating to taxation, a public officer of a body corporate or by reason only of being or having been authorised to accept on behalf of the body corporate or a related body corporate service of process or any notices required to be served on the body corporate or related body corporate.
- (8) The appointment of a firm as auditor of a futures broker is taken to be an appointment of all persons who are members of the firm and are registered company auditors, whether resident in Australia or not, at the date of the appointment.
- (9) Where a firm that has been appointed as auditor of a futures broker is reconstituted by reason of the death, retirement or withdrawal of a member or members or by reason of the admission of a new member or new members, or both:
-

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- (a) a person who was taken under subsection (8) to be an auditor of the broker and who has so retired or withdrawn from the firm as previously constituted is taken to have resigned as auditor of the company as from the day of the person's retirement or withdrawal but, unless that person was the only member of the firm who was a registered company auditor and, after the retirement or withdrawal of that person, there is no member of the firm who is a registered company auditor, section 1216 does not apply to that resignation; and
 - (b) a person who is a registered company auditor and who is so admitted to the firm is taken to have been appointed as an auditor of the broker as from the day of admission; and
 - (c) the reconstitution of the firm does not affect the appointment of the continuing members of the firm who are registered company auditors as auditors of the broker;
- but nothing in this subsection affects the operation of subsection (3).
- (10) Except as provided by subsection (9), the appointment of the members of a firm as auditors of a futures broker that is taken by subsection (8) to have been made by reason of the appointment of the firm as auditor of the broker is not affected by the dissolution of the firm.
 - (11) A report or notice that purports to be made or given by a firm appointed as auditor of a futures broker is not taken to be duly made or given unless it is signed, in the firm name and in the name of the member concerned, by a member of the firm who is a registered company auditor.
 - (12) Where a person or firm is appointed as an auditor under subsection (1) (not being an appointment that is taken to be made by virtue of subsection (9)) or under subsection (16), the futures broker must, within 14 days after the appointment, lodge with ASIC a notice in writing stating that the broker has made the appointment and specifying the name of the person or firm.
 - (13) Without limiting the generality of section 1311, if, in contravention of this section, a firm consents to be appointed, or acts as, an auditor of a futures broker or prepares a report required by this Act

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to be prepared by an auditor of a futures broker, each member of the firm is guilty of an offence.

- (14) A person must not:
- (a) if the person has been appointed auditor of a futures broker—knowingly disqualify himself or herself while the appointment continues from acting as auditor of the broker; or
 - (b) if the person is a member of a firm that has been appointed auditor of a futures broker—knowingly disqualify the firm while the appointment continues from acting as auditor of the broker.
- (15) An auditor of a futures broker holds office until death, until removal or resignation from office in accordance with section 1216 or until becoming prohibited from acting as auditor by reason of subsection (2) or (3).
- (16) Within 14 days after a vacancy occurs in the office of an auditor of a futures broker, if there is no surviving or continuing auditor of the broker, the broker must appoint a person or persons, a firm or firms or a person or persons and a firm or firms to fill the vacancy.
- (17) While a vacancy in the office of an auditor continues, the surviving or continuing auditor or auditors (if any) may act.
- (18) A futures broker must not appoint a person or firm as auditor of the broker unless that person or firm has, before the appointment, consented by notice in writing given to the broker to act as auditor and has not withdrawn the consent by notice in writing given to the broker.
- (19) This section does not apply in relation to a body corporate (except a proprietary company) in relation to which section 327 applies.

1216 Removal and resignation of auditors

- (1) A futures broker may, with the consent of ASIC, remove an auditor of the broker from office.

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- (2) An auditor of a futures broker may, by notice in writing given to the broker, resign as auditor of the broker if:
 - (a) the auditor has, by notice in writing given to ASIC, applied for consent to the resignation and, at or about the same time as the notice was given to ASIC, notified the broker in writing of the application to ASIC; and
 - (b) the auditor has received the consent of ASIC.
- (3) ASIC must, as soon as practicable after receiving a notice from an auditor under subsection (2), notify the auditor and the futures broker whether it consents to the resignation of the auditor.
- (4) A statement made by an auditor in an application to ASIC under subsection (2) or in answer to an inquiry by ASIC relating to the reasons for the application:
 - (a) is not admissible in evidence in any civil or criminal proceedings against the auditor other than proceedings for an offence against section 1308; and
 - (b) may not be made the ground of a prosecution (other than a prosecution for an offence against section 1308), action or suit against the auditor;and a certificate by ASIC that the statement was made in the application or in answer to an inquiry by ASIC is conclusive evidence that the statement was so made.
- (5) Subject to subsection (6), the resignation of an auditor takes effect:
 - (a) on the date (if any) specified for the purpose in the notice of resignation; or
 - (b) on the date on which ASIC gives its consent to the resignation; or
 - (c) on the date (if any) fixed by ASIC for the purpose;whichever last occurs.
- (6) Where, on the retirement or withdrawal from a firm of a member, the firm will no longer be capable, by reason of the provisions of paragraph 1215(3)(d), of acting as auditor of a futures broker, the member so retiring or withdrawing is, if not disqualified from acting as auditor of the broker, taken to be the auditor of the broker

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until the member obtains the consent of ASIC to the retirement or withdrawal.

- (7) This section does not apply in relation to a body corporate (except a proprietary company) in relation to which section 329 applies.

1217 Fees and expenses of auditors

The reasonable fees and expenses of an auditor of a futures broker are payable by the broker.

1218 Futures brokers' accounts

- (1) In this section:

financial year, in relation to a futures broker, means:

- (a) if the broker is a natural person—a period of 12 months ending on 30 June in a year; or
- (b) if the broker is a body corporate—a period that is a financial year of the body corporate because of the definition of *financial year* in section 9.

prescribed day, in relation to a financial year of a futures broker, means the day that is:

- (a) if the broker is a natural person—2 months; or
- (b) if the broker is a body corporate—3 months;

after the end of that financial year or, if an extension is approved under subsection (3), the day on which the extended period ends.

- (2) A futures broker (other than an Australian ADI) must, in respect of each financial year, other than a financial year that ended before the date on which the broker commenced to carry on business as a futures broker, prepare a true and fair profit and loss statement and balance sheet on the basis of such accounting principles (if any) and containing such information and matters as are prescribed for the purposes of this subsection and lodge them with ASIC before the prescribed day for that financial year, together with an auditor's report containing such information and matters as are prescribed

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for the purposes of this subsection and such other information and matters as the auditor thinks fit to include in the report.

- (3) ASIC may, on application made by a futures broker and the auditor of the broker before the end of the period referred to in paragraph (a) or (b), as the case requires, of the definition of *prescribed day* in subsection (1) or, if that period has been extended pursuant to an approval or approvals previously given under this subsection, before the end of the period as so extended, approve an extension or further extension of the period, and such an approval may be given subject to such conditions (if any) as ASIC imposes.
- (4) Where an approval under subsection (3) in relation to a futures broker is given subject to conditions, the broker must comply with those conditions.

1219 Auditor's right of access to records, information etc.

- (1) An auditor of a futures broker has a right of access at all reasonable times to the financial records and other records, including any register, of the broker, and is entitled to require from the broker or, in the case of a futures broker that is a body corporate, from any executive officer of the broker, such information and explanations as the auditor desires for the purposes of audit.
- (2) A futures broker, or an executive officer of a futures broker that is a body corporate, must not, without lawful excuse:
 - (a) refuse or fail to allow an auditor of the broker access, in accordance with subsection (1), to financial records or other records, including any register, of the broker; or
 - (b) refuse or fail to give information, or an explanation, as and when required under subsection (1); or
 - (c) otherwise hinder, obstruct or delay an auditor of the broker in the performance or exercise of the auditor's duties or powers.

1220 Auditor to report to ASIC in certain cases

- (1) Where an auditor, in the performance of the duties of auditor of a futures broker, becomes aware of a prescribed matter, the auditor must, within 7 days after becoming aware of that matter, lodge a written report on the matter and send a copy of the report to:
 - (a) the broker; and
 - (b) each futures exchange of which the broker is a member and to each clearing house (if any) for that futures exchange; and
 - (c) each futures association of which the broker is a member, unless the futures association is also a futures exchange of which the broker is a member.
- (2) In this section, *prescribed matter* means a matter that, in the opinion of the auditor:
 - (a) has adversely affected, is adversely affecting, or may adversely affect, the ability of the futures broker to meet the broker's obligations as a broker; or
 - (b) constitutes or may constitute a contravention of section 1209, 1213 or 1214; or
 - (c) constitutes or may constitute a contravention of a condition of a licence held by the futures broker.

1221 Certain matters to be reported to ASIC

- (1) Where, in relation to a futures broker who is a member of a futures exchange, the futures exchange becomes aware of a prescribed matter, the futures exchange must, as soon as practicable after becoming aware of the matter, lodge a written report on the matter and send a copy of the report to the broker.
- (2) Subsection (1) applies:
 - (a) in relation to a clearing house for a futures exchange and a member of the clearing house; and

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- (b) in relation to a futures association and a member of the futures association (unless the futures association is also a futures exchange);
in the same manner as it applies in relation to a futures exchange and a member of the futures exchange.
- (3) In this section, *prescribed matter*, in relation to a futures broker, means a matter that, in the opinion of the futures exchange, clearing house or futures association concerned:
 - (a) has adversely affected, is adversely affecting, or may adversely affect, the ability of the broker to meet the broker's obligations as a broker; or
 - (b) constitutes or may constitute a contravention of section 1209, 1213 or 1214; or
 - (c) constitutes or may constitute a contravention of a condition of a licence held by the broker; or
 - (d) constitutes a failure to make, in accordance with Part 8.6, contributions to a fidelity fund.

1222 Defamation

- (1) An auditor of a futures broker has qualified privilege in respect of:
 - (a) any statement made, orally or in writing, in the course of performing the duties of an auditor; or
 - (b) the lodging of a report, or the sending of a report under section 1220 to the futures broker, a futures exchange, a clearing house for a futures exchange, or a futures association.
- (2) A futures exchange, a clearing house for a futures exchange, a futures association, or an officer of a futures exchange, of a clearing house for a futures exchange, or of a futures association, has qualified privilege in respect of:
 - (a) any statement made, orally or in writing, in the course of performing the duties imposed by section 1221; or
 - (b) the lodging of any report with ASIC, or the sending of any report to a futures broker, under section 1221.

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- (3) A person has qualified privilege in respect of the publishing of:
- (a) a statement made by an auditor of a futures broker as mentioned in paragraph (1)(a), or by a futures exchange, a clearing house for a futures exchange, a futures association, or an officer, as mentioned in paragraph (2)(a); or
 - (b) a document prepared by an auditor of a futures broker in the course of performing the duties of an auditor; or
 - (c) a document prepared by a futures exchange, a clearing house for a futures exchange, a futures association, or an officer of a futures exchange, of a clearing house for a futures exchange, or of a futures association, in the course of performing the duties imposed by section 1221; or
 - (d) a document required by or under this Chapter to be lodged, whether or not the document has been lodged.

1223 This Part not to affect right of futures exchange or futures association to impose obligations etc. on members

Nothing in this Part prevents a futures exchange or futures association imposing on members of that futures exchange or futures association any obligations or requirements (not being obligations or requirements inconsistent with this Act) that the futures exchange or futures association thinks fit with respect to:

- (a) the audit of financial statements (including the audit of financial statements by an auditor appointed by the futures exchange or futures association); or
- (b) the information to be given in reports from auditors; or
- (c) the keeping of books.

1224 Power of Court to restrain dealings with futures broker's bank accounts

- (1) Where the Court is satisfied that:
- (a) there are reasonable grounds for believing that:
 - (i) there is a deficiency in an account that is, or has at any time been, a clients' segregated account of a person; and

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- (ii) the person was, when the deficiency occurred, a futures broker or a member of a futures organisation; or
- (b) there has been, at a time when a person was a futures broker or a member of a futures organisation, undue delay, or unreasonable refusal, on the person's part in paying, applying or accounting for money as required by this Chapter; or
- (c) a person has, at a time when the person was a futures broker or a member of a futures organisation, failed to pay money into a clients' segregated account of the person as required by this Chapter; or
- (d) a person who is, or has at any time been, a futures broker or a member of a futures organisation, is carrying on, or last carried on, as the case requires, a futures broking business otherwise than in partnership and:
 - (i) in any case—the last futures brokers licence held by the person has been revoked or suspended; or
 - (ii) in any case—the person no longer carries on a futures broking business; or
 - (iii) if the person is a natural person—the person has died, or is incapable, because of physical or mental incapacity, of managing his or her affairs;

the Court may by order restrain dealings in respect of specified bank accounts that the person holds or maintains (whether in Australia or elsewhere), subject to such terms and conditions as the Court imposes.

- (2) An order under subsection (1) may only be made on an application by ASIC or by the futures organisation (if any) concerned.
- (4) 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.
- (5) Where ASIC makes an application to the Court for the making of an order under subsection (1), the Court must not require ASIC, as

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a condition of granting an interim order under subsection (4), to give any undertaking as to damages.

1225 Duty of banker or body corporate to make full disclosure

Where an order made under section 1224 is directed to a banker or a body corporate, the banker or body corporate must:

- (a) disclose to the applicant for the order every account kept by the bank or body corporate in the name of the person to whom the order relates, and any account that the banker or body corporate reasonably suspects is held or kept by the bank or body corporate for the benefit of that person; and
- (b) permit the applicant for the order to make a copy of, or to take an extract from, any account of the person to whom the order relates or any of the banker's books relating to that person or the like books in the possession of the body corporate.

1226 Power of Court to make further orders and give directions

Where an order is made under section 1224, the Court may, on the application of ASIC, a futures organisation or a person affected by the order, make further orders:

- (a) dealing with such ancillary matters as the Court considers necessary or desirable; and
- (b) directing that all or any of the money in an account affected by an order so made be paid by the bank or body corporate to ASIC or a person nominated by ASIC, on such terms and conditions as the Court thinks fit; and
- (c) discharging or varying the order.

1227 Power of Court to make order relating to payment of money

- (1) An order made under section 1226 may include directions to the person to whom the money is paid directing that that person:
 - (a) must cause the money to be paid into a trust account; or

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- (b) is authorised to prepare a scheme for distributing the money to persons who claim, during a period of 6 months after ASIC or that other person receives the money, to be entitled to the money and satisfy ASIC or that other person that they are so entitled; or
 - (c) where the money received is insufficient to pay all proved claims, may, notwithstanding any rule of law or equity to the contrary, apportion the money among the claimants in proportion to their proved claims and show in the scheme how the money is so apportioned.
- (2) Where a person prepares a scheme for distribution of money pursuant to subsection (1), the person must apply to the Court for approval of the scheme and for directions with respect to it.
- (3) The Court may give such directions as to the money held in a trust account pursuant to subsection (1), as to the persons to whom and in what amounts the whole or any portion of that money must be paid, and as to the payment of the balance of the money (if any) remaining in the account, as the Court thinks fit.

Part 8.6—Fidelity funds

1228 Establishment of fidelity funds

- (1) A futures organisation must keep a fidelity fund, and the board of the futures organisation must administer the fidelity fund.
- (2) The assets of a fidelity fund of a futures organisation are the property of the futures organisation, but must be kept separately from all other property of the futures organisation and must be held in trust for the purposes set out in this Part.

1229 Money constituting fidelity fund

- (1) The fidelity fund of a futures organisation consists of:
 - (a) in the case of a fidelity fund established before the commencement of this Act—the money, and other property, of which the fund consisted immediately before that commencement; and
 - (b) in the case of a fidelity fund established after the commencement of this Act—any amount that is paid to the credit of the fund by the futures organisation on the establishment of the fund; and
 - (ba) money paid into the fidelity fund as required by paragraphs 1234(4)(d) and 1235(4)(d); and
 - (c) money paid to the futures organisation, in accordance with this Part or the business rules of the futures organisation, by contributing members of the futures organisation; and
 - (d) the interests and profits from time to time accruing from the investment of the fidelity fund; and
 - (e) money paid into the fidelity fund by the futures organisation; and
 - (f) money recovered by or on behalf of the futures organisation in the exercise of a right of action conferred by this Part; and

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- (g) money paid by an insurer pursuant to a contract of insurance or indemnity entered into by the futures organisation under section 1249; and
 - (h) all other money lawfully paid into the fund.
- (2) Where a futures organisation has, under paragraph (1)(b), paid an amount to the credit of its fidelity fund:
- (a) the Minister may approve in writing, on such conditions (if any) as are specified in the approval, the repayment of the whole, or a specified part, of the amount from the fidelity fund to the general funds of the futures organisation; and
 - (b) if the Minister does so, the whole, or the specified part, as the case may be, of the amount may, in accordance with the conditions (if any) so specified, be so repaid.

1230 Fund to be kept in separate ADI account

The money in a fidelity fund must, until invested or applied in accordance with this Part, be kept in a separate account with an Australian ADI.

1231 Payments out of fund

Subject to this Part, there must be paid out of the fidelity fund of a futures organisation in such order as the board of the futures organisation deems proper:

- (a) the amount of all claims, including costs, allowed by the board or established against the futures organisation under this Part; and
- (b) all legal and other expenses incurred in investigating or defending claims made under this Part or incurred in relation to the fund or in the exercise by the futures organisation or the board of the rights, powers and authorities vested in it by this Part in relation to the fund; and
- (c) all premiums payable in respect of contracts of insurance or indemnity entered into by the futures organisation under section 1249; and

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- (d) the expenses incurred in the administration of the fund, including the salaries and wages of persons employed by the futures organisation or the board in relation to the fund; and
- (e) all other money payable out of the fund in accordance with the provisions of this Chapter.

1232 Accounts of fund

- (1) A futures organisation must establish and keep proper accounts of its fidelity fund and must, within the period of 3 months that next succeeds the end of its financial year, cause a balance-sheet in respect of those accounts to be made out as at the end of that financial year.
- (2) A futures organisation must appoint a registered company auditor to audit the accounts of the fidelity fund.
- (3) The auditor appointed by a futures organisation must audit the accounts of the fidelity fund and must audit each balance-sheet and cause a report on the accounts and balance-sheet to be laid before the board of the futures organisation not later than 1 month after the balance-sheet is made out.
- (4) A futures organisation must give to ASIC a copy of each report laid before the board of the futures organisation under this section and of the balance-sheet to which the report relates within 14 days after the report was so laid before the board.

1233 Management sub-committee

- (1) The board of a futures organisation may, by resolution, appoint a management sub-committee of not fewer than 3 and not more than 5 persons, at least one of whom is also a member of the board.
- (2) The board of a futures organisation may, by resolution, delegate to a sub-committee appointed by it under this section all or any of its powers, authorities and discretions under a provision of this Part (other than this section).

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- (3) A power, authority or discretion delegated under subsection (2) may be exercised by members forming a majority of the sub-committee as if that power, authority or discretion had been conferred by this Part on a majority of the members of the sub-committee.
- (4) A delegation by the board of a futures organisation under this section may at any time, by resolution of the board, be varied or revoked.
- (5) The board of a futures organisation may at any time, by resolution, remove a member of a sub-committee appointed by it under this section and may, by resolution, fill a vacancy arising in the membership of the sub-committee.
- (6) A delegation by the board of a futures organisation under this section does not prevent the exercise of a power, authority or discretion by that board.

1234 Contributions to fund

- (1) A person is not to be admitted to membership of a futures organisation unless:
 - (a) in any case—the person has paid to the futures organisation, as agent for the Commonwealth, the levy known as futures organisation (application for membership) fidelity fund contribution; or
 - (b) if the organisation is not a futures exchange—the person is already a member of a futures exchange.

Note: For the imposition and amount of the levy referred to in paragraph (a), see the *Corporations (Futures Organisations Levies) Act 2001*.

- (2) A contributing member of a futures organisation must, on or before 31 March in each year, pay to the futures organisation, as agent for the Commonwealth, the levy known as futures organisation (annual membership) fidelity fund contribution.

Note: For the imposition and amount of the levy, see the *Corporations (Futures Organisations Levies) Act 2001*.

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- (3) Whenever an amount of levy (the *levy amount*) is paid under this section, or under subsection 6(1) of the *Corporations (Futures Organisations Levies) Act 2001*, to a futures organisation as agent for the Commonwealth:
- (a) the futures organisation must pay an amount equal to the levy amount to the Commonwealth; and
 - (b) the Consolidated Revenue Fund is appropriated by that amount for the purpose of payment to the futures organisation; and
 - (c) the Commonwealth must pay the amount so appropriated to the futures organisation; and
 - (d) the futures organisation must pay the amount it receives under paragraph (c) into its fidelity fund.
- (4) A payment of an amount to a futures organisation as required by paragraph (3)(c) in respect of a particular levy amount is subject to a condition that, if the Commonwealth becomes liable to refund the whole or a part of the levy amount, the future organisation must pay to the Commonwealth an amount equal to the amount that the Commonwealth is liable to refund. The futures organisation may pay, out of its fidelity fund, any amount so required to be paid to the Commonwealth.
- (5) The *Financial Management and Accountability Act 1997* does not apply in relation to the payment of an amount of levy under this section to a futures organisation as agent for the Commonwealth. However, the operation of that Act in relation to the following payments is not affected.
- (a) the payment of an amount to the Commonwealth as required by paragraph (3)(a); or
 - (b) the payment of an amount by the Commonwealth as required by paragraph (3)(c).
- The futures organisation must, in accordance with the regulations, notify the Commonwealth of payments of levy it receives as agent for the Commonwealth.
- (6) An amount payable by a futures organisation as required by paragraph (3)(a) may be set off against an amount payable to the futures organisation as required by paragraph (3)(c).

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1235 Levy in addition to annual contributions

- (1) If, at any time, the amount of a fidelity fund is insufficient to pay all amounts that, at that time, are required to be paid under section 1231, the futures organisation concerned may determine that levy known as futures organisation additional fidelity fund contribution is to be paid by specified contributing members of the futures organisation. When such a determination is made, the levy is payable to futures organisation, as agent for the Commonwealth in accordance with this section.

Note: For the imposition and amount of the levy, see the *Corporations (Futures Organisations Levies) Act 2001*.

- (2) An amount of levy payable under subsection (1) must be paid within the time and in the manner specified by the futures organisation either generally or in relation to a particular case.
- (3) If a levy is imposed by subsection 6(2) of the *Corporations (Futures Organisations Levies) Act 2001* on a person, the levy must be paid by the time by which the levy under subsection 1235(1) of the old Corporations Law referred to in that subsection was required to be paid.
- (4) Whenever an amount of levy (the **levy amount**) is paid under this section, or under subsection 6(2) of the *Corporations (Futures Organisations Levies) Act 2001*, to a futures organisation as agent for the Commonwealth:
- (a) the futures organisation must pay an amount equal to the levy amount to the Commonwealth; and
 - (b) the Consolidated Revenue Fund is appropriated by that amount for the purpose of payment to the futures organisation; and
 - (c) the Commonwealth must pay the amount so appropriated to the futures organisation; and
 - (d) the futures organisation must pay the amount it receives under paragraph (c) into its fidelity fund.
- (5) A payment of an amount to a futures organisation as required by paragraph (4)(c) in respect of a particular levy amount is subject to

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a condition that, if the Commonwealth becomes liable to refund the whole or a part of the levy amount, the futures organisation must pay to the Commonwealth an amount equal to the amount that the Commonwealth is liable to refund. The futures organisation may pay, out of its fidelity fund, any amount so required to be paid to the Commonwealth.

- (6) The *Financial Management and Accountability Act 1997* does not apply in relation to the payment of an amount of levy under this section to a futures organisation as agent for the Commonwealth. However, the operation of that Act in relation to the following payments is not affected.
- (a) the payment of an amount to the Commonwealth as required by paragraph (4)(a); or
 - (b) the payment of an amount by the Commonwealth as required by paragraph (4)(c).

The futures organisation must, in accordance with the regulations, notify the Commonwealth of payments of levy it receives as agent for the Commonwealth.

- (7) An amount payable by a futures organisation as required by paragraph (4)(a) may be set off against an amount payable to the futures organisation as required by paragraph (4)(c).

1236 Levy not payable in certain cases

- (3) A futures organisation may determine in writing that subsection 1234(1) does not apply in relation to the futures organisation in relation to specified persons.
- (4) A futures organisation may determine in writing that subsection 1234(2) does not apply in relation to the futures organisation in relation to specified contributing members of the futures organisation.
- (5) A determination in force under subsection (3) or (4) has effect accordingly.

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1237 Power of futures organisation to make advances to fund

- (1) A futures organisation may, from its general funds, give or advance, on such terms as the board of the futures organisation thinks fit, any sums of money to its fidelity fund.
- (2) Money that is advanced under subsection (1) may at any time be repaid from the fidelity fund to the general funds of the futures organisation.

1238 Investment of fund

Money in a fidelity fund of a futures organisation that is not immediately required for the purposes of the fund may be invested by the futures organisation in any manner in which trustees are for the time being authorised by a law in force in a State or Territory in this jurisdiction to invest trust funds or on deposit with an eligible money market dealer.

1239 Application of fund

- (1) Subject to this Part, where:
 - (a) a person (in this subsection called the *futures person*) suffers pecuniary loss at a particular time because of a defalcation, or because of fraudulent misuse of money or other property, by:
 - (i) a person who is at that time a contributing member of a futures organisation; or
 - (ii) a director, partner, officer or employee of a person who is at that time a contributing member of a futures organisation; or
 - (iii) a partner in, or employee of, a partnership that is at that time a contributing member of a futures organisation; and
 - (b) the loss is suffered in respect of money or other property that was, in connection with the contributing member's dealings in futures contracts (whether or not any of those dealings was effected on a futures market), entrusted to or received by the

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contributing member, or a director, partner, officer or employee of the contributing member (whether before or after the commencement of this section):

- (i) for or on behalf of the futures person or another person;
or
- (ii) because the contributing member was trustee of the money or other property;

the fidelity fund of the futures organisation must be applied for the purpose of compensating the futures person.

- (2) The reference in paragraph (1)(b) to a partner of a contributing member of a futures organisation is, in a case where the contributing member is a partnership, a reference to a partner in the partnership.
- (3) Subject to this Part, where a right to compensation does not arise under subsection (1), a fidelity fund of a futures organisation may, if the board of the futures organisation thinks fit, be applied for the purpose of paying to an official receiver or trustee within the meaning of the *Bankruptcy Act 1966* an amount not greater than the amount that the official receiver or trustee, as the case may be, certifies is required in order to make up or reduce the total deficiency arising because the available assets of a bankrupt who is a contributing member of the futures organisation are insufficient to satisfy the debts arising from dealings in futures contracts that have been proved in the bankruptcy by creditors of the bankrupt.
- (4) Subsection (3) applies in the case of a contributing member of a futures organisation who has made a composition with the member's creditors, or has executed a deed of assignment or a deed of arrangement, under Part X of the *Bankruptcy Act 1966* in like manner as that subsection applies in the case of a contributing member of a futures organisation who has become bankrupt and, for the purposes of that subsection as so applying by virtue of this subsection:
 - (a) the reference in that subsection to a trustee is taken to be a reference to a controlling trustee within the meaning of that Part; and

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- (b) the reference to debts proved in the bankruptcy is taken to be a reference to provable debts in relation to the composition or deed within the meaning of that Part; and
 - (c) a reference to the bankrupt is taken to be a reference to the person who made the composition or executed the deed.
- (5) Subject to this Part, where a right to compensation does not arise under subsection (1), a fidelity fund of a futures organisation may, if the board of the futures organisation thinks fit, be applied for the purpose of paying to the liquidator of a body corporate that is a contributing member of the futures organisation and that has commenced to be wound up, an amount not greater than the amount that the liquidator certifies is required to make up or reduce the total deficiency arising because the available assets of the body corporate are insufficient to satisfy the debts of the body corporate arising from dealings in futures contracts that have been proved in the winding up by creditors of the body corporate.
- (6) Money paid pursuant to subsection (3) or (5) is so paid only on condition that it is applied by the official receiver, trustee or liquidator towards satisfaction of debts arising from dealings in futures contracts and for no other purpose.
- (7) Subject to subsection (9), the amount, or the sum of the amounts, paid under this Part out of a fidelity fund of a futures organisation:
 - (a) for the purpose of compensating pecuniary loss as mentioned in subsection (1); or
 - (b) for the purpose of making payments under subsection (3) or (5);must not exceed, in respect of a particular contributing member of the futures organisation:
 - (c) unless paragraph (d) applies—\$500,000; or
 - (d) if some other amount is prescribed, for the purposes of this subsection, in relation to the futures organisation, a class of futures organisations that includes the futures organisation, or futures organisations generally—that amount.

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- (8) For the purposes of calculating the sum referred to in subsection (7), an amount that is paid from a fidelity fund is, to the extent to which that amount is repaid to the fund, to be disregarded.
- (9) If a futures organisation considers, having regard to the ascertained or contingent liabilities of its fidelity fund, that the assets of the fund so permit, the futures organisation may apply out of the fund such sums in excess of the amount limited by or under this section as the futures organisation, in its discretion, thinks fit in or towards the compensation of persons who have suffered pecuniary loss as mentioned in subsection (1) or making a payment under subsection (3) or (5).
- (10) Where:
- (a) money or other property has been entrusted to, or received by:
 - (i) a person or partnership; or
 - (ii) a director, partner, officer or employee of a person; or
 - (iii) a partner in or employee of, a partnership;
being a person who, or a partnership that, has at any time been but is no longer a contributing member of a futures organisation; and
 - (b) immediately before that person or partnership last ceased to be a member or member organisation of the futures organisation, he, she or it was a contributing member of the futures organisation; and
 - (c) because of a defalcation, or the fraudulent misuse of money or other property by:
 - (i) that person or a director, partner, officer or employee of that person; or
 - (ii) a partner in, or employee of, that partnership;
as the case may be, the person by or from whom the money or other property was so entrusted or received suffered pecuniary loss; and
 - (d) at the time when the money or other property was so entrusted or received, the person suffering the pecuniary loss believed, on reasonable grounds, that that person or

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partnership was at that time a member or member organisation of the futures organisation;

that person or partnership is, for the purposes of this section (other than this subsection and subsection (11)), taken to have been, when the pecuniary loss was suffered, a contributing member of the futures organisation.

(11) Where:

(a) a person who or a partnership that has at any time been, but is no longer, a contributing member of a futures organisation has incurred a debt arising from dealings in futures contracts; and

(b) at the time when the debt was incurred, the creditor, or one or more of the creditors, in relation to the debt believed on reasonable grounds that that person or partnership was at that time a member or member organisation of the futures organisation;

a reference in this section (other than subsection (10) and this subsection) to a contributing member of the futures organisation is, for the purpose of determining the application of subsection (3) or (5) in relation to that creditor or those creditors, as the case may be, in relation to that debt, taken to include a reference to that person or partnership.

(12) A reference in this section to a defalcation, or to a fraudulent misuse of money or other property, is a reference to a defalcation, or to such a fraudulent misuse, wherever and whenever occurring.

1240 Claims against fund

(1) Subject to this Part, a person who suffers pecuniary loss as mentioned in subsection 1239(1) is entitled to claim compensation from the fidelity fund of a futures organisation whose fidelity fund is, pursuant to that subsection, required to be applied to compensate the person, and to take proceedings in the Court as provided in this Part against the futures organisation to establish that claim.

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- (2) A person does not have a claim against a fidelity fund of a futures organisation in respect of:
 - (a) pecuniary loss suffered before 1 July 1986; or
 - (b) pecuniary loss in respect of money or other property suffered after the money or property had, in due course of the administration of a trust, ceased to be under the sole control of a member organisation of the futures organisation.
- (3) Subject to this Part, the amount that a claimant is entitled to claim as compensation from a fidelity fund of a futures organisation is the amount of the actual pecuniary loss suffered by the claimant (including the reasonable costs of, and disbursements incidental to, the making and proof of the claim) less the total amount or value of all amounts or other benefits received or receivable by the claimant from a source other than the fund in reduction of the loss.
- (4) In addition to any compensation that is payable under this Part, interest is payable out of the fidelity fund on the amount of the compensation, less any amount attributable to costs and disbursements, at the prescribed rate calculated from and including the day on which the pecuniary loss was suffered until the day on which the claim is satisfied.

1241 Rights of innocent partner in relation to fund

- (1) Where all persons who have submitted claims pursuant to section 1240 have been fully compensated in accordance with the provisions of this Part for pecuniary loss in relation to a contributing member of a futures organisation, being pecuniary loss as mentioned in subsection 1239(1) suffered in relation to money or other property, any partner of the contributing member who has made payment to a person in compensation for loss suffered by the person in relation to that money or property is taken to be subrogated to the extent of that payment to all the rights and remedies of that person against the fidelity fund of the futures organisation if the board of the futures organisation, having regard to all the circumstances, determines that the partner was in no way a party to the loss and acted honestly and reasonably in the matter.

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- (2) If a partner of a contributing member of a futures organisation feels aggrieved by the determination of a board under subsection (1), the partner may, within 28 days after receipt of notice of the determination, appeal to the Court against the determination by lodging a notice of appeal in the prescribed form.
- (3) The appellant must, on the day on which the appellant lodges notice of appeal with the Court, lodge a copy of the notice with the futures organisation concerned.
- (4) The Court must inquire into and decide upon the appeal and, for that purpose, may do all such matters and things, and may do those matters and things in the same manner and to the same extent, as it is empowered to do in the exercise of its ordinary jurisdiction and if the Court is of the opinion having regard to all the circumstances that the appellant was not a party to the defalcation or fraudulent misuse of money or other property from which the pecuniary loss arose and that the appellant acted honestly and reasonably in the matter, it may order that the appellant, to the extent of any payment made by the appellant, be subrogated to the rights and remedies, in relation to the fidelity fund of the futures organisation concerned, of the person to whom the appellant made such a payment.

1242 Notice calling for claims against fund

- (1) A futures organisation may cause to be published in a daily newspaper circulating generally in each State and Territory, a notice in the prescribed form specifying a date, not being earlier than 3 months after the publication of the notice, on or before which claims for compensation from the fidelity fund, in relation to the person specified in the notice, may be made.
- (2) A claim for compensation from a fidelity fund of a futures organisation in respect of a pecuniary loss must be made in writing to the futures organisation:
 - (a) where a notice under subsection (1) has been published, on or before the date specified in the notice; or

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- (b) where no such notice has been published, within 6 months after the claimant became aware of the pecuniary loss; and a claim that is not so made is barred unless the futures organisation otherwise determines.
- (3) A futures organisation, a member of a board of a futures organisation, or a member or employee of a futures organisation, has qualified privilege in respect of the publication of a notice under subsection (1).

1243 Power of board to settle claims

- (1) Subject to this Part, the board of a futures organisation may allow and settle a proper claim for compensation from a fidelity fund of the futures organisation at any time after the occurrence of the pecuniary loss in respect of which the claim arose.
- (2) Subject to subsection (3), a person must not commence proceedings under this Part against a futures organisation without leave of the board unless:
 - (a) the board has disallowed the person's claim; and
 - (b) the claimant has exhausted all relevant rights of action and other legal remedies for the recovery of the money or other property in respect of which the pecuniary loss occurred, being rights and remedies that are available against the member of the futures organisation in relation to whom the claim arose and all other persons who are liable in respect of the loss suffered by the claimant, other than any right or remedy that the claimant may have, under section 1240, against a person other than the futures organisation.
- (3) A person who has been refused leave by the board of a futures organisation under subsection (2) may apply to the Court for leave to commence proceedings against the futures organisation and the Court may make such order in the matter as it thinks fit.
- (4) The board of a futures organisation, after disallowing, whether wholly or partly, a claim for compensation from the fidelity fund of

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the futures organisation, must serve notice of the disallowance in the prescribed form on the claimant or on the claimant's solicitor.

- (5) Proceedings against a futures organisation in respect of a claim that has been disallowed by the board of the futures organisation must not be commenced after the end of 3 months after the service of the notice of disallowance referred to in subsection (4).
- (6) In proceedings brought to establish a claim, evidence of an admission or confession by, or other evidence that would be admissible against, the person against whom a defalcation or fraudulent misuse of property is alleged is admissible to prove the defalcation or fraudulent misuse notwithstanding that the person is not the defendant in or a party to those proceedings, and all defences that would have been available to that person are available to the futures organisation.
- (7) The board or, where proceedings are brought to establish a claim, the Court, if satisfied that there was a defalcation or fraudulent misuse of property on which to found the claim, may allow the claim and act accordingly notwithstanding that the person against whom the defalcation or fraudulent misuse of property is alleged has not been convicted or prosecuted or that the evidence on which the board or the Court, as the case may be, acts would not be sufficient to establish the guilt of that person on a criminal trial in respect of the defalcation or fraudulent misuse of property.

1244 Form of order of Court establishing claim

- (1) Where, in proceedings brought to establish a claim, the Court is satisfied that there was a defalcation or fraudulent misuse of property on which to found the claim and that otherwise the claimant has a valid claim, the Court must, by order:
 - (a) declare the fact and the date of the defalcation or fraudulent misuse of property and the amount of the claim; and
 - (b) direct the board to allow the claim as so declared and deal with it in accordance with the provisions of this Part.
- (2) In any such proceedings all questions of costs are in the discretion of the Court.

1245 Power of Board to require production of documents etc.

The board of a futures organisation may at any time require a person to produce and deliver any documents or statements of evidence necessary to support a claim made or necessary for the purpose either of exercising its rights against a contributing member of the futures organisation or a partner or the partners in a partnership that is a contributing member of the futures organisation or any other person or of enabling criminal proceedings to be taken against a person in respect of a defalcation or fraudulent misuse of property, and in default of delivery of such documents or statements of evidence by the first-mentioned person, the board may disallow any claim by the first-mentioned person under this Part.

1246 Subrogation of futures organisation to rights etc. of claimant on payment from fund

On payment out of a fidelity fund of a futures organisation of any money in respect of a claim under this Part, the futures organisation is subrogated to the extent of that payment to all the rights and remedies of the claimant in relation to the loss suffered by the claimant from the defalcation or fraudulent misuse of property.

1247 Payment of claims only from fund

Money or other property belonging to a futures organisation, other than its fidelity fund, is not available for the payment of a claim under this Part, whether the claim is allowed by the board of the futures organisation or is made the subject of an order of the Court.

1248 Provisions where fund insufficient to meet claims or where claims exceed total amount payable

- (1) Where the amount in a fidelity fund of a futures organisation is insufficient to pay the whole of the amount of all claims against it that have been allowed or in respect of which orders of the Court

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have been made, the amount in the fund must, subject to subsection (2), be apportioned among the claimants in such manner as the board of the futures organisation thinks equitable, and such a claim so far as it then remains unpaid is taken to be charged against future receipts of the fund and paid out of the fund when money is available in the fund.

- (2) Where the aggregate of all claims that have been allowed or in respect of which orders of the Court have been made in relation to defalcations or fraudulent misuses of property by or in connection with a contributing member of a futures organisation exceeds the total amount that may, pursuant to section 1239, be paid under this Part in respect of that contributing member, the total amount must be apportioned among the claimants in such manner as the board thinks equitable, and on payment out of the fund of that total amount in accordance with that apportionment all such claims and any orders relating to those claims and all other claims against the fund that may thereafter arise or be made in respect of defalcations or fraudulent misuses of property by or in connection with that contributing member are discharged.

1249 Power of futures organisation to enter into contracts of insurance or indemnity

- (1) A futures organisation may enter into a contract with a person carrying on fidelity insurance business whereby the futures organisation will be insured or indemnified, to the extent and in the manner provided by the contract, against liability in respect of claims under this Part.
- (2) Such a contract may be entered into in relation to contributing members of the futures organisation generally, or in relation to particular contributing members named in the contract, or in relation to contributing members generally with the exclusion of particular contributing members named in the contract.
- (3) A futures organisation, a member or employee of a futures organisation or of the board of a futures organisation, or a member of the management sub-committee of the board of a futures organisation, has qualified privilege in respect of the publication of

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a statement that a contract entered into under this section does, or does not, as the case may be, apply in relation to that member.

1250 Application of insurance money

A claimant against a fidelity fund of a futures organisation does not have a right of action against a person with whom a contract of insurance or indemnity is made under this Part in respect of such a contract or a right or claim with respect to any money paid by the insurer in accordance with such a contract.

Part 8.7—Offences

Division 1—Insider dealing

1251 Futures contract concerning a body corporate

For the purposes of this Division, a futures contract concerns a body corporate if, and only if:

- (a) the futures contract is a commodity agreement and a commodity to which it relates is securities of the body; or
- (b) the futures contract is an adjustment agreement and a state of affairs to which it relates concerns the price of securities of the body, or the prices of a class of securities that includes securities of the body, at a particular time.

1252 Person connected with a body corporate

(1) For the purposes of this Division, a person is connected with a body corporate (in this subsection called the *relevant body corporate*) if the person is a natural person and:

- (a) is an officer of the relevant body corporate or of a related body corporate; or
- (b) has a substantial holding in the relevant body corporate or in a related body corporate; or
- (c) occupies a position that may reasonably be expected to give the person access to information of a kind referred to in subsection 1253(1) or (2) by virtue of:
 - (i) any professional or business relationship existing between the person (or the person's employer or a body corporate of which the person is an officer) and the relevant body corporate or a related body corporate; or
 - (ii) the person being an officer of a body corporate that has a substantial holding in the relevant body corporate or in a related body corporate.

- (2) For the purposes of subsection (1), *officer*, in relation to a body corporate, includes:
- (a) a director, secretary, executive officer or employee of the body corporate; and
 - (b) a receiver, or a receiver and manager, of property of the body corporate; and
 - (c) an administrator of the body corporate; and
 - (ca) an administrator of a deed of company arrangement executed by the body corporate; and
 - (d) a liquidator of the body corporate; and
 - (e) a trustee or other person administering a compromise or arrangement made between the body corporate and another person or other persons.

1253 Persons precluded from dealing

- (1) For the purposes of this Part, a person is precluded on a particular day from dealing in a futures contract concerning a body corporate if, by virtue of being, or having been at any time during the 6 months ending on that day, connected with the body, the person has inside information in relation to that futures contract.
- (2) For the purposes of this Part, a person is also precluded on a particular day from dealing in a futures contract concerning a body corporate if, by virtue of being, or having been at any time during the 6 months ending on that day, connected with another body corporate, the person has information that:
- (a) is inside information in relation to that futures contract; and
 - (b) relates to any transaction (actual or expected) involving both those bodies, or involving one of them and securities of the other.
- (3) For the purposes of this Part, a person is also precluded from dealing in a futures contract if the person:
- (a) has inside information in relation to the futures contract; and
 - (b) obtained the information, directly or indirectly, from another person; and

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- (c) is aware, or ought reasonably to be aware, of facts or circumstances by virtue of which that other person is precluded by subsection (1) or (2) from dealing in the futures contract; and
- (d) when the information was so obtained:
 - (i) was an associate of the other person; or
 - (ii) had with the other person an arrangement for the communication of information of a kind referred to in subsection (1) or (2) with a view to a dealing, by the first-mentioned person, by the other person, or by both of them together, in that futures contract or a futures contract of the same kind as that futures contract.

1254 Body corporate precluded from dealing when officer precluded

- (1) Without prejudice to subsection 1253(3), but subject to this section, while an officer of a body corporate is precluded from dealing in a futures contract, the body is, for the purposes of this Part, also precluded from dealing in the futures contract.
- (2) A body corporate is not, merely because of information that an officer of the body has, precluded by subsection (1) from dealing at a particular time in a futures contract if:
 - (a) the decision to deal in the futures contract at that time was taken on the body's behalf by a person other than the officer; and
 - (b) the body had in operation at that time arrangements to ensure that the information was not communicated to that person and that no advice with respect to the transaction was given to that person by a person who had the information; and
 - (c) the information was not so communicated and no such advice was so given.
- (3) A body corporate is not, merely because of information that an officer of the body has, precluded by subsection (1) from dealing in a futures contract concerning another body corporate if the information:

- (a) was obtained by the officer in the course of performing duties as an officer of the first-mentioned body; and
- (b) relates only to a proposed dealing by the first-mentioned body in securities of, or a futures contract concerning, the other body.

1255 Exceptions: licensed futures brokers

For the purposes of this Part, a person who holds a futures brokers licence is not precluded from dealing in a futures contract concerning a body corporate if:

- (a) the licensee enters into the dealing as agent for another person pursuant to a specific instruction by that other person to enter into that dealing; and
- (b) the licensee has not given any advice to the other person in relation to dealing in a futures contract concerning the body corporate; and
- (c) the other person is not, in relation to the dealing, an associate of the licensee.

1256 Prohibitions where dealing precluded

- (1) A person must not, while precluded from dealing in a futures contract, deal in that futures contract.
- (2) A person who, because of having particular information, is precluded from dealing in a futures contract, must not, while so precluded, communicate the information to another person if the first-mentioned person knows, or ought reasonably to know, that the other person will make use of the information for the purpose of dealing in that futures contract.

1257 Defence where other party to dealing also had the inside information

Where a prosecution is begun against a person for an offence because the person had particular information and dealt in a futures contract in contravention of section 1256, it is a defence if it is

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proved that the other party to the dealing knew, or ought reasonably to have known, the information before entering into the dealing.

Division 2—General

1258 Dealings by futures broker on behalf of others

A futures broker must not deal in a futures contract on behalf of another person unless the dealing is effected:

- (a) on a futures market of a futures exchange or recognised futures exchange; or
- (b) on an exempt futures market; or
- (c) as permitted by the business rules of a futures organisation of which the broker is a member.

1259 Futures market manipulation

A person must not, in this jurisdiction or elsewhere, take part in, be concerned in, or carry out, whether directly or indirectly:

- (a) a transaction (whether a dealing in a futures contract or not) that has, is intended to have, or is likely to have; or
- (b) 2 or more transactions (whether any of them is a dealing in a futures contract or not) that have, are intended to have, or are likely to have:

the effect of:

- (c) creating an artificial price for dealings in futures contracts on a futures market in this jurisdiction; or
- (d) maintaining at a level that is artificial (whether or not it was previously artificial) a price for dealings in futures contracts on a futures market in this jurisdiction.

1260 False trading and market rigging

- (1) A person must not, in this jurisdiction or elsewhere, create, cause to be created, or do anything that is calculated to create, a false or misleading appearance:
 - (a) of active dealing in futures contracts on a futures market in this jurisdiction; or

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- (b) with respect to the market for, or the price for dealings in, futures contracts on a futures market in this jurisdiction.
- (2) A person must not, in this jurisdiction or elsewhere, by any fictitious or artificial transactions or devices, maintain, inflate, depress, or cause fluctuations in, the price for dealings in futures contracts on a futures market in this jurisdiction.
- (3) In determining whether a transaction is fictitious or artificial for the purposes of subsection (2), the fact that the transaction is, or was at any time, intended by the parties who entered into it to have effect according to its terms is not conclusive.

1261 False or misleading statements etc.

A person contravenes this section if the person:

- (a) in this jurisdiction or elsewhere, makes a statement, or disseminates information, that is false or misleading in a material particular and is likely:
 - (i) to induce other persons to deal in futures contracts on a futures market in this jurisdiction; or
 - (ii) to have the effect of raising, lowering, maintaining or stabilising the price for dealings in futures contracts, or in a class of futures contracts, on a futures market in this jurisdiction; and
- (b) when making the statement, or disseminating the information:
 - (i) is recklessly indifferent as to whether the statement or information is true or false; or
 - (ii) knows, or ought reasonably to know, that the statement is false or misleading in a material particular.

1262 Fraudulently inducing person to deal in futures contracts

- (1) A person must not:
 - (a) by making or publishing any statement, promise or forecast that the person knows to be misleading, false or deceptive;
 - (b) by any dishonest concealment of material facts;

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- (c) by the reckless making or publishing (dishonestly or otherwise) of any statement, promise or forecast that is misleading, false or deceptive; or
 - (d) by recording or storing in, or by means of, any mechanical, electronic or other device information that the person knows to be false or misleading in a material particular;
induce or attempt to induce another person to deal in a futures contract or a class of futures contracts.
- (7) It is a defence to a prosecution for an offence under this section constituted by recording or storing information as mentioned in paragraph (1)(d) if it is proved that, when the defendant so recorded or stored the information, the defendant had no reasonable grounds for expecting that the information would be available to any person.

1263 Dissemination of information about illegal transactions

Where:

- (a) in this jurisdiction or elsewhere, a person circulates or disseminates, or authorises or is concerned in the circulation or dissemination of, any statement or information to the effect that the price for dealings in futures contracts, or in a class of futures contracts, on a futures market in this jurisdiction will, or is likely to, rise or fall or be maintained because of a transaction, or other act or thing done, in relation to such futures contracts or futures contracts included in that class, being a transaction, or other act or thing, that constitutes a contravention of section 1259, 1260, 1261 or 1262; and
- (b) the person, or an associate of the person:
 - (i) has entered into such a transaction or done such an act or thing; or

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- (ii) has received, or expects to receive, directly or indirectly, a consideration or benefit for circulating or disseminating, or authorising or being concerned in the circulation or dissemination of, the statement or information;

the first-mentioned person contravenes this section.

1264 Fraud in connection with dealings in futures contracts

Where, in connection with a dealing or proposed dealing in a futures contract by a futures broker on behalf of a client of the broker, a person who:

- (a) is the broker or an employee or agent of the broker; or
- (b) has an interest, or is otherwise concerned in, the dealing or proposed dealing;

does any of the following:

- (c) defrauds the client;
- (d) does an act, or omits to do an act, knowing that the client will be deceived or misled, or with reckless indifference as to whether or not the client will be deceived or misled, as a result of the act or omission;
- (e) (without limiting the generality of paragraph (d)) makes a statement, promise or forecast to the client, or makes an entry in a record relating to the client or persons including the client:
 - (i) knowing that the statement, promise, forecast or entry is false, misleading or deceptive in a material particular; or
 - (ii) with reckless indifference as to whether or not the statement, promise, forecast or entry is false, misleading or deceptive in a material particular;

the person contravenes this section.

1265 Compensation for loss etc.

(1) Where:

- (a) a person who, because of having particular information, is precluded by section 1253 from dealing in a futures contract

deals, in contravention of section 1256, in that futures contract; or

- (b) a person, being a body corporate, deals, in contravention of section 1256, in a futures contract at a time when an officer of the body is, because of having particular information, precluded from dealing in that futures contract;

the person is liable (whether or not the person has been convicted of an offence in respect of the contravention) to compensate any other party to the dealing who did not have that information for any loss sustained by that party because of any difference between the price at which the dealing took place and the price at which it would be likely to have taken place if that information had been generally available.

- (2) A person who contravenes any of sections 1259 to 1264 (inclusive) (whether or not the person has been convicted of an offence in respect of the contravention) is liable to pay compensation to any other person who, in dealing in futures contracts, suffers loss because of the difference between the price at which the dealing takes place and the price at which it would be likely to have taken place if the contravention had not occurred.
 - (3) The amount of compensation for which a person is liable under subsection (1) or (2) is:
 - (a) in a case to which paragraph (b) does not apply—the amount of the loss sustained by the person claiming the compensation; or
 - (b) if the first-mentioned person has been found by a court to be liable, or has been ordered by a court, to pay an amount or amounts to any other person or persons under this Part or under Part 9.4B because of the same act or transaction—the amount of that loss less the amount or the sum of the amounts that the first-mentioned person has been so found to be liable, or has been so ordered, to pay.
 - (4) For the purposes of subsection (3), the onus of proving that the liability of a person to pay an amount to another person arose from the same act or transaction from which another liability arose lies on the person liable to pay the amount.
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- (5) An action under this section for recovery of compensation for a loss is not maintainable after the end of the period of 2 years commencing on the day of completion of the dealing in which the loss occurred.
- (6) ASIC may, if it considers it to be in the public interest to do so, bring an action in the name of, and for the benefit of, a person for recovery of compensation for a loss referred to in subsection (1) and suffered by that person.
- (7) Nothing in subsection (1) affects any liability that a person may incur under any other law.

1266 Sequence of transmission and execution of orders

- (1) In this section, a reference to the transmission by a futures broker of instructions to deal in a class of futures contracts is a reference:
 - (a) where the broker has direct access to the futures market on which the instructions are to be executed—to the transmission of the instructions to that futures market; or
 - (b) where the broker has access to the futures market on which the instructions are to be executed only through another futures broker—to the transmission of the instructions to that other futures broker.
- (2) Subject to subsection (3), a futures broker must transmit in the sequence in which they are received by the broker all instructions to deal in a class of futures contracts at or near the market price for a futures contract of that class prevailing immediately before execution of the instructions.
- (3) Where a futures broker proposes to deal in a class of futures contracts on the broker's own account and the person by whom or on whose instructions the instructions for the dealing are to be transmitted is aware of instructions of a client of the broker to deal in that class of futures contracts at or near the market price for a futures contract of that class prevailing at that time (being instructions that have not been transmitted), that person must not transmit, and must not give instructions to any other person to transmit, the instructions to give effect to the proposal of the broker

to deal in that class of futures contracts before the instructions of the client are transmitted.

- (4) A futures broker, or a director, partner, officer or employee of a futures broker, must not, except:
- (a) to the extent necessary to execute the instructions concerned; or
 - (b) as required by this Act or any other law; or
 - (c) as required by the business rules of a futures organisation of which the broker is a member;

disclose to any other futures broker, or to a person engaged or employed in the business of the first-mentioned broker or of any other futures broker, instructions of a client to deal in a class of futures contracts.

- (5) A member of a futures exchange who is concerned in the execution, on a trading floor of the futures exchange, of instructions to deal in futures contracts must execute in the order in which they are received by the member all instructions to deal in a class of futures contracts at or near the market price for a futures contract of that class prevailing immediately before execution of the instructions.

- (6) Where:

- (a) during a particular period, a futures broker transmits instructions (whether or not those instructions consist of, or include, instructions giving effect to a proposal of the broker to deal in the class of contracts concerned on the broker's own account) to deal in a class of futures contracts at or near the market price for a futures contract of that class prevailing immediately before execution of the instructions; and
- (b) dealings in that class of futures contracts are effected pursuant to those instructions;

the broker must, except so far as the business rules of a futures organisation of which the broker is a member otherwise provide, allocate the dealings to those instructions:

- (c) in the sequence in which the dealings were effected; and

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- (d) in the sequence in which the broker transmitted those instructions.
- (7) A futures broker must maintain, in accordance with the regulations, records that set out the prescribed particulars of:
- (a) instructions by a client to deal in futures contracts; and
 - (b) the date and time of receipt, transmission and execution of those instructions; and
 - (c) the person by whom those instructions are received, the person by whom they are transmitted and the person by whom they are executed; and
 - (d) the date and time of receipt, transmission and execution of instructions to deal in futures contracts on the broker's own account; and
 - (e) the person by whom instructions of the kind referred to in paragraph (d) are received, the person by whom they are transmitted and the person by whom they are executed;
- and must retain those records for the prescribed period.
- (8) Where:
- (a) a futures broker transmits for execution on a futures market outside Australia and the external Territories instructions to deal in futures contracts; and
 - (b) it is not reasonably practicable for the broker to set out in the records maintained by the broker pursuant to subsection (7) the prescribed particulars of the date and time of execution of those instructions;
- the broker must so set out those particulars as precisely as is reasonably practicable.

1267 Dealings by employees of futures brokers and futures advisers

- (1) A person who is a futures broker or a futures adviser and an employee of that person must not, as principals, jointly deal in, or agree to deal in, futures contracts.
- (2) A person who is a partner in a partnership that carries on a business of dealing in futures contracts and an employee of the partnership

must not, as principals, jointly deal in, or agree to deal in, futures contracts.

- (3) A person who is a partner in a partnership that carries on a futures advice business and an employee of the partnership must not, as principals, jointly deal in, or agree to deal in, futures contracts.
 - (4) A person who is a futures broker or a futures adviser must not give credit to an employee of that person or to a person who, to the knowledge of the first-mentioned person, is associated with such an employee if:
 - (a) the credit is given for the purpose of enabling or assisting the person to whom the credit is given to deal in futures contracts; or
 - (b) the person giving the credit knows or has reason to believe that the credit will be used for the purpose of dealing in futures contracts.
 - (5) A person who is a partner in a partnership that carries on a business of dealing in futures contracts must not give credit to an employee of the partnership or to a person who, to the knowledge of the first-mentioned person, is associated with such an employee if:
 - (a) the credit is given for the purpose of enabling or assisting the person to whom the credit is given to deal in futures contracts; or
 - (b) the person giving the credit knows or has reason to believe that the credit will be used for the purpose of dealing in futures contracts.
 - (6) A person who is a partner in a partnership that carries on a futures advice business must not give credit to an employee of the partnership or to a person who, to the knowledge of the first-mentioned person, is associated with such an employee if:
 - (a) the credit is given for the purpose of enabling or assisting the person to whom the credit is given to deal in futures contracts; or
 - (b) the person giving the credit knows or has reason to believe that the credit will be used for the purpose of dealing in futures contracts.
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- (7) A person who is an employee of a member organisation of a futures exchange in connection with a business of dealing in futures contracts carried on by the member organisation must not, as principal, deal, or agree to deal, in futures contracts unless the member organisation acts as the agent of the person in respect of the transaction.
- (8) A reference in subsection (1) or (4) to an employee of a person who is a futures broker or a futures adviser includes, in the case of a body corporate that is a futures broker or a futures adviser, a reference to an officer of the body corporate.
- (9) The reference in subsection (7) to an employee of a member organisation of a futures exchange includes:
 - (a) in the case of a member organisation that is a body corporate; and
 - (b) in the case of a member organisation that is a partnership in which a partner is a body corporate;a reference to an officer of the body corporate.
- (10) A reference in this section to an employee of a futures broker, a futures adviser, a partnership or a member organisation of a futures exchange includes a reference to a person who, pursuant to a subsisting agreement, performs services for the futures broker, futures adviser, partnership or member organisation in connection with dealings in futures contracts by the futures broker, futures adviser, partnership or member organisation.

Part 8.8—Miscellaneous

1268 Power of Court to make certain orders

(1) Where:

(a) on the application of ASIC, it appears to the Court that a person:

(i) has contravened this Chapter, or any other law of a State or Territory in this jurisdiction relating to dealing in futures contracts; or

(ii) has contravened the conditions of a licence, the business rules of a futures exchange, a clearing house or a futures association; or

(iii) is about to do an act with respect to dealing in futures contracts that, if done, would be such a contravention; or

(b) on the application of a futures exchange, clearing house or futures association, it appears to the Court that a person has contravened the business rules of the futures exchange, clearing house or futures association, as the case may be;

the Court may make such order or orders as it thinks fit including, but without limiting the generality of the foregoing, one or more of the following orders:

(c) in the case of persistent or continuing breaches of this Chapter, or of a law of a State or Territory in this jurisdiction relating to dealing in futures contracts, or the conditions or restrictions of a licence, or of the business rules of a futures exchange, clearing house or futures association—an order restraining a person from carrying on a business of dealing in futures contracts, acting as a futures adviser, holding himself, herself or itself out as so carrying on business or so acting, or from doing an act as a representative of a futures broker or of a futures adviser;

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- (d) an order restraining a person from acquiring, disposing of or otherwise dealing in any class of futures contracts that is specified in the order;
 - (e) an order appointing a receiver of property of a futures broker or of property that is held by a futures broker for or on behalf of another person, whether as trustee or otherwise;
 - (f) an order declaring a futures contract to be void or voidable;
 - (g) for the purpose of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a specified act;
 - (h) any ancillary order deemed to be desirable in consequence of the making of an order under any of the preceding paragraphs.
- (2) 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.
- (3) Where ASIC makes an application to the Court for the making of an order under subsection (1), the Court must not require ASIC or any other person, as a condition of granting an interim order under subsection (2), to give any undertaking as to damages.
- (4) The Court must not make an order under subsection (1) if it is satisfied that the order would unfairly prejudice a person.
- (5) The Court may, before making an order under subsection (1), direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.
- (6) A person appointed by order of the Court under subsection (1) as a receiver of property of a futures broker:
- (a) may require the broker to deliver to the person any property of which the person has been appointed receiver or to give to the person all information concerning that property that may reasonably be required; and

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- (b) may acquire and take possession of any property of which the person has been appointed receiver; and
 - (c) may deal with any property that the person has acquired or of which the person has taken possession in any manner in which the broker might lawfully have dealt with the property; and
 - (d) has such other powers in respect of the property as the Court specifies in the order.
- (7) In paragraph (1)(e) and subsection (6), **property**, in relation to a futures broker, includes money or other property entrusted to or received on behalf of any other person by the broker or another person in the course of or in connection with a business of dealing in futures contracts carried on by the futures broker.
- (8) A person must not, without reasonable excuse, contravene:
- (a) an order under this section that is applicable to the person; or
 - (b) a requirement of a receiver appointed by order of the Court under subsection (1).
- (9) The Court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

1269 Restrictions on use of titles “futures broker”, “futures exchange” etc.

- (1) A person who is not the holder of a futures brokers licence must not take or use, or by inference adopt, the name or title of futures broker, or take or use, or have attached to, or exhibited at, any place, a name, title or description implying, or tending to create the belief, that the person is a futures broker.
- (2) A person who is not the holder of a futures brokers licence must not:
- (a) take or use, or by inference adopt; or
 - (b) have attached to, or exhibited at, any place;
- a name, title or description implying, or tending to create the belief, that the person is the holder of a futures brokers licence.

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- (3) A body corporate that is not:
- (a) a futures exchange; or
 - (b) a recognised futures exchange;
- must not take or use, or by inference adopt, the name or title of futures exchange, or take or use, or have attached to, or exhibited at, any place, a name, title or description implying, or tending to create the belief, that the body is:
- (c) a futures exchange; or
 - (d) a recognised futures exchange.
- (4) A body corporate that is not a futures association must not take or use, or by inference adopt, the name or title of futures association, or take or use, or have attached to, or exhibited at, any place, a name, title or description implying, or tending to create the belief, that the body is a futures association.

1270 Preservation and disposal of records etc.

- (1) A person who is required by a provision of this Act to maintain, make or keep a register or a financial or other record in relation to a business carried on by the person must preserve that register or record for the prescribed period, whether or not the person ceases to carry on that business before the end of that period.
- (2) The prescribed period for the purposes of subsection (1) is:
- (a) in relation to a register or a record other than a financial record, the period of 5 years next after the day on which the last entry was made in the register or record; or
 - (b) in relation to a financial record, the 7 years after the transactions covered by the record are completed.
- (3) Subsections (1) and (2) do not apply in relation to a contract note or copy of a contract note received or issued by a futures broker who is a member of a futures exchange if the matters required by subsection 1206(4), (5) or (6), as the case requires, to be included in the contract note are recorded:
- (a) by the futures exchange; or

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- (b) subject to such conditions (if any) as ASIC imposes, by the broker;
in a manner approved by ASIC and the record of those matters is retained for not less than 5 years.
- (4) ASIC may, if of the opinion that it is no longer necessary or desirable to retain it, destroy or otherwise dispose of any document that is given to or lodged with ASIC under or for the purposes of this Act and that has been in the possession of ASIC for such period as is prescribed for the purposes of this subsection, either generally or in relation to a particular document or class of documents.

1271 Concealing etc. books relating to futures contracts

- (1) A person who:
- (a) in any case—conceals, destroys, mutilates or alters a book relating to the business carried on by a futures broker or required under this Act to be kept by the holder of a licence;
or
 - (b) sends or takes, or causes the sending or taking of, the book out of this jurisdiction or out of Australia;
- contravenes this subsection.
- (2) In a prosecution of a person for an offence under subsection (1), it is a defence if it is established that the person did not act with intent to defraud, to defeat the purposes of this Act or the ASIC Act or to prevent, delay or obstruct the carrying out of an examination, investigation or audit, or the exercise of a power or authority, under this Act or the ASIC Act.

1272 Falsification of records

- (1) Where matter that is used or intended to be used in connection with the keeping of a book required to be kept under this Act or a register or any accounting or other record referred to in section 1270 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) destroys, removes or falsifies 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 other matter to be recorded or stored, by means of that device; or
 - (c) fails to record or store matter by means of that device with intent to falsify any entry made or intended to be compiled, wholly or in part, from that matter;
- contravenes this subsection.
- (2) In a prosecution of a person for an offence under subsection (1), it is a defence if it is established that the person acted honestly and that in all the circumstances the act or omission constituting the offence should be excused.

1273 Precautions against falsification of records

A person required by this Chapter to keep a book or record must take reasonable precautions for guarding against falsification of the book or record and for facilitating discovery of any falsification.

Chapter 9—Miscellaneous

Part 9.1—Registers and registration of documents

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
 - (i) an application under section 1279; or
 - (ia) a document lodged under a provision of Chapter 7 (other than subsection 776(2B), section 1001B or Part 7.13) or Chapter 8; or
 - (ii) a document lodged under section 1287 or 1288; or
 - (iii) a document lodged under paragraph 1296(2)(b); or
 - (iv) a report made or lodged under section 422, 438D, 452 or 533; 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.
- (2A) For the purposes of subsection (2), a document given to ASIC under subsection 776(2B) is taken to be a document lodged with ASIC.

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- (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:

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- (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
 - (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.
- (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.
- (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

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- (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
 - (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.

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- (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 annual return or 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).

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- (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.

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 Part 2D.6 or under any previous law of a State or Territory.
- (2) The register must contain a copy of:
 - (b) every notice that was served under section 206F; or
 - (c) every order lodged under section 206G.
- (3) Subsections 1274(2) and (5) apply to a copy of an order or notice as if that copy were a document lodged with ASIC.

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.

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- (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:

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.

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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
 - (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

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the document of which it is a transparency had been so lost or destroyed.

Part 9.2—Registration of auditors and liquidators

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 or liquidator

- (1) A natural person may make an application to ASIC:
 - (a) for registration as an auditor; or
 - (b) for registration as a liquidator; or
 - (c) for registration as a liquidator of a specified body corporate, being a body corporate that is to be wound up under this Act.
- (2) An application under this section must be made in writing as prescribed and must contain such information as is prescribed.

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:
 - (i) is a member of the Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or any other prescribed body; or
 - (ii) holds a degree, diploma or certificate from a prescribed university or another prescribed institution in Australia and has 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 in accountancy (including auditing) of not less than 3 years duration and in commercial law (including company law) of not less than 2 years duration; or
 - (iii) has other qualifications and experience that, in the opinion of ASIC, are equivalent to the qualifications mentioned in subparagraph (i) or (ii); and
 - (b) ASIC is satisfied that the applicant has had such practical experience in auditing as is prescribed; and

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

1281 Auditor-General taken to be registered as auditor

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.

1282 Registration of liquidators

- (2) Subject to this section, where an application for registration as a liquidator is made under section 1279, ASIC must grant the application if:
- (a) the applicant:
 - (i) is a member of The Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or any other prescribed body; or
 - (ii) holds a degree, diploma or certificate from a prescribed university or another prescribed institution in Australia and has 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 in accountancy of not less than 3 years duration and in commercial law (including company law) of not less than 2 years duration; or
 - (iii) has other qualifications and experience that, in the opinion of ASIC, are equivalent to the qualifications mentioned in subparagraph (i) or (ii); and
 - (b) ASIC is satisfied as to the experience of the applicant in connection with the winding up of bodies corporate; and
 - (c) ASIC is satisfied that the applicant is capable of performing the duties of a liquidator and is otherwise a fit and proper person to be registered as a liquidator;
- but otherwise ASIC must refuse the application.
- (3) Where an application for registration as a liquidator of a specified body corporate is made under section 1279, ASIC must grant the application and register the applicant as a liquidator of that body if ASIC is satisfied that the applicant has sufficient experience and ability, and is a fit and proper person, to act as liquidator of the body, having regard to the nature of the property or business of the

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body and the interests of its creditors and contributories, but otherwise ASIC must refuse the application.

- (4) ASIC must not register as a liquidator, or as a liquidator of a specified body corporate, a person who is disqualified from managing corporations under Part 2D.6.
- (5) Subject to subsection (10), ASIC may refuse to register as a liquidator or as a liquidator of a specified body corporate a person who is not resident in Australia.
- (6) Where:
 - (a) ASIC grants an application by a person for registration as a liquidator or as a liquidator of a specified body corporate; and
 - (b) the person has complied with the requirements of section 1284;ASIC must cause to be issued to the person a certificate by ASIC:
 - (c) stating that the person has been registered as a liquidator or as a liquidator of a specified body corporate; and
 - (d) specifying a day as the day of the beginning of the registration, being:
 - (i) the day on which ASIC granted the application; or
 - (ii) the day on which the person complied with the requirements of section 1284;whichever was the later; and
 - (e) in the case of a person who is registered under subsection (3) as a liquidator of a specified body corporate—setting out the name of that body.
- (8) The registration of a person as a liquidator under subsection (2) comes into force at the beginning of the day specified in the certificate as the day of the beginning of the registration and remains in force until:
 - (a) the registration is cancelled by ASIC or by the Board; or
 - (b) the person dies.
- (9) The registration of a person as a liquidator of a specified body corporate under subsection (3) comes into force at the beginning of

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the day specified in the certificate as the day of the beginning of the registration and remains in force until:

- (a) the registration is cancelled by ASIC or by the Board; or
 - (b) the person dies; or
 - (c) the body corporate is dissolved or deregistered.
- (10) ASIC must not refuse to register a person as a liquidator, or as a liquidator of a specified body corporate, 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.
- (11) Where ASIC refuses an application by a person for registration as a liquidator, or as a liquidator of a specified body corporate, ASIC must, not later than 14 days after the decision, give to the person notice in writing setting out the decision and the reasons for it.

1283 Registration of official liquidators

- (1) ASIC may register as an official liquidator a natural person who is a registered liquidator.
- (2) A person who is registered as an official liquidator is entitled, upon request, to be issued with a certificate of his or her registration.
- (3) ASIC may register under subsection (1) as official liquidators as many registered liquidators as it thinks fit.

1284 Security to be given by liquidators

- (1) Where ASIC grants an application by a person for registration as a liquidator or as a liquidator of a specified body corporate, the person must lodge and maintain with ASIC a security for the due performance of his or her duties as such a liquidator in such form and for such amount as is, from time to time, determined by ASIC in relation to that liquidator and with such surety or sureties (if any) as ASIC, from time to time, requires.

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- (2) Where a security is lodged in accordance with subsection (1), the security may be applied by ASIC in such circumstances, for such purposes and in such manner as is prescribed.
- (3) The regulations may make provision in relation to:
 - (a) the discharge in whole or part by ASIC of securities lodged under this section; and
 - (b) the release by ASIC of sureties referred to in subsection (1) from all or any of their obligations as such sureties.

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
 - (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.

1286 Registers of Liquidators and Official Liquidators

- (1) ASIC must cause a Register of Liquidators to be kept for the purposes of this Act and must cause to be entered in the Register:
- (a) in relation to a person who is registered as a liquidator:
 - (i) the name of the person; and
 - (ii) the day of the beginning of the registration of that person as a liquidator; and
 - (iii) the address of the principal place where the person practises as a liquidator and the addresses of the other places (if any) at which he or she so practises; and
 - (iv) if the person practises as a liquidator 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
 - (v) particulars of any suspension of the registration of the person as a liquidator or as a liquidator of a specified body corporate, and of any action taken in respect of the person under paragraph 1292(9)(a), (b) or (c); and
 - (b) in relation to a person who is registered as a liquidator of a specified body corporate:
 - (i) the name of the person; and
 - (ii) the name of the body corporate; and
 - (iii) the day of commencement of the registration of the person as a liquidator of the body corporate; and
 - (iv) the address of the principal place where the person proposes to perform his or her functions as the liquidator of the body corporate; and
 - (v) if the person practises a profession as a member of a firm or under a name or style other than his or her own name, being a profession by virtue of which he or she is qualified to be appointed as a liquidator of the body corporate—the name and address of that firm or the name or style under which he or she so practises; and
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- (vi) particulars of any suspension or deemed suspension of the registration of the person as a liquidator of that body corporate or as a liquidator of a specified body corporate, 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 a liquidator, or as a liquidator of a specified body corporate, such other particulars as ASIC considers appropriate.
- (2) ASIC must cause a Register of Official Liquidators to be kept for the purposes of this Act and must cause to be entered in the Register the name, and such other particulars as ASIC considers appropriate, of any person registered as an official liquidator.
- (3) Where a person ceases to be registered as a liquidator, as a liquidator of a specified body corporate or as an official liquidator, ASIC must cause to be removed from the Register of Liquidators or from the Register of Official Liquidators, as the case may be, the name of the person and any other particulars entered in that Register in relation to that person.
- (4) A person may inspect and make copies of, or take extracts from, the Register of Liquidators or the Register of Official Liquidators.

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.
- (2) Where:

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- (a) a person who is a registered liquidator ceases to practise as a liquidator; or
 - (b) a change occurs in any matter particulars of which are required by subparagraph 1286(1)(a)(i), (iii) or (iv) to be entered in the Register of Liquidators in relation to a person who is a registered liquidator;
- 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.
- (3) Where:
- (a) a person who is registered as a liquidator of a specified body corporate ceases to act as a liquidator in the winding up of that body; or
 - (b) a change occurs in any matter particulars of which are required by subparagraph 1286(1)(b)(i), (ii), (iv) or (v) to be entered in the Register of Liquidators in relation to a person who is registered as a liquidator of a specified body corporate;
- 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, as a liquidator or as a liquidator of a specified corporate body is disqualified from managing corporations under Part 2D.6, then, within a period of 3 days after they become disqualified, they must lodge written particulars in the prescribed form of the circumstances because of which they become disqualified.

1288 Triennial statements by registered auditors and liquidators

- (3) A person who is a registered company auditor or registered liquidator must, within one month after the end of:
- (a) the period of 3 years beginning on the day on which the person's registration begins; and

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- (b) each subsequent period of 3 years;
lodge a statement in respect of that period of 3 years setting out such information as is prescribed.
- (4) ASIC may, on the application of a registered company auditor or a registered liquidator made before the end of the period for lodging a statement under subsection (3), extend, or further extend, that period.
- (5) ASIC may, by notice in writing served on the person, require a person who is registered as a liquidator of a specified body corporate to lodge, within a period specified in the notice, a statement in respect of a period specified in the notice setting out such information as is prescribed.

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

- (1) An auditor has qualified privilege in respect of:
 - (a) any statement that he or she makes, orally or in writing, in the course of his or her duties as auditor; or
 - (b) any statement that he or she makes, orally or in writing, on a directors' report under section 298 or 306 or on any statement, report or other document that is taken, for any purpose, to be part of the first-mentioned report; or
 - (c) notifying ASIC of a matter under section 311.
- (2) A person has qualified privilege in respect of:
 - (a) the publishing of any document prepared by an auditor in the course of his or her duties and required by or under this Act to be lodged, whether or not the document has been lodged; or
 - (b) the publishing of any statement made by an auditor as mentioned in subsection (1).

Division 3—Cancellation or suspension of registration

1290 Cancellation at request of registered person

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

1291 Official liquidators

- (1) ASIC may, at any time, cancel, or suspend for a specified period, the registration as an official liquidator of a person who is so registered.
- (2) ASIC may, at any time, require a person registered as an official liquidator to give an undertaking to refrain from engaging in specified conduct except on specified conditions.
- (3) Where ASIC decides to exercise a power under subsection (1) or (2), ASIC must, not later than 14 days after the decision, give to the person a notice in writing setting out the decision and the reasons for it, but the validity of the decision is not affected by failure of ASIC to do so.
- (4) A decision of ASIC under subsection (1) to cancel or suspend the registration of a person as an official liquidator comes into effect at the end of the day on which there is given to the person a notice of the decision, being a notice of the kind referred to in subsection (3).

Section 1292

1292 Powers of Board in relation to auditors and liquidators

- (1) The Board may, if it is satisfied on an application by ASIC 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:
 - (i) contravened section 1288; or
 - (ii) ceased to be resident in Australia; 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.
- (2) The Board may, if it is satisfied on an application by ASIC for a person who is registered as a liquidator to be dealt with under this section that, before, at or after the commencement of this section:
 - (a) the person has:
 - (i) contravened section 1288; or
 - (ii) ceased to be resident in Australia; or
 - (d) that the person has failed, whether in or outside this jurisdiction, to carry out or perform adequately and properly:
 - (i) the duties of a liquidator; or
 - (ii) any duties or functions required by an Australian law to be carried out or performed by a registered liquidator;or is otherwise not a fit and proper person to remain registered as a liquidator;by order, cancel, or suspend for a specified period, the registration of the person as a liquidator.
- (3) The Board may, if it is satisfied on an application by ASIC for a person who is registered as a liquidator of a specified body

corporate to be dealt with under this section that, before, at or after the commencement of this section:

- (a) the person has:
 - (i) contravened subsection 1288(5); or
 - (ii) ceased to be resident in Australia; or
- (d) that the person has failed, whether in or outside this jurisdiction, to carry out adequately and properly the duties of a liquidator in respect of the winding up of that body corporate or is otherwise not a fit and proper person to remain registered as a liquidator of that body corporate;

by order, cancel, or suspend for a specified period, the registration of the person as a liquidator of that body corporate.

(4) Where:

- (a) ASIC applies to the Board for a person who is registered as an auditor to be dealt with under this section; and
- (b) the person is also registered as a liquidator or as a liquidator of a specified body corporate;

the Board may, in addition to making an order under subsection (1), if it is satisfied as to any of the matters specified in paragraph (2)(a) or (d) or (3)(a) or (d), make an order cancelling, or suspending for a specified period, the registration of the person as a liquidator or as a liquidator of that body, as the case may be, and, where the Board makes such an order, the order is, for the purposes of this Division, taken to have been made under subsection (2) or (3), as the case may be.

(5) Where:

- (a) ASIC applies to the Board for a person who is registered as a liquidator to be dealt with under this section; and
- (b) the person is also registered as an auditor or as a liquidator of a specified body corporate;

the Board may, in addition to making an order under subsection (2), if it is satisfied as to any of the matters specified in paragraph (1)(a) or (d) or (3)(a) or (d), make an order cancelling, or suspending for a specified period, the registration of the person as an auditor or as a liquidator of that body, as the case may be, and, where the Board makes such an order, the order is, for the purposes

Section 1292

of this Division, taken to have been made under subsection (1) or (3), as the case may be.

(6) Where:

(a) ASIC applies to the Board for a person who is registered as a liquidator of a specified body corporate to be dealt with under this section; and

(b) the person is also registered as an auditor or as a liquidator; the Board may, in addition to making an order under subsection (3), if it is satisfied as to any of the matters specified in paragraph (1)(a) or (d) or (2)(a) or (d), make an order cancelling, or suspending for a specified period, the registration of the person as an auditor or as a liquidator, as the case may be, and, where the Board makes such an order, the order is, for the purposes of this Division, taken to have been made under subsection (1) or (2), as the case may be.

(7) The Board must, if it is satisfied on an application by ASIC for a prescribed person 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 each prescribed registration of the person.

(8) In subsection (7) and in this subsection:

prescribed person means a person who is registered as an auditor, as a liquidator or as a liquidator of a specified body corporate.

prescribed registration, in relation to a prescribed person, means a registration of the person as an auditor, as a liquidator or as the liquidator of a specified body corporate.

(9) Where, on an application by ASIC for a person who is registered as an auditor, as a liquidator or as a liquidator of a specified body corporate to be dealt with under this section, the Board is satisfied that the person has failed to carry out or perform adequately and properly any of the duties or functions mentioned in paragraph (1)(d), (2)(d) or (3)(d), as the case may be, or is

otherwise not a fit and proper person to remain registered as an auditor, liquidator or liquidator of that body, as the case may be, 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, as a liquidator or as a liquidator of a specified body corporate, as the case may be.
- (10) Where, on an application by ASIC for a person who is registered as an auditor, as a liquidator or as a liquidator of a specified body corporate to be dealt with under this section, the Board is empowered to deal with the person as mentioned in subsection (9), the Board may so deal with the person:
- (a) if the Board is required to make an order under subsection (6) on the application—in addition to making such an order; or
 - (b) otherwise—in addition to, or instead of, cancelling or suspending the registration of the person as an auditor, as a liquidator or as a liquidator of that body, as the case may be.
- (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:

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Part 9.2 Registration of auditors and liquidators

Division 3 Cancellation or suspension of registration

Section 1295

- (a) cancel or suspend the registration of a person as an auditor, as a liquidator or as a liquidator of a specified body corporate; 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 an opportunity to appear at the hearing and to make submissions to, and bring evidence before, the Board in relation to the matter.

1295 Board may remove suspension

- (1) Where a registration of a person is suspended, 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.
- (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, as a liquidator or as a liquidator of a specified body corporate comes into effect at the end of the day on which there is given to the person a notice of the decision pursuant to which the order is made, being a notice of the kind referred to in paragraph 1296(1)(a).
- (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, as a liquidator, as a liquidator of a specified body corporate or as an official liquidator is suspended is, except for the purposes of subsections 1285(2) and 1286(3), section 1287 (other than paragraphs 1287(1)(a), (2)(a) and

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(3)(a), section 1288 and this Division, taken not to be registered as an auditor, liquidator, liquidator of that body corporate or official liquidator, as the case may be, so long as the registration is suspended.

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.
- (3) A person permitted by this Act 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.

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

Section 1302

- (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.
- (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.

1302 Location of registers

- (1) A register that is required by section 271 to be kept by a company must be kept at the registered office or at an office at the principal place of business in this jurisdiction of the company but:

Section 1303

- (a) if the work of making up the register is done at another office of the company in this jurisdiction, it may be kept at that other office; or
 - (b) if the company arranges with some other person to make up the register on its behalf and the office of that other person at which the work is done is in this jurisdiction, it may be kept at that office; or
 - (c) if ASIC approves, it may be kept at another office in this jurisdiction, being an office of the company or of another person.
- (3) If default is made in complying with subsection (1) in its application to any register of a company, the company, any officer of the company who is in default, and any person who has arranged with the company to make up the register on its behalf and is in default, are each guilty of an offence.
- (4) A company must, within 7 days after any register of the company to which subsection (1) applies is first kept at an office other than the registered office or the principal office, as the case may be, lodge notice of the address of the office where the register is kept and must, within 7 days after any change in the place at which the register is kept, lodge notice of the change.
- (5) If default is made in complying with subsection (4) in its application to any register of a company, the company and any officer of the company who is in default are each guilty of an offence.
- (7) In this section, unless the contrary intention appears, *company* includes a registered body.

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.

Section 1304

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.
- (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:

Section 1306

- (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 are 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.

Section 1307

1307 Falsification of books

- (1) An officer, former officer, member or former member of a company who conceals, destroys, mutilates or falsifies any securities of or belonging to the company or any books affecting or relating to affairs of the company is guilty of an offence.
- (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:
 - (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) destroys, removes or falsifies 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.
- (4) In this section, *officer*, in relation to a company, includes a receiver of property of the company who is not also a manager.

Part 9.4—Offences

Division 1—Specific offences

1308 False or misleading statements

- (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) A person who, in a document required by or for the purposes of this Act or lodged with or submitted to ASIC, makes or authorises the making of a statement that to the person's knowledge is false or misleading in a material particular, or omits or authorises the omission of any matter or thing without which the document is to the person's knowledge misleading in a material respect, is guilty of an offence.
- (3) A person who makes or authorises the making of a statement that is based on information that to the person's knowledge:
 - (a) is false or misleading in a material particular; or
 - (b) has omitted from it a matter or thing the omission of which renders the information misleading in a material respect;is, for the purposes of subsection (2), taken to have made or authorised the making of a statement that to the person's knowledge was false or misleading in a material particular.
- (3A) 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 (2) of this section.
- (4) A person who, in a document required by or for the purposes of this Act or lodged:

Section 1308

- (a) makes or authorises the making of a statement that is false or misleading in a material particular; or
 - (b) omits or authorises the omission of any matter or thing without which the document is misleading in a material respect;
without having taken reasonable steps to ensure that the statement was not false or misleading or to ensure that the statement did not omit any matter or thing without which the document would be misleading, as the case may be, is guilty of an offence.
- (5) A person who makes or authorises the making of a statement without having taken reasonable steps to ensure that the information on which the statement was based:
- (a) was not false or misleading in a material particular; and
 - (b) did not have omitted from it a matter or thing the omission of which would render the information misleading in a material respect;
- is, for the purposes of subsection (4), taken to have made or authorised the making of a statement without having taken reasonable steps to ensure that the statement was not false or misleading.
- (6) For the purposes of subsections (2) and (4), where:
- (a) at a meeting, a person votes in favour of a resolution approving, or otherwise approves, a document required by or for the purposes of this Act or required to be lodged; and
 - (b) the document contains a statement that, to the person's knowledge, is false or misleading in a material particular, or omits any matter or thing without which the document is, to the person's knowledge, misleading in a material respect;
- the person is taken to have authorised the making of the statement or the omission of the matter or thing.
- (7) 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 not itself required by this Act to be laid before the company in general meeting; and
 - (c) is attached to or included with a report of the directors sent 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 (c).
- (8) A person must not, in connection with an application for a securities licence or futures licence:
- (a) make a statement that is false or misleading in a material particular knowing it to be false or misleading; or
 - (b) omit to state any matter or thing knowing that because of that omission the application is misleading in a material respect.

1309 False information etc.

- (1) An officer 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) a securities exchange in Australia or elsewhere or an officer of such a securities exchange;
- 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:
- (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;
- is guilty of an offence.
- (2) An officer of a corporation who makes available or gives information, or authorises or permits the making available or giving of information, to:

Section 1309

- (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) a securities exchange in Australia or elsewhere or an officer of such a securities exchange;
- 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;
- is guilty of an offence.
- (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) A person must not, for the purposes of this Act, lodge with a futures exchange, a clearing house for a futures exchange, or a futures association, a document that contains a statement that, to the person's knowledge, is false or misleading.

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.
- (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:
 - (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 and 5A;
 - (d) Parts 5B.1 and 5B.3;
 - (e) Chapter 10.
- (2) Subject to section 1312, a person who is guilty of an offence against this Act, whether by virtue of subsection (1) or otherwise, is punishable, on conviction, by a penalty not exceeding the penalty applicable to the offence.
- (3) Where:
 - (a) subsection (1) operates in relation to a provision of this Act so as to make a person guilty of an offence; or

- (b) a provision of this Act (other than this section) provides that a person is, in circumstances referred to in the provision, guilty of an offence;
and 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, the penalty applicable to the offence is the penalty so set out.
- (4) Where a provision of this Act (other than this section) provides that the penalty applicable to a contravention of a particular provision of this Act is a specified penalty, pecuniary or otherwise, the penalty applicable to an offence constituted by a contravention of the particular provision is the specified penalty.
- (5) Except as provided in subsection (3) or (4) or in a provision of this Act (other than this section), the penalty applicable to the offence is a fine of 5 penalty units.

1312 Penalties for bodies corporate

Where a body corporate is convicted of an offence against this Act, the penalty that the court may impose is a fine not exceeding 5 times the maximum amount that, but for this section, the court could impose as a pecuniary penalty for that offence.

1313 Penalty notices

- (1) Where ASIC has reason to believe that a person has committed a prescribed offence, ASIC may, subject to subsection (2), give the person a notice in the prescribed form:
- (a) alleging that the person has committed the prescribed offence and giving the prescribed particulars in relation to the prescribed offence; and
 - (b) setting out the prescribed penalty in respect of the prescribed offence; and
 - (c) stating:
 - (i) in the case of a prescribed offence constituted by a failure to do a particular act or thing:

Section 1313

- (A) that the obligation to do the act or thing continues despite the service of the notice or the payment of the prescribed penalty; and
 - (B) that if, within the period specified in the notice (being a period of at least 21 days), the person pays the prescribed penalty to the authority specified in the notice and does the act or thing, no further action will be taken against the person in relation to the prescribed offence; and
 - (C) that if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice or has not done the act or thing, proceedings may be instituted against the person; or
- (ii) in the case of a prescribed offence, not being an offence constituted by a failure to do a particular act or thing:
- (A) that if, within the period specified in the notice (being a period of at least 21 days), the person pays the prescribed penalty to the authority specified in the notice, no further action will be taken against the person in relation to the prescribed offence; and
 - (B) that if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice, proceedings may be instituted against the person.
- (2) Subsection (1) does not empower ASIC:
- (a) to give a person more than one notice under that subsection in relation to an alleged commission by that person of a particular prescribed offence; or
 - (b) to give a person a notice under that subsection in relation to a prescribed offence unless proceedings could be instituted against that person for that offence in accordance with section 1316.

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- (3) A notice under subsection (1) may be given to a natural person either personally or by post.
- (4) Where a notice under subsection (1) is given to a person in relation to a prescribed offence constituted by a failure to do a particular act or thing:
 - (a) if, within the period specified in the notice, the person pays the prescribed penalty to the authority specified in the notice, and does the act or thing—no proceedings may be instituted against the person in respect of the prescribed offence; or
 - (b) if, at the end of the period specified in the notice, the person has paid the prescribed penalty to the authority specified in the notice but has not done the act or thing—no proceedings may be instituted against the person in respect of the prescribed offence, but the obligation to do that act or thing continues, and section 1314 applies in relation to the continued failure to do that act or thing as if, on the day on which the person so paid the prescribed penalty, the person had been convicted of an offence constituted by a failure to do that act or thing; or
 - (c) if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice but had done the act or thing—proceedings may be instituted against the person in respect of the prescribed offence; or
 - (d) if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice and has not done the act or thing—the obligation to do that act or thing continues, and proceedings may be instituted against the person in respect of the prescribed offence.
- (5) Where a notice under subsection (1) is given to a person in relation to a prescribed offence, not being an offence constituted by a failure to do a particular act or thing:
 - (a) if, within the period specified in the notice, the person pays the prescribed penalty to the authority specified in the notice—no proceedings may be instituted against the person in respect of the prescribed offence; or

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- (b) if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice—proceedings may be instituted against the person in respect of the prescribed offence.
- (6) The payment of an amount by a person pursuant to a notice served on the person under this section in relation to a prescribed offence is not taken for any purpose to be an admission by that person of any liability in connection with the alleged commission of the prescribed offence.
- (7) Except as provided by paragraphs (4)(a) and (b) and (5)(a), this section does not affect the operation of any provision of this Act, of the regulations, of the rules or of any other Act in relation to the institution of proceedings in respect of offences that are prescribed offences for the purposes of this section.
- (8) In this section:

authority includes a person.

prescribed offence means:

- (a) a subsection 1311(5) offence; or
(b) an offence against this Act that the regulations prescribe for the purposes of this section.

prescribed penalty, in relation to a prescribed offence in relation to which ASIC may give, or has given, to a person a notice under subsection (1), means:

- (a) if the offence is a subsection 1311(5) offence:
- (i) if the regulations prescribe in relation to the offence for the purposes of this paragraph an amount not exceeding one half the amount of the penalty applicable to the offence:
- (A) if the person is a body corporate—a penalty of five times the amount so prescribed; or
(B) otherwise—a penalty of the amount so prescribed; or
- (ii) otherwise:

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- (A) if the person is a body corporate—a penalty of 1.25 times the amount of the penalty applicable to the offence; or
- (B) otherwise—a penalty of 0.25 times the amount of the penalty applicable to the offence; or

Note: Section 1311 provides for the penalty applicable to an offence.

- (b) otherwise—a penalty of the amount that the regulations prescribe in relation to the offence.

subsection 1311(5) offence means an offence the penalty applicable to which is provided for by subsection 1311(5).

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:

- (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

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- (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 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 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 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

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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) a Commission 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*.

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.

Section 1316A

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:
- (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.

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- (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.

Section 1317A

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 and Liquidators Disciplinary Board.
- (2) For the purposes of this Act and the *Administrative Appeals Tribunal Act 1975*, ASIC is taken to be a person whose interests are affected by a decision made under this Act by the Companies Auditors and Liquidators 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
- (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

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- (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
- (h) a decision to make a determination under subsection 1317D(3).

1317D Notice of reviewable decision and review rights

- (1) This section applies if the Minister, ASIC or the Companies Auditors and Liquidators Disciplinary Board (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.
- (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.

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- (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 9.4B—Civil consequences of contravening civil penalty provisions

1317E Declarations of contravention

- (1) If a Court is satisfied that a person has contravened 1 of the following provisions, it must make a declaration of contravention:
- (a) subsections 180(1) and 181(1) and (2), 182(1) and (2), 183(1) and (2) (officers' duties);
 - (b) subsection 209(2) (related parties rules);
 - (c) subsections 254L(2), 256D(3), 259F(2) and 260D(2) (share capital transactions);
 - (d) subsection 344(1) (requirements for financial reports);
 - (e) subsection 588G(2) (insolvent trading);
 - (f) subsection 601FC(1);
 - (g) subsection 601FD(1);
 - (h) subsection 601FE(1);
 - (i) section 601FG;
 - (j) subsection 601JD(1);
 - (k) subclause 29(6) of Schedule 4.

These provisions are the *civil penalty provisions*.

Note: Once a declaration has been made ASIC can then seek a pecuniary penalty order (section 1317G) or a disqualification order (section 206C).

- (2) A declaration of contravention must specify the following:
- (a) the Court that made the declaration;
 - (b) the civil penalty provision that was contravened;
 - (c) the person who contravened the provision;
 - (d) the conduct that constituted the contravention;
 - (e) the corporation or registered scheme to which the conduct related.

Section 1317F

1317F Declaration of contravention is conclusive evidence

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

1317G Pecuniary penalty orders

- (1) A Court may order a person to pay the Commonwealth a pecuniary penalty of up to \$200,000 if:
 - (a) a declaration of contravention by the person has been made under section 1317E; and
 - (b) the contravention:
 - (i) materially prejudices the interests of the corporation or scheme, or its members; or
 - (ii) materially prejudices the corporation's ability to pay its creditors; or
 - (iii) is serious.
- (2) The penalty is a civil debt payable to ASIC on the Commonwealth's behalf. ASIC or the Commonwealth may enforce the order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgment debt.

1317H Compensation orders

Compensation for damage suffered

- (1) A Court may order a person to compensate a corporation or registered scheme for damage suffered by the corporation or scheme if:
 - (a) the person has contravened a civil penalty provision in relation to the corporation or scheme; and
 - (b) the damage resulted from the contravention.The order must specify the amount of the compensation.

Damage includes profits

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

Damage includes diminution of value of scheme property

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

Recovery of damage

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

1317J Who may apply for a declaration or order

Application by ASIC

- (1) ASIC may apply for a declaration of contravention, a pecuniary penalty order or a compensation order.

Application by corporation

- (2) The corporation, or the responsible entity for the registered scheme, may apply for a compensation order.
- (3) The corporation, or the responsible entity for the registered scheme, may intervene in an application for a declaration of contravention or a pecuniary penalty order in relation to the corporation or scheme. The corporation or responsible entity is

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entitled to be heard on all matters other than whether the declaration or order should be made.

No one else may apply

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

1317K Time limit for application for a declaration or order

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

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

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

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

1317M Civil proceedings after criminal proceedings

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

1317N Criminal proceedings during civil proceedings

- (1) Proceedings for a declaration of contravention or pecuniary penalty order against a person are stayed if:

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- (a) criminal proceedings are started or have already been started against the person for an offence; and
 - (b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.
- (2) The proceedings for the declaration or order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the declaration or order are dismissed.

1317P Criminal proceedings after civil proceedings

Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether:

- (a) a declaration of contravention has been made against the person; or
- (b) a pecuniary penalty order has been made against the person; or
- (c) a compensation order has been made against the person; or
- (d) the person has been disqualified from managing a corporation under Part 2D.6.

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

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

- (a) the individual previously gave the evidence or produced the documents in proceedings for a pecuniary penalty order against the individual for a contravention of a civil penalty provision (whether or not the order was made); and
- (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.

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

Section 1317R

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

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- (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 or 1317H); and
 - (b) does not include proceedings for an offence (except so far as the proceedings relate to the question whether the court should make an order under section 588K or 1317H).
- (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 of a corporation or of a Part 5.7 body), the person ought fairly to be excused for the contravention;

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the court may relieve the person either wholly or partly from a liability to which the person would otherwise be subject, or that might otherwise be imposed on the person, because of the contravention.

- (3) In determining under subsection (2) whether a person ought fairly to be excused for a contravention of section 588G, the matters to which regard is to be had include, but are not limited to:
 - (a) any action the person took with a view to appointing an administrator of the company or Part 5.7 body; and
 - (b) when that action was taken; and
 - (c) the results of that action.
- (4) If a person thinks that eligible proceedings will or may be begun against them, they may apply to the Court for relief.
- (5) On an application under subsection (4), the Court may grant relief under subsection (2) as if the eligible proceedings had been begun in the Court.
- (6) For the purposes of subsection (2) as applying for the purposes of a case tried by a judge with a jury:
 - (a) a reference in that subsection to the court is a reference to the judge; and
 - (b) the relief that may be granted includes withdrawing the case in whole or in part from the jury and directing judgment to be entered for the defendant on such terms as to costs as the judge thinks appropriate.
- (7) Nothing in this section limits, or is limited by, section 1318.

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 of a corporation; or
 - (b) an auditor of a corporation, whether or not the person is an officer of the corporation; or

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- (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) For the purposes of this section, *officer* in relation to a corporation, means:
- (a) a director, secretary, executive officer or employee of the corporation; and
 - (b) a receiver, or receiver and manager, of property of the corporation; and
 - (c) an administrator of the corporation; and
 - (ca) an administrator of a deed of company arrangement executed by the corporation; and
 - (d) a liquidator of the corporation; and
 - (e) a trustee or other person administering a compromise or arrangement made between the corporation and another person or other persons.

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.

1321 Appeals from decisions of receivers, liquidators etc.

A person aggrieved by any act, omission or decision of:

- (a) a person administering a compromise, arrangement or scheme referred to in Part 5.1; or

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- (b) a receiver, or a receiver and manager, of property of a corporation; or
 - (c) an administrator of a company; or
 - (ca) an administrator of a deed of company arrangement executed by a company; or
 - (d) a liquidator or provisional liquidator of a company;
- may appeal to the Court in respect of the act, omission or decision and the Court may confirm, reverse or modify the act or decision, or remedy the omission, as the case may be, and make such orders and give such directions 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
 - (ii) a defect, irregularity or deficiency of notice or time.
- (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

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person entitled to attend the meeting or ASIC, declares proceedings at the meeting to be void.

- (3A) If a member does not have a reasonable opportunity to participate in a meeting of members, or part of a meeting of members, held at 2 or more venues, the meeting 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 proceeding (or that part of it) 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;

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- (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 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, securities, futures contracts or property

- (1) Where:
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- (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 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 securities, futures contracts 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, securities, futures contracts 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 securities, futures contracts or other property, to, or to another person at the direction or request of, the person on whose behalf the money, securities, futures contracts 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 securities, futures contracts or other property of the relevant person, or of an associate of the relevant person:

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- (i) from a place in this jurisdiction to a place outside this jurisdiction (including the transfer of securities 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 securities 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
 - (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
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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 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.

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

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(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.

(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

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- (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.
- (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.

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- (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
 - (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 or 6D or Part 7.11, the Court may do either or both of the following:

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

Section 1324B

1324B Order to disclose information or publish advertisements

Without limiting section 1324, if, on the application of ASIC, the Court is satisfied that a person has engaged in conduct constituting a contravention of a provision of Chapter 5C or 6D or Part 7.11, the Court may make either or both of the following orders against that person or a person involved in the contravention:

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

1325 Other orders

- (1) Where, in a proceeding instituted under, or for a contravention of, Chapter 5C or 6D or Part 7.11, 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 Chapter 5C or 6D or Part 7.11, 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.

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- (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 Chapter 5C or 6D or Part 7.11, 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 Chapter 5C or 6D or Part 7.11 or instituted by ASIC under section 1324, a person is found to have engaged in conduct in contravention of Chapter 5C or 6D or Part 7.11, 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

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- (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 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.
- (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.

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.

Section 1325B

Note 1: Section 9 defines *remedial order*.

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

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

Note: Section 9 defines *remedial order*.

- (3) An order under this section may be made on application by the following:
- (a) ASIC;
 - (b) the company, or the responsible entity of the registered scheme, whose securities are involved in the contravention;
 - (c) a member or former member of that company or scheme;
 - (d) a person from whom the relevant interest in the securities were acquired;
 - (e) a person whose interests are affected by the contravention.

1325B Court may order bidder to make offers

- (1) If a bidder making a takeover bid for a class of securities contravenes section 631 by failing to make offers under the bid within time and ASIC applies for an order under this section, the Court may:
- (a) order the bidder to send, to each holder of securities in that class, an offer to which the bidder's statement relates within a specified time; and

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- (b) make any ancillary orders it thinks appropriate including orders that the bidder:
 - (i) send notices setting out specified information with the offer; and
 - (ii) send copies of the notice within a specified period to the target and, if the target is listed, to the relevant securities exchange; and
 - (iii) lodge a copy of the notice with ASIC within a specified period.
- (2) Offers sent in accordance with an order under this section are taken to be made under a takeover bid.

1325C Unfair or unconscionable agreements, payments or benefits

- (1) The Court may make orders under subsection (2) if:
 - (a) a body corporate gives, or enters into an agreement to give, a director or secretary of the body corporate or a related body corporate a benefit (including a payment or an agreement to employ them, or engage their services, for a fixed period); and
 - (b) the agreement is entered into or the benefit is given:
 - (i) within 12 months after the start of the bid period for a takeover bid for the securities of the body corporate or a related body corporate; or
 - (ii) at a time when the directors of the body corporate have reason to believe that a takeover bid is to be made in respect of securities of the body corporate or a related body corporate; and
 - (c) the Court is satisfied that the agreement or benefit was unfair or unconscionable having regard to the interests of the body corporate.
- (2) The Court may:
 - (a) declare the agreement, or any part of it, to be void or to have always been void; or
 - (b) direct a person to whom a benefit is given, or another specified person, to:

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- (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;
- 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:

Section 1325E

- (a) an order restraining the exercise of voting or other rights attached to securities; or
 - (b) an order that an exercise of voting or other rights attached to securities be disregarded.
- (4) In determining whether or not a contravention of a provision by a person ought to be excused, have regard to the contravention being caused by any of the following:
- (a) the person's inadvertence or mistake;
 - (b) the person not having been aware of a relevant fact or occurrence;
 - (c) circumstances beyond the control of the person.
- (5) This section applies notwithstanding anything contained in any other provision of this Chapter.

1325E Orders to secure compliance

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

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

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.

- (2) The costs of any proceeding before a court under this Act is 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.
- (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

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(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 the Supreme Court of:
 - (a) each State; and
 - (b) the Capital Territory; and
 - (c) the Northern Territory;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 the Supreme Court of:
 - (a) each State; and
 - (b) the Capital Territory; and
 - (c) the Northern Territory;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 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.

1337C Jurisdiction of Family Court and State Family Courts

- (1) Jurisdiction is conferred on the Family Court 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 Family Court 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:

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- (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 Family Court 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 Family Court 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

Section 1337E

removing from the Supreme Court of a State, the Capital Territory or the Northern Territory 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 the lower courts of:

- (a) each State; and
- (b) the Capital Territory; and
- (c) the Northern Territory;

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):

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- (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 Family Court.
- (2) An appeal may not be instituted from a decision of a court of the Capital Territory to:
 - (a) a court of a State or the Northern Territory; or
 - (b) the Family Court.
- (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 Family Court; or
 - (d) a State Family Court of that State.
- (4) An appeal may not be instituted from a decision of the Family Court 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

- (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.

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- (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
 - (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.

Section 1337J

- (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 Family Court 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 Family Court of Australia; 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

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- (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 Family Court of Australia; 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 Family Court of Australia; 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.
- (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
 - (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).

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- (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
- (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

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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 or in an external Territory; 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 Family Court with respect to civil matters arising under the Corporations Legislation; or

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- (b) jurisdiction conferred on a court of a State, the Capital Territory or the Northern 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).

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:

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- (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 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 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.

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(3) In this section:

Corporations legislation does not include rules of court.

1337U Rules of the Family Court

(1) The power to make rules of court conferred by section 123 of the *Family Law Act 1975* extends to making rules of court:

- (a) with respect to proceedings, and the practice and procedure, of the Family 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 about meetings ordered by the Family Court.

(2) In this section:

Corporations legislation does not include rules of court.

Division 2—Vesting and cross-vesting of 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, the several courts of each State, the Capital Territory and the Northern 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, the Capital Territory or the Northern Territory, 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:

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- (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);have 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 a State, the Capital Territory or the Northern Territory, 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 a 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.

- (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 court of a State or the Northern Territory 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.

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1338C Laws to be applied

(1) Subject to this Division, the laws of a State, the Capital Territory or the Northern 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) ASIC holds unclaimed property on trust in accordance with, and for the purposes of, this Part.

Note: Division 2 of Part 8 of the ASIC Act contains provisions about property that ASIC receives or holds on trust.

- (2) If property becomes unclaimed property, ASIC must:
- (a) in the case of money—pay it into an unclaimed money account; or
 - (b) otherwise—sell or dispose of the property as it thinks fit and pay the proceeds into an unclaimed money account.

This subsection does not apply to unclaimed property so far as the property consists of an investment made as permitted by subsection 142(2) of the ASIC Act.

- (3) The Minister may apply as mentioned in subsection 135(1) of the ASIC Act income derived from investing, as permitted by subsection 142(2) of that Act, money that is unclaimed property.

Note: Subsection 135(1) of the ASIC Act provides for how ASIC may apply its own money.

- (4) If income is applied under subsection (3), a person is not liable to another person in respect of the income merely because the other person is entitled to money in an unclaimed money account.

1340 ASIC not liable to pay calls on shares etc.

Where unclaimed property is or includes shares in a body corporate, ASIC is not 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

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(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 Disposition of money in unclaimed money account

- (1) If money is not paid out of an unclaimed money account in accordance with this section or subsection 1339(3) within 6 years after it was originally paid into such an account under subsection 1339(2), it must be paid into the Consolidated Revenue Fund.
- (2) If:
 - (a) a person claims to be entitled to money paid into an unclaimed money account under subsection 1339(2); and
 - (b) ASIC is satisfied that the person is entitled to the money;
ASIC must:
 - (c) unless paragraph (d) applies—pay the money to the person out of the relevant unclaimed money account; or
 - (d) if the money has been paid into the Consolidated Revenue Fund under subsection (1)—pay an equivalent amount to the person out of money appropriated by the Parliament for the purpose.
- (3) A person who is dissatisfied with the decision of ASIC in respect of a claim made by the person in accordance with subsection (2) may appeal to the Court and the Court may confirm, disallow or vary the decision of ASIC.
- (4) Where a person claims to be entitled to money that has been paid to another person in accordance with this section, ASIC is not under any liability to that first-mentioned person in respect of that money, but, if the first-mentioned person is entitled to that money, that person may recover that money from the other person.
- (5) Where a person claims to be entitled to money, being money an amount equivalent to which has been paid to another person in accordance with subsection (2) out of money appropriated by the Parliament for the purpose, ASIC is not under any liability to that

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first-mentioned person in respect of that money, but, if the first-mentioned person is entitled to that money, that person may recover that equivalent amount 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

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 such of the Minister's functions and powers under this Act as are prescribed.
- (2) A delegate is, in the performance or exercise of a delegated function or power, subject to the Minister's directions.

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:

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- (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*.

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.

Part 9.10—Fees for chargeable matters

1351 Fees for chargeable matters

- (1) The *Corporations (Fees) Act 2001* imposes fees in respect of various matters under or connected with this Act.
- (2) The fees so imposed are payable to the Commonwealth.

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 or the *Corporations (Fees) Act 2001* prevents the Commonwealth from:

Section 1360

- (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.

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

Section 1364

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) for or in relation to the publication of advertisements offering the services of dealers or investment advisers or offering securities for purchase or sale, and the form and content of those advertisements; and
- (p) for or in relation to the publication of advertisements offering the services of futures brokers or futures advisers or offering to deal in futures contracts, and the form and content of those advertisements; and
- (q) for or in relation to the form of balance-sheets and profit and loss statements required by this Act to be prepared by dealers or futures brokers; and

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- (r) for or in relation to prohibiting, or regulating the manner and extent of, the offsetting by a futures broker of dealings in futures contracts (as between dealings on the broker's own account and dealings on behalf of a client or as between dealings on behalf of a client and dealings on behalf of another client) and, without limitation, regulating the manner of, or requiring, the making of margin calls in respect of dealings in futures contracts effected by a futures broker; 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
- (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 \$1,000 for contraventions of the regulations.

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

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- (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.

1368 Exemptions from Chapter 6D, 7 or 8

The regulations may provide that, subject to any prescribed terms and conditions, Chapter 6D, 7 or 8, or specified provisions of Chapter 6D, 7 or 8:

- (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:

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- (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 section 1313; 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 section 1311.
- (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 section 1313 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.

Chapter 10 Transitional provisions

Part 10.1 Transition from the old corporations legislation

Division 1 Preliminary

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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);

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- (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.

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.

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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 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 they 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).

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.

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

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- (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 managed investment 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.

Chapter 10 Transitional provisions

Part 10.1 Transition from the old corporations legislation

Division 3 Carrying over the old Corporations Regulations

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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;
- (c) a proceeding in the court's accrued federal jurisdiction in relation to a matter to which a provision of the old

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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
 - (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*.

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Part 10.1 Transition from the old corporations legislation

Division 4 Court proceedings and orders

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(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 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.

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- (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
- 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.

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.

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Part 10.1 Transition from the old corporations legislation

Division 4 Court proceedings and orders

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- (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

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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 925A 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.

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:
-

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- (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 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.

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- (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 (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 Law of a State or Territory in this jurisdiction to pay a contribution, levy or fee.

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Section 1398

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.

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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
 - (c) if the thing done was the granting of an application or claim—the thing granted had not been revoked, and had not

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Division 6 General transitional provisions relating to other things done etc. under the old corporations legislation

Section 1400

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.

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:

Section 1400

- (a) was acquired, accrued or incurred under a carried over provision of the old corporations legislation of a State or Territory in this jurisdiction; and
- (b) was in existence immediately before the commencement.

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 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.

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Section 1401

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 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
- (b) was in existence immediately before the commencement.

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 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

Section 1402

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.

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).

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Section 1403

- (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:
- (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

Section 1404

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.

Chapter 10 Transitional provisions

Part 10.1 Transition from the old corporations legislation

Division 6 General transitional provisions relating to other things done etc. under the old corporations legislation

Section 1405

- (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.

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):

Section 1406

- (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.

Chapter 10 Transitional provisions

Part 10.1 Transition from the old corporations legislation

Division 6 General transitional provisions relating to other things done etc. under the old corporations legislation

Section 1407

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:

Section 1408

- (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).
-

Chapter 10 Transitional provisions

Part 10.1 Transition from the old corporations legislation

Division 6 General transitional provisions relating to other things done etc. under the old corporations legislation

Section 1408

- (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.

Transitional provisions of old Corporations Law	
Item	Provisions
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
7	subsection 319(4)
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

Transitional provisions of old Corporations Law

Item Provisions

- | | |
|----|---|
| 19 | Chapter 11, other than section 1416 |
| 20 | Schedule 4, other than the following provisions: <ul style="list-style-type: none">(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. |
-

- (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 48(2) of the *Acts Interpretation Act 1901*, regulations for the purposes of this section may be expressed to take effect from a date before the regulations are notified in the *Gazette*.
- (5) In this section:

matters of a transitional nature also includes matters of an application or saving nature.

Schedule 2—Forms of Transfer of Marketable Securities and Marketable Rights

Note: See section 1101

FORM 1		Section 1101
SECURITY TRANSFER FORM	MARKING STAMP	

PART 1

Full name of company or other eligible body:

Description of securities:	Class:	If not fully paid, paid to:	Register:
Quantity:	[Words]	[Figures]	

Transfer identification number:

Full name(s) of transferor(s):

The transferor(s) hereby transfer(s) the above securities to the transferee(s) named in Part 2 hereof or to the several transferees named in Part 2 of the Broker's Transfer Form(s), Split Transfer Form(s) or Consolidated Transfer Form(s) relating to the above securities.

This transfer is executed on the transferor's behalf by the transferor's broker, who certifies:

- (a) as to the validity of documents; and
- (b) that stamp duty, if payable, has been or will be paid.

[Transferor's broker's stamp]

Affixed at.....

on.....

(place and date of affixing stamp)

PART 2

Full name(s) and address(es) of transferee(s):	Transferee's broker hereby certifies: <ul style="list-style-type: none"> (a) that the securities set out in Part 1 above, having been purchased in the ordinary course of business, are to be registered in the name(s) of the transferee(s) named in this Part; and (b) that stamp duty, if payable, has been or will be paid; and hereby requests that such entries be made in the register as are necessary to give effect to this transfer; <hr style="border: none; border-top: 1px solid black; margin: 5px 0;"/> [Transferee's broker's stamp] <hr style="border: none; border-top: 1px solid black; margin: 5px 0;"/> Date of affixing stamp:
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PART 3

Transferee's broker hereby certifies:

- (a) that the securities set out in Part 1 above, having been purchased in the ordinary course of business, are to be registered in the name(s) of the transferee(s) named in the Consolidated Transfer Form relating to the securities; and
- (b) that stamp duty, if payable, has been or will be paid;

and hereby requests that such entries be made in the register as are necessary to give effect to this transfer.

[Transferee's broker's stamp]

Date of affixing stamp:

Schedule 2 Forms of Transfer of Marketable Securities and Marketable Rights

FORM 2		Section 1101	
BROKER'S TRANSFER FORM		MARKING STAMP	
PART 1			
Full name of company or other eligible body:			
Description of securities:	Class:	If not fully paid, paid to:	Register:
Quantity:		[Words]	[Figures]
Transfer identification number:	Transferor's broker hereby certifies: (a) that the Security Transfer Form relating to the securities set out above has been or will be lodged at the company's or eligible body's office; and (b) that stamp duty, if payable, has been or will be paid. [Transferor's broker's stamp] Affixed at on (place and date of affixing stamp)		
Full name(s) of transferor(s):			
PART 2			
Full name(s) and address(es) of transferee(s):	Transferee's broker hereby certifies: (a) that the securities set out in Part 1 above, having been purchased in the ordinary course of business, are to be registered in the name(s) of the transferee(s) named in this Part; and (b) that stamp duty, if payable, has been or will be paid; and hereby requests that such entries be made in the register as are necessary to give effect to this transfer. [Transferee's broker's stamp] Date of affixing stamp:		
PART 3			

Forms of Transfer of Marketable Securities and Marketable Rights **Schedule 2**

Transferee's broker hereby certifies:

- (a) that the securities set out in Part 1 above, having been purchased in the ordinary course of business, are to be registered in the name(s) of the transferee(s) named in the Consolidated Transfer Form relating to the securities; and
- (b) that stamp duty, if payable, has been or will be paid;

and hereby requests that such entries be made in the register as are necessary to give effect to this transfer.

[Transferee's broker's stamp]

Date of affixing stamp:

Schedule 2 Forms of Transfer of Marketable Securities and Marketable Rights

FORM 3		Section 1101	
SPLIT TRANSFER FORM		MARKING STAMP	
PART 1			
Full name of company or other eligible body:			
Description of securities:	Class:	If not fully paid, paid to:	Register:
Quantity:	[Words]		[Figures]
Transfer identification number:	The [name of securities exchange] hereby certifies that the Security Transfer Form or the Broker's Transfer Form relating to the securities set out above has been or will be lodged at the company's or eligible body's office.		
Full name(s) of transferor(s):	[Securities Exchange stamp] Affixed at..... on..... (place and date of affixing stamp)		
PART 2			
Full name(s) and address(es) of transferee(s)	Transferee's broker hereby certifies: (a) that the securities set out in Part 1 above, having been purchased in the ordinary course of business, are to be registered in the name(s) of the transferee(s) named in this Part; and (b) that stamp duty, if payable, has been or will be paid; and hereby requests that such entries be made in the register as are necessary to give effect to this transfer. [Transferee's broker's stamp] Date of affixing stamp:		

PART 3

Transferee's broker hereby certifies:

- (a) that the securities set out in Part 1 above, having been purchased in the ordinary course of business, are to be registered in the name(s) of the transferee(s) named in the Consolidated Transfer Form relating to the securities; and
- (b) that stamp duty, if payable, has been or will be paid;

and hereby requests that such entries be made in the register as are necessary to give effect to this transfer.

[Transferee's broker's stamp]

Date of affixing stamp:

Schedule 2 Forms of Transfer of Marketable Securities and Marketable Rights

FORM 4		Section 1101
CONSOLIDATED TRANSFER FORM	MARKING STAMP	
PART 1		
Full name of company or other eligible body:		
Description of securities:	Class:	If not fully paid, paid to:
Quantity:	[Words]	[Figures]
Transfer identification number:		
Transfer Consolidation Number(s):		
PART 2		
Full name(s) and address(es) of transferee(s):	Transferee's broker hereby certifies: (a) that the securities set out in Part 1 of the Form(s) whose Transfer Consolidation Number(s) is (or are) set out in Part 1 above, having been purchased in the ordinary course of business, are to be registered in the name(s) of the transferee(s) named in this Part; and (b) that stamp duty, if payable, has been or will be paid; and hereby requests that such entries be made in the register as are necessary to give effect to the transfer(s). [Transferee's broker's stamp]	
	Date of affixing stamp:	

Forms of Transfer of Marketable Securities and Marketable Rights **Schedule 2**

FORM 5		Section 1101
SECURITY RENUNCIATION AND TRANSFER FORM	MARKING STAMP	
PART 1		
Full name of company or other eligible body:		
Description of rights:		Register:
Quantity:	[Words]	[Figures]
Transfer identification number:		
Full name(s) of transferor(s):		

The transferor(s) hereby renounce(s) and transfer(s) the above rights in favour of the transferee(s) named in Part 2 hereof or to the several transferees named in Part 2 of the Broker's Renunciation and Transfer Form(s), Renunciation and Split Transfer Form(s) or Renunciation and Consolidated Transfer Form(s) relating to the above rights.

This transfer and renunciation is executed on the transferor's behalf by the transferor's broker, who certifies:

- (a) as to the validity of documents; and
- (b) that stamp duty, if payable, has been or will be paid.

[Transferor's broker's stamp]

Affixed at.....

on.....

(place and date of affixing stamp)

PART 2	
Full name(s) and address(es) of transferee(s):	Transferee's broker hereby certifies: <ul style="list-style-type: none"> (a) that, the rights set out in Part 1 above having been purchased in the ordinary course of business, the marketable securities to which the rights relate are to be allotted to the transferee(s) named in this Part; and (b) that stamp duty, if payable, has been or will be paid; and hereby requests that the marketable securities be allotted by the company or eligible body to the transferee(s) and such entries be made in the register as are necessary to give effect to this renunciation and transfer.
	[Transferee's broker's stamp]

Schedule 2 Forms of Transfer of Marketable Securities and Marketable Rights

Date of affixing stamp:

PART 3

Transferee's broker hereby certifies:

- (a) that, the rights set out in Part 1 above having been purchased in the ordinary course of business, the marketable securities to which the rights relate are to be allotted to the transferee(s) named in the Renunciation and Consolidated Transfer Form relating to the rights; and
- (b) that stamp duty, if payable, has been or will be paid;

and hereby requests that the marketable securities be allotted by the company or eligible body to the transferee(s) and such entries be made in the register as are necessary to give effect to this renunciation and transfer.

[Transferee's broker's stamp]

Date of affixing stamp:

Forms of Transfer of Marketable Securities and Marketable Rights **Schedule 2**

FORM 6		Section 1101
BROKER'S RENUNCIATION AND TRANSFER FORM	MARKING STAMP	
PART 1		
Full name of company or other eligible body:		
Description of rights:	Register:	
Quantity: [Words]	[Figures]	
Transfer identification number:	Transferor's broker hereby certifies:	
Full name(s) of transferor(s):	(a) that the Security Renunciation and Transfer Form relating to the rights set out above has been or will be lodged at the company's or eligible body's office; and (b) that stamp duty, if payable, has been or will be paid.	
	[Transferor's broker's stamp]	
	Affixed at.....	
	on.....	
	(place and date of affixing stamp)	

Schedule 2 Forms of Transfer of Marketable Securities and Marketable Rights

PART 2

Full name(s) and address(es) of transferee(s):	Transferee's broker hereby certifies: (a) that, the rights set out in Part 1 above having been purchased in the ordinary course of business, the marketable securities to which the rights relate are to be allotted to the transferee(s) named in this Part; and (b) that stamp duty, if payable, has been or will be paid; and hereby requests that the marketable securities be allotted by the company or eligible body to the transferee(s) and such entries be made in the register as are necessary to give effect to this renunciation and transfer. [Transferee's broker's stamp] <hr/> Date of affixing stamp:
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PART 3

Transferee's broker hereby certifies:

(a) that, the rights set out in Part 1 above having been purchased in the ordinary course of business, the marketable securities to which the rights relate are to be allotted to the transferee(s) named in the Renunciation and Consolidated Transfer Form relating to the rights; and

(b) that stamp duty, if payable, has been or will be paid;

and hereby requests that the marketable securities be allotted by the company or eligible body to the transferee(s) and such entries be made in the register as are necessary to give effect to this renunciation and transfer.

[Transferee's broker's stamp]

Date of affixing stamp:

Forms of Transfer of Marketable Securities and Marketable Rights **Schedule 2**

FORM 7		Section 1101
RENUNCIATION AND SPLIT TRANSFER FORM	MARKING STAMP	
PART 1		
Full name of company or other eligible body:		
Description of rights:	Register:	
Quantity:	[Words]	[Figures]
Transfer identification number:	The [name of securities exchange] hereby certifies that the Security Renunciation and Transfer Form or the Broker's Renunciation and Transfer Form relating to the rights set out above has been or will be lodged at the company's or eligible body's office.	
Full name(s) of transferor(s):	[Securities exchange stamp]	
	Affixed at.....	
	on.....	
	(place and date of affixing stamp)	
PART 2		
Full name(s) and address(es) of transferee(s):	Transferee's broker hereby certifies:	
	(a) that, the rights set out in Part 1 above having been purchased in the ordinary course of business, the marketable securities to which the rights relate are to be allotted to the transferee(s) named in this Part; and	
	(b) that stamp duty, if payable, has been or will be paid;	
	and hereby requests that the marketable securities be allotted by the company or eligible body to the transferee(s) and such entries be made in the register as are necessary to give effect to this renunciation and transfer.	
	[Transferee's broker's stamp]	
	Date of affixing stamp:	

Schedule 2 Forms of Transfer of Marketable Securities and Marketable Rights

PART 3

Transferee's broker hereby certifies:

- (a) that, the rights set out in Part 1 above having been purchased in the ordinary course of business, the marketable securities to which the rights relate are to be allotted to the transferee(s) named in the Renunciation and Consolidated Transfer Form relating to the rights; and
- (b) that stamp duty, if payable, has been or will be paid;

and hereby requests that the marketable securities be allotted by the company or eligible body to the transferee(s) and such entries be made in the register as are necessary to give effect to this renunciation and transfer.

(Transferee's broker's stamp)

Date of affixing stamp:

Forms of Transfer of Marketable Securities and Marketable Rights **Schedule 2**

FORM 8		Section 1101
RENUNCIATION AND CONSOLIDATED TRANSFER FORM	MARKING STAMP	
PART 1		
Full name of company or other eligible body:		
Description of rights:		
Quantity:	[Words]	[Figures]
Transfer identification number:		
Transfer Consolidation Number(s):		
PART 2		
Full name(s) and address(es) of transferee(s):	Transferee's broker hereby certifies: <ul style="list-style-type: none"> (a) that, the rights set out in Part 1 of the Form(s) whose Transfer Consolidation Number(s) is (<i>or</i> are) set out in Part 1 above having been purchased in the ordinary course of business, the marketable securities to which the rights relate are to be allotted to the transferee(s) named in this Part; and (b) that stamp duty, if payable, has been or will be paid; and hereby requests that the marketable securities be allotted by the company or eligible body to the transferee(s) and such entries be made in the register as are necessary to give effect to the renunciation(s) and transfer(s). [Transferee's broker's stamp]	
	Date of affixing stamp:	

Schedule 2 Forms of Transfer of Marketable Securities and Marketable Rights

FORM 9		Section 1101	
TRUSTEE TRANSFER FORM	MARKING STAMP		
PART 1			
Full name of company or other eligible body:			
Description of securities:	Class:	If not fully paid, paid to	Register:
Quantity:	[Words]	[Figures]	
Transfer identification number, where appropriate:			
Full name(s) of transferor(s):			
PART 2			
Full name(s) and address(es) of transferee(s):	Transferor hereby certifies that the securities set out in Part 1 above are to be registered in the name(s) of the transferee(s) named in this Part, being the person(s) for or on whose behalf the transferor held them, either alone or together with another person or other persons, in the ordinary course of business immediately before the execution of this transfer, and hereby requests that such entries be made in the register as are necessary to give effect to this transfer.		
I (<i>or</i> We) hereby transfer the above securities to the transferee(s) named in Part 2 hereof.			
Execution by the transferor(s):			
Date of execution:			

FORM 10 Section 1102

TRUSTEE RENUNCIATION AND TRANSFER FORM

PART 1

Full name of company or other eligible body:

Description of rights:	Register:
Quantity: [Words]	[Figures]

Transfer identification number, where appropriate:

Full name(s) of transferor(s):

PART 2

Full name(s) and address(es) of transferee(s):	Transferor hereby certifies that, the rights set out in Part 1 above having been transferred to the person(s) for or on whose behalf the transferor held them, either alone or together with another person or other persons, in the ordinary course of business immediately before the transfer, the marketable securities to which the rights relate are to be allotted to the transferee(s) named in this Part, and hereby requests that the marketable securities be allotted by the company or eligible body to the transferee(s) and that such entries be made in the register as are necessary to give effect to this renunciation and transfer.
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I (*or We*) hereby renounce and transfer the above rights in favour of the transferee(s) named in Part 2 hereof.

Execution by the transferor(s):

Date of execution:

Schedule 3—Penalties

Note: See section 1311.

Penalties		
Item	Provision	Penalty
1	Section 111AU	200 penalty units or imprisonment for 5 years, or both.
2	Subsection 113(1)	50 penalty units or imprisonment for 1 year, or both.
3	Subsection 113(3)	5 penalty units.
4	Section 115	5 penalty units.
5	Subsection 117(5)	10 penalty units, or imprisonment for 3 months, or both.
6	Subsection 123(3)	10 penalty units, or imprisonment for 3 months, or both.
7	Subsection 136(5)	5 penalty units.
8	Section 139	5 penalty units.
9	Subsections 142(1) and (2)	5 penalty units.
10	Subsection 143(1)	5 penalty units.
11	Section 144	10 penalty units or imprisonment for 3 months, or both.
12	Subsections 145(1) and (3)	5 penalty units.
13	Section 146	5 penalty units.
14	Subsections 148(2), (3) and (4)	10 penalty units or imprisonment for 3 months, or both.
15	Subsection 150(2)	5 penalty units.
16	Subsection 151(2)	5 penalty units.
17	Subsections 153(1) and (2)	10 penalty units or imprisonment for 3 months, or both.
18	Section 156	10 penalty units or imprisonment for 3 months, or both.

Penalties		
Item	Provision	Penalty
19	Subsection 157(2)	5 penalty units.
20	Subsection 158(2)	50 penalty units or imprisonment for 1 year, or both.
21	Subsection 162(3)	5 penalty units.
22	Subsection 163(5)	10 penalty units or imprisonment for 3 months, or both.
23	Subsection 165(2)	50 penalty units or imprisonment for 1 year, or both.
24	Section 168	10 penalty units or imprisonment for 3 months, or both.
25	Subsection 170(3)	10 penalty units or imprisonment for 3 months, or both.
26	Section 172	10 penalty units or imprisonment for 3 months, or both.
27	Section 173	10 penalty units or imprisonment for 3 months, or both.
28	Section 174	10 penalty units or imprisonment for 3 months, or both.
29	Section 177	10 penalty units or imprisonment for 3 months, or both.
30	Section 184	200 penalty units or imprisonment for 5 years, or both.
31	Subsections 188(1) and (2)	5 penalty units.
32	Subsection 191(1)	10 penalty units or imprisonment for 3 months, or both.
33	Subsection 195(1)	5 penalty units.
34	Section 199B	5 penalty units.
35	Subsection 200B(1)	25 penalty units or imprisonment for 6 months, or both.
36	Section 200C	25 penalty units or imprisonment for 6 months, or both.
37	Section 200D	25 penalty units or imprisonment for 6 months, or both.

Schedule 3 Penalties

Penalties		
Item	Provision	Penalty
38	Subsection 201D(1)	10 penalty units or imprisonment for 3 months, or both.
39	Subsection 201D(2)	5 penalty units.
40	Subsection 202B(1)	5 penalty units.
41	Subsections 203D(3) and (5)	5 penalty units.
42	Section 204A	5 penalty units.
43	Subsections 204C(1) and (2)	5 penalty units.
44	Subsections 205B(1), (2), (4) and (5)	10 penalty units or imprisonment for 3 months, or both.
45	Subsections 205C(1) and (2)	10 penalty units or imprisonment for 3 months, or both.
46	Subsection 205E(2)	10 penalty units or imprisonment for 3 months, or both.
47	Section 205F	10 penalty units or imprisonment for 3 months, or both.
48	Subsections 205G(1), (3) and (4)	10 penalty units or imprisonment for 3 months, or both.
49	Subsection 206A(1)	50 penalty units or imprisonment for 1 year, or both.
50	Subsection 209(3)	2000 penalty units, or imprisonment for 5 years, or both.
51	Section 224	200 penalty units or imprisonment for 5 years, or both.
52	Section 225	5 penalty units.
53	Section 235	50 penalty units or imprisonment for 1 year, or both.
54	Section 237	25 penalty units or imprisonment for 6 months, or both.
55	Section 242	10 penalty units or imprisonment for 3 months, or both.
56	Subsection 242AA(3)	5 penalty units.
58	Subsection 246B(3)	5 penalty units.
59	Subsection 246D(6)	5 penalty units.

Penalties		
Item	Provision	Penalty
60	Subsections 246F(1) and (3)	5 penalty units.
61	Subsection 246G(1)	5 penalty units.
62	Section 247C	5 penalty units.
63	Subsections 249E(3) and (4)	5 penalty units.
64	Section 249K	5 penalty units.
65	Section 249Z	5 penalty units.
66	Subsection 250A(5)	5 penalty units.
67	Subsections 250N(1) and (2)	10 penalty units or imprisonment for 3 months, or both.
68	Subsections 250P(3) and (4)	10 penalty units or imprisonment for 3 months, or both.
69	Section 250S	5 penalty units.
70	Section 250T	5 penalty units.
71	Subsections 251A(1) to (5)	10 penalty units or imprisonment for 3 months, or both.
72	Subsections 251B(1), (3) and (4)	5 penalty units.
73	Subsections 252C(3) and (4)	5 penalty units.
74	Section 252H	5 penalty units.
75	Section 252X	5 penalty units.
76	Subsection 252Y(5)	5 penalty units.
77	Subsections 253M(1), (2) and (3)	10 penalty units or imprisonment for 3 months, or both.
78	Subsections 253N(1), (3) and (4)	5 penalty units.
79	Subsection 254H(4)	5 penalty units.
80	Subsection 254L(3)	2,000 penalty units, or imprisonment for 5 years, or both.
81	Subsection 254N(2)	5 penalty units.
82	Subsection 254Q(13)	5 penalty units.

Schedule 3 Penalties

Penalties		
Item	Provision	Penalty
83	Section 254T	100 penalty units or imprisonment for 2 years, or both.
84	Subsections 254X(1) and (2)	5 penalty units.
85	Section 254Y	5 penalty units.
86	Subsection 256D(4)	2,000 penalty units, or imprisonment for 5 years, or both.
87	Subsection 259B(6)	5 penalty units.
88	Subsection 259D(4)	5 penalty units.
89	Subsection 259F(3)	2,000 penalty units, or imprisonment for 5 years, or both.
90	Subsection 260D(3)	2,000 penalty units, or imprisonment for 5 years, or both.
91	Subsection 283AA(1)	25 penalty units or imprisonment for 6 months, or both.
92	Subsection 283AA(3)	25 penalty units or imprisonment for 6 months, or both.
93	Section 283AB	25 penalty units or imprisonment for 6 months, or both.
94	Subsection 283AC(1)	25 penalty units or imprisonment for 6 months, or both.
95	Subsection 283AC(2)	25 penalty units or imprisonment for 6 months, or both.
96	Subsection 283BH(1)	200 penalty units or imprisonment for 5 years, or both.
97	Section 283BI	25 penalty units or imprisonment for 6 months, or both.
98	Section 283CE	25 penalty units or imprisonment for 6 months, or both.
99	Section 286	25 penalty units or imprisonment for 6 months, or both.
100	Section 287	25 penalty units or imprisonment for 6 months, or both.
101	Section 288	25 penalty units or imprisonment for 6 months, or both.

Penalties		
Item	Provision	Penalty
102	Subsection 289(2)	25 penalty units or imprisonment for 6 months, or both.
103	Section 294	10 penalty units or imprisonment for 3 months, or both.
104	Subsection 308(1)	50 penalty units or imprisonment for 1 year, or both.
105	Section 311	10 penalty units or imprisonment for 3 months, or both.
106	Section 312	25 penalty units or imprisonment for 6 months, or both.
107	Section 313	10 penalty units or imprisonment for 3 months, or both.
108	Subsection 314(1)	10 penalty units or imprisonment for 3 months, or both.
109	Section 316	10 penalty units or imprisonment for 3 months, or both.
110	Section 317	10 penalty units or imprisonment for 3 months, or both.
111	Subsections 318(1), (3) and (4)	25 penalty units or imprisonment for 6 months, or both.
112	Subsections 318(1) and (5)	25 penalty units or imprisonment for 6 months, or both.
113	Section 322	10 penalty units or imprisonment for 3 months, or both.
114	Section 323	25 penalty units or imprisonment for 6 months, or both.
115	Section 323B	25 penalty units or imprisonment for 6 months, or both.
116	Subsection 323D(3)	10 penalty units or imprisonment for 3 months, or both.
117	Subsection 344(2)	2,000 penalty units, or imprisonment for 5 years, or both.
118	Subsections 345(1), (2) and (3)	5 penalty units.
119	Subsection 346(1)	5 penalty units.

Schedule 3 Penalties

Penalties		
Item	Provision	Penalty
120	Section 428	10 penalty units or imprisonment for 3 months, or both.
121	Subsection 437C(1)	25 penalty units or imprisonment for 6 months, or both.
122	Subsection 437D(5)	25 penalty units or imprisonment for 6 months, or both.
123	Subsection 438B(4)	50 penalty units or imprisonment for 1 year, or both.
124	Subsection 438C(5)	50 penalty units or imprisonment for 1 year, or both.
125	Section 448B	25 penalty units or imprisonment for 6 months, or both.
126	Section 448C	25 penalty units or imprisonment for 6 months, or both.
127	Section 448D	25 penalty units or imprisonment for 6 months, or both.
128	Section 450E	10 penalty units.
129	Section 471A	25 penalty units or imprisonment for 6 months, or both.
130	Section 475	25 penalty units or imprisonment for 6 months, or both.
131	Subsection 486A(8)	100 penalty units or imprisonment for 2 years, or both.
132	Section 494	50 penalty units or imprisonment for 1 year, or both.
133	Section 497	10 penalty units or imprisonment for 3 months, or both.
134	Subsection 530A(6)	50 penalty units or imprisonment for 1 year, or both.
135	Subsections 530B(3) and (6)	50 penalty units or imprisonment for 1 year, or both.
136	Section 532	10 penalty units or imprisonment for 3 months, or both.
137	Section 541	10 penalty units or imprisonment for 3 months, or both.

Penalties		
Item	Provision	Penalty
138	Subsection 588G(3)	2,000 penalty units, or imprisonment for 5 years, or both.
139	Subsection 590(1)	100 penalty units or imprisonment for 2 years, or both.
140	Subsection 590(5)	50 penalty units or imprisonment for 1 year, or both.
141	Subsection 592(1)	50 penalty units or imprisonment for 1 year, or both.
142	Subsection 592(6)	100 penalty units or imprisonment for 2 years, or both.
143	Section 595	10 penalty units or imprisonment for 3 months, or both.
144	Section 596	100 penalty units or imprisonment for 2 years, or both.
145	Subsection 596AB(1)	1,000 penalty units or imprisonment for 10 years, or both.
146	Subsection 596F(3)	100 penalty units or imprisonment for 2 years, or both.
147	Section 597	100 penalty units or imprisonment for 2 years, or both.
148	Subsections 597(6), (7), (10A) and (13)	100 penalty units or imprisonment for 2 years, or both.
149	Subsection 597A(3)	100 penalty units or imprisonment for 2 years, or both.
150	Subsection 601AD(5)	5 penalty units.
151	Subsection 601BC(5)	10 penalty units or imprisonment for 3 months, or both.
152	Subsections 601BH(1) and (2)	5 penalty units.
153	Subsection 601BJ(3)	5 penalty units.
154	Subsection 601BK(1)	5 penalty units.
155	Subsection 601BP(1)	5 penalty units.
156	Section 601BR	5 penalty units.
157	Section 601CW	10 penalty units or imprisonment for 3 months, or both.

Schedule 3 Penalties

Penalties		
Item	Provision	Penalty
158	Subsection 601CZB(1)	10 penalty units or imprisonment for 3 months, or both.
159	Section 601CZC	10 penalty units or imprisonment for 3 months, or both.
160	Section 601DD	5 penalty units.
161	Section 601DE	10 penalty units or imprisonment for 3 months, or both.
162	Subsection 601DH(1)	5 penalty units.
163	Subsection 601ED(5)	200 penalty units or imprisonment for 5 years, or both.
164	Subsection 601FF(2)	200 penalty units or imprisonment for 5 years, or both.
165	Subsection 601FL(4)	100 penalty units or imprisonment for 2 years, or both.
166	Subsection 601FM(3)	100 penalty units or imprisonment for 2 years, or both.
167	Subsection 601FQ(6)	100 penalty units or imprisonment for 2 years, or both.
168	Section 601HD	25 penalty units or imprisonment for 6 months, or both.
169	Subsection 601HG(6)	25 penalty units or imprisonment for 6 months, or both.
170	Subsection 601JA(1)	100 penalty units or imprisonment for 2 years, or both.
171	Section 601JA	25 penalty units or imprisonment for 6 months, or both.
172	Subsection 601JB(5)	25 penalty units or imprisonment for 6 months, or both.
173	Subsection 601KA(3)	25 penalty units or imprisonment for 6 months, or both.
174	Subsection 606(1)	25 penalty units or imprisonment for 6 months, or both.
175	Subsection 606(2)	25 penalty units or imprisonment for 6 months, or both.

Penalties		
Item	Provision	Penalty
176	Subsection 606(4)	25 penalty units or imprisonment for 6 months, or both.
177	Paragraphs 614(1)(a), (b), (c) and (d)	100 penalty units or imprisonment for 2 years, or both.
178	Subsection 622(1)	25 penalty units or imprisonment for 6 months, or both.
179	Subsection 623(1)	25 penalty units or imprisonment for 6 months, or both.
180	Subsection 624(2)	25 penalty units or imprisonment for 6 months, or both.
181	Subsections 630(2), (3) and (4)	25 penalty units or imprisonment for 6 months, or both.
182	Subsection 631(1)	100 penalty units or imprisonment for 2 years, or both.
183	Subsection 631(2)	200 penalty units or imprisonment for 5 years, or both.
184	Subsection 633(1) (items 4, 5, 7, 8, 9, 11, 12, 13, 14)	25 penalty units or imprisonment for 6 months, or both.
185	Section 635 (items 5, 7, 8, 10, 11, 12, 13, 14)	25 penalty units or imprisonment for 6 months, or both.
186	Subsection 636(3)	25 penalty units or imprisonment for 6 months, or both.
187	Subsection 636(4)	10 penalty units.
188	Subsection 637(1)	25 penalty units or imprisonment for 6 months, or both.
189	Subsection 638(1)	25 penalty units or imprisonment for 6 months, or both.
190	Subsection 638(3)	25 penalty units or imprisonment for 6 months, or both.
191	Subsection 638(5)	25 penalty units or imprisonment for 6 months, or both.
192	Subsection 638(6)	10 penalty units.
193	Subsection 639(1)	25 penalty units or imprisonment for 6 months, or both.

Schedule 3 Penalties

Penalties		
Item	Provision	Penalty
194	Subsection 640(1)	25 penalty units or imprisonment for 6 months, or both.
195	Subsection 641(1)	25 penalty units or imprisonment for 6 months, or both.
196	Section 643	25 penalty units or imprisonment for 6 months, or both.
197	Section 644	25 penalty units or imprisonment for 6 months, or both.
198	Subsections 647(1), (2) and (3)	25 penalty units or imprisonment for 6 months, or both.
199	Subsection 648A(1)	25 penalty units or imprisonment for 6 months, or both.
200	Subsections 648E(1) and (2)	25 penalty units or imprisonment for 6 months, or both.
201	Section 648G	50 penalty units or imprisonment for 1 year, or both.
202	Subsection 649C(2)	25 penalty units or imprisonment for 6 months, or both.
203	Subsection 650B(3)	25 penalty units or imprisonment for 6 months, or both.
204	Subsections 650E(5) and (6)	25 penalty units or imprisonment for 6 months, or both.
205	Subsection 650F(3)	25 penalty units or imprisonment for 6 months, or both.
206	Subsection 651A(4)	25 penalty units or imprisonment for 6 months, or both.
207	Section 651C	25 penalty units or imprisonment for 6 months, or both.
208	Subsection 652C(3)	25 penalty units or imprisonment for 6 months, or both.
209	Subsection 654A(1)	25 penalty units or imprisonment for 6 months, or both.
210	Subsection 654C(1)	25 penalty units or imprisonment for 6 months, or both.
211	Subsection 654C(3)	25 penalty units or imprisonment for 6 months, or both.

Penalties		
Item	Provision	Penalty
212	Section 657F	25 penalty units or imprisonment for 6 months, or both.
213	Section 661D	25 penalty units or imprisonment for 6 months, or both.
214	Subsection 662A(1)	25 penalty units or imprisonment for 6 months, or both.
215	Section 663A	25 penalty units or imprisonment for 6 months, or both.
216	Subsections 664D(1), (2) and (3)	25 penalty units or imprisonment for 6 months, or both.
217	Subsections 664E(2), (3) and (4)	25 penalty units or imprisonment for 6 months, or both.
218	Subsection 665A(2)	25 penalty units or imprisonment for 6 months, or both.
219	Subsections 665D(3) and (4)	25 penalty units or imprisonment for 6 months, or both.
220	Section 665E	25 penalty units or imprisonment for 6 months, or both.
221	Subsection 666A(1)	25 penalty units or imprisonment for 6 months, or both.
222	Subsections 666B(2) and (3)	25 penalty units or imprisonment for 6 months, or both.
223	Subsection 667A(3)	25 penalty units or imprisonment for 6 months, or both.
224	Subsections 668A(1), (3) and (4)	25 penalty units or imprisonment for 6 months, or both.
225	Subsection 668B(1)	25 penalty units or imprisonment for 6 months, or both.
226	Subsection 670A(3)	50 penalty units or imprisonment for 1 year, or both.
227	Subsections 670C(1), (2) and (3)	25 penalty units or imprisonment for 6 months, or both.
228	Subsection 671B(1)	25 penalty units or imprisonment for 6 months, or both.
229	Subsection 672B(1)	25 penalty units or imprisonment for 6 months, or both.

Schedule 3 Penalties

Penalties		
Item	Provision	Penalty
230	Subsection 721(1)	200 penalty units or imprisonment for 5 years, or both.
231	Subsection 721(4)	200 penalty units or imprisonment for 5 years, or both.
232	Subsection 722(1)	25 penalty units or imprisonment for 6 months, or both.
233	Subsection 724(1)	25 penalty units or imprisonment for 6 months, or both.
234	Subsection 725(1)	25 penalty units or imprisonment for 6 months, or both.
235	Section 726	200 penalty units or imprisonment for 5 years, or both.
236	Subsection 727(1)	200 penalty units or imprisonment for 5 years, or both.
237	Subsection 727(2)	200 penalty units or imprisonment for 5 years, or both.
238	Subsection 727(3)	200 penalty units or imprisonment for 5 years, or both.
239	Subsection 727(4)	200 penalty units or imprisonment for 5 years, or both.
240	Subsection 728(3)	200 penalty units or imprisonment for 5 years, or both.
241	Section 730	50 penalty units or imprisonment for 1 year, or both.
242	Subsection 734(1)	25 penalty units or imprisonment for 6 months, or both.
243	Subsection 734(2)	25 penalty units or imprisonment for 6 months, or both.
244	Section 735	10 penalty units or imprisonment for 3 months, or both.
245	Subsection 736(1)	25 penalty units or imprisonment for 6 months, or both.
246	Section 766F	400 penalty units.
247	Section 766G	500 penalty units.

Penalties		
Item	Provision	Penalty
248	Section 767	50 penalty units or imprisonment for 1 year, or both.
249	Subsection 775(6)	10 penalty units for each day during all or part of which the contravention continues.
250	Section 776	25 penalty units or imprisonment for 6 months, or both.
251	Section 780	50 penalty units or imprisonment for 1 year, or both.
252	Section 781	50 penalty units or imprisonment for 1 year, or both.
253	Section 787	50 penalty units or imprisonment for 1 year, or both.
254	Section 788	10 penalty units.
255	Section 806	25 penalty units or imprisonment for 6 months, or both.
256	Section 807	25 penalty units or imprisonment for 6 months, or both.
257	Section 809	50 penalty units or imprisonment for 1 year, or both.
258	Section 813	25 penalty units or imprisonment for 6 months, or both.
259	Section 814	25 penalty units or imprisonment for 6 months, or both.
260	Section 815	50 penalty units or imprisonment for 1 year, or both.
261	Section 835	25 penalty units or imprisonment for 6 months, or both.
262	Section 839	25 penalty units or imprisonment for 6 months, or both.
263	Section 843	25 penalty units or imprisonment for 6 months, or both.
264	Section 844	25 penalty units or imprisonment for 6 months, or both.
265	Section 845	25 penalty units or imprisonment for 6 months, or both.

Schedule 3 Penalties

Penalties		
Item	Provision	Penalty
266	Section 846	(a) for a first offence—25 penalty units or imprisonment for 6 months, or both; (b) for a later offence—100 penalty units or imprisonment for 2 years, or both.
267	Subsection 847(5)	10 penalty units for each day during all or part of which the contravention continues.
268	Section 849	25 penalty units or imprisonment for 6 months, or both.
269	Subsection 866(3)	50 penalty units or imprisonment for 1 year, or both.
270	Subsection 866(4)	100 penalty units or imprisonment for 2 years, or both.
271	Subsection 867(3)	50 penalty units or imprisonment for 1 year, or both.
272	Subsection 867(4)	100 penalty units or imprisonment for 2 years, or both.
273	Subsection 868(2)	50 penalty units or imprisonment for 1 year, or both.
274	Subsection 868(3)	100 penalty units or imprisonment for 2 years, or both.
275	Subsection 869(3)	50 penalty units or imprisonment for 1 year, or both.
276	Subsection 869(4)	100 penalty units or imprisonment for 2 years, or both.
277	Subsection 870(3)	25 penalty units or imprisonment for 6 months, or both.
278	Section 872	25 penalty units or imprisonment for 6 months, or both.
279	Subsection 873(6)	100 penalty units or imprisonment for 2 years, or both.
280	Section 881	25 penalty units or imprisonment for 6 months, or both.
281	Subsection 889(3)	50 penalty units or imprisonment for 1 year, or both.
282	Section 891	50 penalty units or imprisonment for 1 year, or both.

Penalties		
Item	Provision	Penalty
283	Section 997	200 penalty units or imprisonment for 5 years, or both.
284	Section 998	200 penalty units or imprisonment for 5 years, or both.
285	Section 999	200 penalty units or imprisonment for 5 years, or both.
286	Section 1000	200 penalty units or imprisonment for 5 years, or both.
287	Section 1001	200 penalty units or imprisonment for 5 years, or both.
288	Subsection 1001A(2)	200 penalty units or imprisonment for 5 years, or both.
289	Subsection 1001B(1)	200 penalty units or imprisonment for 5 years, or both.
290	Section 1002G	2,000 penalty units or imprisonment for 5 years, or both.
291	Subsections 1096A(1), (3), (4), (5) and (6)	10 penalty units or imprisonment for 3 months, or both.
292	Section 1112	25 penalty units or imprisonment for 6 months, or both.
293	Section 1112A	25 penalty units or imprisonment for 6 months, or both.
294	Section 1112B	25 penalty units or imprisonment for 6 months, or both.
295	Subsection 1114(8)	100 penalty units or imprisonment for 2 years, or both.
296	Section 1117	50 penalty units or imprisonment for 12 months, or both.
297	Section 1118	50 penalty units or imprisonment for 12 months, or both.
298	Section 1123	200 penalty units or imprisonment for 5 years, or both.
299	Section 1123A	200 penalty units or imprisonment for 5 years, or both.
300	Section 1125	200 penalty units or imprisonment for 5 years, or both.

Schedule 3 Penalties

Penalties		
Item	Provision	Penalty
301	Section 1128	200 penalty units or imprisonment for 5 years, or both.
302	Section 1129	200 penalty units or imprisonment for 5 years, or both.
303	Section 1130	200 penalty units or imprisonment for 5 years, or both.
304	Subsections 1138(10) and (11)	10 penalty units for each day on which a contravention occurs.
305	Subsection 1139(5)	25 penalty units or imprisonment for 6 months, or both.
306	Section 1142	200 penalty units or imprisonment for 5 years, or both.
307	Section 1143	200 penalty units or imprisonment for 5 years, or both.
308	Section 1153	50 penalty units or imprisonment for 1 year, or both.
309	Section 1154	10 penalty units.
310	Section 1192	25 penalty units or imprisonment for 6 months, or both.
311	Section 1205	100 penalty units or imprisonment for 2 years, or both.
312	Section 1208	25 penalty units or imprisonment for 6 months, or both.
313	Section 1209	50 penalty units or imprisonment for 1 year, or both.
314	Section 1210	25 penalty units or imprisonment for 6 months, or both.
315	Section 1213	25 penalty units or imprisonment for 6 months, or both.
316	Section 1214	100 penalty units or imprisonment for 2 years, or both.
317	Section 1219	100 penalty units or imprisonment for 2 years, or both.
318	Section 1256	200 penalty units or imprisonment for 5 years, or both.

Penalties		
Item	Provision	Penalty
319	Section 1258	100 penalty units or imprisonment for 2 years, or both.
320	Section 1259	200 penalty units or imprisonment for 5 years, or both.
321	Section 1260	200 penalty units or imprisonment for 5 years, or both.
322	Section 1261	25 penalty units or imprisonment for 6 months, or both.
323	Section 1262	200 penalty units or imprisonment for 5 years, or both.
324	Section 1263	200 penalty units or imprisonment for 5 years, or both.
325	Section 1264	200 penalty units or imprisonment for 5 years, or both.
326	Section 1266	25 penalty units or imprisonment for 6 months, or both.
327	Section 1267	25 penalty units or imprisonment for 6 months, or both.
328	Section 1268	100 penalty units or imprisonment for 2 years, or both.
329	Section 1269	25 penalty units or imprisonment for 6 months, or both.
330	Section 1271	50 penalty units or imprisonment for 1 year, or both.
331	Section 1272	50 penalty units or imprisonment for 1 year, or both.
332	Section 1274	50 penalty units or imprisonment for 1 year, or both.
333	Subsection 1300(2A)	10 penalty units or imprisonment for 3 months, or both.
334	Section 1307	100 penalty units or imprisonment for 2 years, or both.
335	Subsection 1308(2)	100 penalty units or imprisonment for 2 years, or both.
336	Subsection 1309(1)	100 penalty units or imprisonment for 2 years, or both.

Schedule 3 Penalties

Penalties		
Item	Provision	Penalty
337	Subsection 1309(2)	50 penalty units or imprisonment for 1 year, or both.
338	Subsection 1317FA(1)	2,000 penalty units or imprisonment for 5 years, or both.
339	Section 1323	25 penalty units or imprisonment for 6 months, or both.
340	Subsections 1423(1) and (2)	5 penalty units.
341	Subsection 1431(6)	5 penalty units.
342	Section 1432	5 penalty units.
343	Subsection 1436(2)	5 penalty units.

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

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.

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Part 1 Preliminary

Clause 1

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 Preliminary

Division 1 Registration and its consequences

Clause 11

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

Clause 11

- (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.
- (5) Any act done:
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Division 1 Registration and its consequences

Clause 11

- (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 is so, even if the other member, or another member, held shares in

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Part 2 Preliminary

Division 2 Membership

Clause 13

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 because of giving the guarantee or guarantees than it had immediately before the transfer date.

Clause 15

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 Membership

Clause 20

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

Clause 27

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.

Clause 27

- (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—Demutualisations

29 Disclosure for proposed demutualisation

- (1) If a modification of the constitution of an unlisted company registered under clause 3 of the transition provisions is proposed and the modification would have the effect of:
 - (a) varying or cancelling the rights of members, or a class of members, to the reserves of the company; or
 - (b) varying or cancelling the rights of members, or a class of members, to the assets of the company on a winding up; or
 - (c) varying or cancelling the voting rights of members or a class of members; or
 - (d) otherwise varying or cancelling rights so that Part 2F.2 (Class rights) applies; or
 - (e) allowing 1 of those variations or cancellations of rights;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.
- (2) If:
 - (a) an issue of shares by an unlisted company registered under clause 3 of the transition provisions would have the effect of varying or cancelling rights so that Part 2F.2 (Class rights) applies; and
 - (b) at least 1 of the following is required to approve the share issue, or variation or cancellation of rights:
 - (i) a meeting of the company's members;

- (ii) a resolution passed at a meeting of the class of members concerned;
- (iii) written consent of a specified proportion of members in the class concerned;

the following rules apply (in addition to those that apply under Part 2F.2):

- (c) notice of the meeting or consent process must be accompanied by the documents listed in subclause (4);
- (d) the company must lodge with ASIC the notice of the meeting or consent process and the documents referred to in paragraphs (4)(a) and (c) within 7 days after the notice is given;
- (e) notice of the meeting may not be shortened under subsection 249H(2).

Paragraph (c) need not be complied with to the extent that a person has already been given the documents.

- (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) in the case of a proposed modification of the constitution of a company—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 or share issue 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) or (2) it is not guilty of an offence.

Clause 30

- (6) A person contravenes this subclause if they are involved in a contravention of subclause (1) or (2).

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) or (2) and the involvement is dishonest.

Penalty: 2,000 penalty units or imprisonment for 5 years, or both.

- (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 stock market of a securities exchange.

30 ASIC's exemption power

- (1) If ASIC is satisfied that a company does not have a mutual structure, it may exempt the company from this Part.
- (2) If ASIC is satisfied that:
- (a) a proposed modification of the constitution of a company will not result in or allow a modification of the mutual structure of the company; or
 - (b) an issue of shares would not result in or allow a modification of the mutual structure of the company;
- it may exempt the company from this Part in relation to the proposed modification or share issue.
- (3) In determining whether the company has a mutual structure, ASIC may take into account:
- (a) the particular structure, circumstances and history of the company; and
 - (b) whether:

- (i) each customer of the company (for example an account holder, mortgagor or policy holder) is required to be a member of the company; or
 - (ii) each member (or joint membership) has only 1 vote; and
 - (c) any other relevant matter in relation to the company or its members.
- (4) In determining whether the proposed modification or share issue will result in or allow a modification of the mutual structure of the company, ASIC must take into account whether the proposed modification or share issue would have the effect of converting the company into a company run for the purpose of yielding a return to shareholders.
- (5) An exemption under subclause (2) 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.
- (6) The exemption must be in writing and ASIC must publish notice of it in the *Gazette*.
- (7) For the purposes of this clause, the *provisions of this Part* include regulations made for the purposes of this Part.

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 or share issue.

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):

Clause 32

- (a) the variation or cancellation of members' rights
- (b) that the proposed modification will allow the variation or cancellation of members' rights
- (c) in relation to a share issue:
 - (i) who will and will not receive shares under the issue; and
 - (ii) the rights and obligations attached to the shares; and
 - (iii) the implications of the share issue for the management and structure of the company
- (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 or share issue
- (h) any other proposed changes to the company that are related to the proposed modification or share issue (for example, whether the company proposes to list its securities for quotation on a securities market of a stock exchange 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 share issue, or that it is not proposed to change the company's name
- (j) the procedural steps required to vary or cancel the members' rights
- (k) the procedural steps required to issue the shares
- (l) how voting on the proposed modification or share issue 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 or share issue 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: 25 penalty units or imprisonment for 6 months, or both.

- (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

Clause 34

- (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
- (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; or
 - (e) a share issue to which this Part applies.
- (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 or share issue 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

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that were proposed to be issued to the person because the person holds shares in the company or pursuant to 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
 - (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
 - (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 1996*; and
 - (b) references to a benefit fund were references to an approved benefit fund within the meaning of the *Life Insurance Act 1996*; 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 25 penalty units; and
 - (j) references to a penalty of \$1,000 were references to a penalty of 10 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
 - (f) the *Unclaimed Moneys Act 1918* of Tasmania; or

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- (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)
 - (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.

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- (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.

*[Minister's second reading speech made in—
House of Representatives on 4 April 2001
Senate on 18 June 2001]*

(12/01)