



Australian Securities and Investments Commission Act 2001

No. 51, 2001



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**An Act to provide for the Australian Securities and
Investments Commission, a Companies and
Securities Advisory Committee and certain other
bodies, and for other purposes**

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No. 51, 2001

**An Act to provide for the Australian Securities and
Investments Commission, a Companies and
Securities Advisory Committee and certain other
bodies, and for other purposes**

[Assented to 28 June 2001]

The Parliament of Australia enacts:

Part 1—Preliminary

Division 1—Objects

1 Objects

- (1) The objects of this Act are:
 - (a) to provide for the Australian Securities and Investments Commission (*ASIC*) which will administer such laws of the Commonwealth, a State or a Territory as confer functions and powers under those laws on ASIC; and
 - (b) to provide for ASIC's functions, powers and business; and
 - (c) to establish a Companies and Securities Advisory Committee to provide informed and expert advice to the Minister about the content, operation and administration of the corporations legislation (other than the excluded provisions), about corporations and about the securities markets and futures markets; and
 - (d) to establish a Corporations and Securities Panel, a Companies Auditors and Liquidators Disciplinary Board, a Financial Reporting Council, an Australian Accounting Standards Board and a Parliamentary Joint Committee on Corporations and Securities.
- (2) In performing its functions and exercising its powers, ASIC must strive to:
 - (a) maintain, facilitate and improve the performance of the financial system and the entities within that system in the interests of commercial certainty, reducing business costs, and the efficiency and development of the economy; and
 - (b) promote the confident and informed participation of investors and consumers in the financial system; and
 - (d) administer the laws that confer functions and powers on it effectively and with a minimum of procedural requirements; and
 - (e) receive, process and store, efficiently and quickly, the information given to ASIC under the laws that confer functions and powers on it; and

Section 1

- (f) ensure that information is available as soon as practicable for access by the public; and
 - (g) take whatever action it can take, and is necessary, in order to enforce and give effect to the laws of the Commonwealth that confer functions and powers on it.
- (3) This Act has effect, and is to be interpreted, accordingly.

Part 1 Preliminary

Division 2 Citation

Section 1A

Division 2—Citation

1A Short title

This Act may be cited as the *Australian Securities and Investments Commission Act 2001*.

Division 3—Commencement and application

2 Commencement

This Act commences at the same time as the *Corporations Act 2001*.

4 Application of this Act

This Act applies:

- (a) in this jurisdiction; and
- (b) in a State that is not a referring State (but only to the extent to which the application would be within the legislative powers of the Parliament (including powers it has under paragraphs 51(xxxvii) and (xxxix) of the Constitution)); and
- (c) in such external Territories (if any) as are prescribed.

Division 4—Interpretation

5 Interpretation

- (1) In this Act, unless the contrary intention appears:

AASB means the Australian Accounting Standards Board.

absent from office, in relation to a holder of an office, means:

- (a) absent from duty or from Australia; or
- (b) unable, for any reason, to perform the functions of the office.

affairs, in relation to a body corporate, has the same meaning as in section 232 of the Corporations Act.

APRA means the Australian Prudential Regulation Authority.

ASIC means the Australian Securities and Investments Commission.

ASIC delegate means a person to whom, or a body to which, a function or power is delegated under section 102.

assist, in relation to an ASIC delegate, means:

- (a) to perform functions:
 - (i) as a member, officer or employee of the ASIC delegate; and
 - (ii) in connection with the ASIC delegate's performance or exercise of a function or power delegated under section 102; or
- (b) to perform services for the ASIC delegate in connection with the ASIC delegate's performance or exercise of a function or power delegated under section 102.

Australia includes an external Territory to which this Act applies.

books includes:

- (a) a register; and
- (b) financial reports or financial records, however compiled, recorded or stored; and

- (c) a document; and
- (d) banker's books; and
- (e) any other record of information.

CASAC means the Companies and Securities Advisory Committee.

Chairperson means:

- (a) except in Part 11 or in relation to the Disciplinary Board—the Chairperson of ASIC; and
- (b) in Part 11 or in relation to the Disciplinary Board—the Chairperson of the Disciplinary Board.

contravention, in relation to a law, includes an ancillary offence relating to an offence against that law.

Convenor means the Convenor of CASAC.

Corporations Act means the *Corporations Act 2001* and regulations made under that Act.

corporations legislation means:

- (a) this Act; and
- (b) the Corporations Act.

court, except in section 248, includes a tribunal having power to require the production of documents or the answering of questions.

Deputy Chairperson means the Deputy Chairperson of ASIC.

Disciplinary Board means the Companies Auditors and Liquidators Disciplinary Board.

eligible employee has the same meaning as in the *Superannuation Act 1976*.

eligible person, in relation to a person, means a person who:

- (a) if the first-mentioned person is a body corporate—is or has been an officer of the body within the meaning of the corporations legislation (other than the excluded provisions);
or
- (b) in any case:

Section 5

- (i) is or has been an employee, agent, banker, solicitor or auditor of; or
 - (ii) is acting, or has acted, in any other capacity on behalf of;
- the first-mentioned person.

examination means an examination of a person pursuant to a requirement made under section 19.

excluded provisions means section 12A and Division 2 of Part 2.

expenses, in relation to an investigation under Division 1 of Part 3, includes costs and expenses incurred in relation to a proceeding begun under section 50 as a result of the investigation.

fail means refuse or fail.

foreign country means:

- (a) an external Territory to which this Act does not apply; or
- (b) a country outside Australia and the external Territories; or
- (c) a part of such a country.

FRC means the Financial Reporting Council.

give has:

- (a) in relation to a document—a meaning affected by section 86; and
- (b) in relation to information—a meaning affected by section 6.

hearing, in this section and Part 3, means a hearing before ASIC and, in sections 52, 54, 55 and 56, includes a part of such a hearing.

House means a House of the Parliament.

information has a meaning affected by section 6.

international accounting standards means accounting standards made by:

- (a) the Board of the International Accounting Standards Committee; or
- (b) another body specified by the regulations.

investigate, in relation to ASIC, means investigate in the course of performing or exercising any of ASIC's functions and powers.

meeting means:

- (a) in Part 4—a meeting of ASIC;
- (b) in Part 9—a meeting of CASAC;
- (c) in Part 11—a meeting of the Disciplinary Board.

member means:

- (a) except in Division 2 of Part 4, in Part 9, 10, 11, 12 or 14, or in relation to a Division, CASAC, the Panel, the Disciplinary Board, the FRC, the AASB or the Parliamentary Committee—a member of ASIC; and
- (b) in Part 9 or in relation to CASAC—a member of CASAC; and
- (c) in Part 10 or in relation to the Panel—a member of the Panel; and
- (d) in Part 11 or in relation to the Disciplinary Board—the Chairperson or any other member of the Disciplinary Board; and
- (e) in relation to the FRC—a member of the FRC; and
- (ea) in relation to the AASB—a member of the AASB; and
- (f) in Part 14 or in relation to the Parliamentary Committee—a member of the Parliamentary Committee.

officer, in relation to a body corporate, includes:

- (a) a director, secretary, executive officer or employee of the body; and
- (b) a receiver, or a receiver and manager, of property of the body; and
- (ba) an administrator of the body; and
- (bb) an administrator of a deed of company arrangement executed by the body; and
- (c) an official manager, or a deputy official manager, of the body; and
- (d) a liquidator, or a provisional liquidator, of the body; and

Section 5

- (e) a trustee or other person administering a compromise or arrangement made between the body and any other person or persons.

Panel means the Corporations and Securities Panel.

Panel proceedings means proceedings before the Panel on:

- (a) an application made to the Panel under the Corporations Act; or
- (b) a reference of a decision to the Panel for review under the Corporations Act.

Parliamentary Committee means the Parliamentary Joint Committee on Corporations and Securities.

power includes an authority.

prescribed means prescribed by this Act or the regulations.

President means the President of the Panel.

proceeding means:

- (a) a proceeding in a court; or
- (b) a proceeding or hearing before, or an examination by or before, a tribunal;

whether the proceeding, hearing or examination is of a civil, administrative, criminal, disciplinary or other nature.

produce, except in Part 3, includes permit access to.

property means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description and includes a thing in action and money.

record, in relation to an examination, means the whole or a part of a record made under section 24 of statements made at the examination.

regulations means regulations made under this Act.

report includes an interim report.

staff member means:

- (a) a member of the staff referred to in subsection 120(1) or a person employed under subsection 120(3); or
- (b) a person engaged under subsection 121(1); or
- (c) any of the officers, employees and persons who under section 122 are to assist ASIC.

statement, in relation to an examination, includes a question asked, an answer given, and any other comment or remark made, at the examination.

superannuation benefits includes:

- (a) benefits in the nature of superannuation benefits; and
- (b) benefits similar to benefits provided under the *Superannuation Act 1976*; and
- (c) benefits similar to the benefits provided under the *Superannuation Act 1990*.

Territory means:

- (a) the Capital Territory; or
- (b) the Northern Territory; or
- (c) an external Territory to which this Act applies;

and, when used in a geographical sense, includes the coastal sea of the Territory.

this Act includes the regulations.

tribunal means:

- (a) a tribunal in Australia; or
- (b) any other body, authority or person in Australia having power, by law or by consent of parties, to hear, receive or examine evidence.

trust money means money ASIC receives or holds on trust.

witness:

- (a) in relation to a hearing before ASIC, means a person appearing at the hearing to give evidence; or
- (b) in relation to Panel proceedings, means a person appearing in the proceedings to give evidence.

Section 5A

written record, in relation to an examination, means:

- (a) a record of the examination:
 - (i) that is made in writing; or
 - (ii) as reduced to writing; or
 - (b) a part of such a record.
- (2) Subject to this Act, an expression has the same meaning in this Act as in the Corporations Act.
- (3) Except so far as the contrary intention appears in this Act, Parts 1.2 and 1.3 of the Corporations Act apply for the purposes of this Act as if the provisions of this Act were provisions of that Act.

5A Application of Acts *Interpretation Act 1901*

- (1) The *Acts Interpretation Act 1901* as in force on 1 November 2000 applies to this Act.
- (2) Amendments of the *Acts Interpretation Act 1901* made after 1 November 2000 do not apply to this Act.

6 Giving information

A reference in this Act to giving information includes a reference to:

- (a) explaining or stating a matter; or
- (b) identifying a person, matter or thing; or
- (c) disclosing information; or
- (d) answering a question.

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Division 1—Australian Securities and Investments Commission

8 ASIC is a body corporate

ASIC:

- (a) is a body corporate, with perpetual succession; and
- (b) has a common seal; and
- (c) may acquire, hold and dispose of real and personal property;
and
- (d) may sue and be sued in its corporate name.

Note 1: ASIC was established by section 7 of the *Australian Securities and Investments Commission Act 1989* and is continued in existence by section 261 of this Act.

Note 2: The *Commonwealth Authorities and Companies Act 1997* applies to ASIC. That Act deals with matters relating to Commonwealth authorities, including reporting and accountability, banking and investment, and conduct of officers.

9 Membership

- (1) ASIC is to consist of not fewer than 3 nor more than 8 members.
- (2) The Governor-General appoints the members on the nomination of the Minister.
- (3) At least 3 of the members must be appointed as full-time members and each of the remaining members (if any) may be appointed as a full-time member or as a part-time member.
- (4) The Minister is to nominate a person as a member only if the Minister is satisfied that the person is qualified for appointment by virtue of his or her knowledge of, or experience in, one or more of

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the following fields, namely, business, the administration of companies, the financial markets, law, economics and accounting.

- (5) The performance of ASIC's functions or the exercise of ASIC's powers is not affected by reason only that the number of members, or the number of full-time members, is less than 3 unless a continuous period of 3 months has elapsed since the number of members, or the number of full-time members, as the case may be, fell below 3.
- (6) For the purposes of subsection (5), an acting member is taken to be a member.

10 Chairperson and Deputy Chairperson

The Governor-General is to appoint as Chairperson of ASIC a person who is, or is to be, a full-time member and may appoint as Deputy Chairperson of ASIC a person (other than the Chairperson) who is, or is to be, a full-time member.

Note: For the manner in which the Chairperson and Deputy Chairperson may be referred to, see section 18B of the *Acts Interpretation Act 1901*.

11 Corporations legislation functions and powers and other functions and powers conferred by the States and Territories

- (1) ASIC has such functions and powers as are conferred on it by or under the corporations legislation (other than the excluded provisions).
- (2) ASIC also has the following functions:
 - (a) to provide such staff and support facilities to the Panel, the Disciplinary Board and the Review Board as are necessary or desirable for the performance and exercise by the Panel, the Disciplinary Board and the Review Board of their respective functions and powers;
 - (b) to advise the Minister about any changes to the corporations legislation (other than the excluded provisions) that, in ASIC's opinion, are needed to overcome, or would assist in overcoming, any problems that ASIC has encountered in the

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course of performing or exercising any of its functions and powers.

- (3) ASIC may, on its own initiative or when requested by the Minister, advise the Minister, and make to the Minister such recommendations as it thinks fit, about any matter of a kind referred to in section 148.
- (4) ASIC has power to do whatever is necessary for or in connection with, or reasonably incidental to, the performance of its functions.
- (6) Subject to this Act, ASIC has the general administration of this Act.
- (8) ASIC may, with the consent of the Minister, enter into an agreement or arrangement with a State or Territory for the performance of functions or the exercise of powers by ASIC as an agent of the State or Territory.
- (9) ASIC has such functions and powers as are referred to in such an agreement or arrangement. However, ASIC is not under a duty to perform such functions or exercise such powers.
- (9A) ASIC may have functions or powers conferred on it by or under a law of a State or Territory if:
 - (a) that law provides for, or relates to, the repeal, amendment or termination (however described) of the operation of, any of the replaced legislation within the meaning of item 22 of Schedule 8 to the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*; and
 - (b) the conferral of the powers or functions is in accordance with:
 - (i) provisions of an agreement entered into by the Commonwealth and the State or Territory, being provisions approved by the Minister for the purposes of this subsection; or
 - (ii) an approval given by the Minister for the purposes of this subsection.

ASIC has the functions and powers so conferred by that law. However, ASIC is not under a duty to perform such functions or exercise such powers.

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- (9B) ASIC is not subject to any directions of the Minister in relation to:
- (a) entering an agreement under subsection 11(8); or
 - (b) performing functions or exercising powers referred to in subsection 11(9); or
 - (c) performing functions or exercising powers conferred under subsection 11(9A).

12 Directions by Minister

- (1) The Minister may give ASIC a written direction about policies it should pursue, or priorities it should follow, in performing or exercising any of its functions or powers under the corporations legislation (other than the excluded provisions).
- (2) The Minister must not give a direction under subsection (1) unless he or she has:
 - (a) notified ASIC in writing that he or she is considering giving the direction; and
 - (b) given the Chairperson an adequate opportunity to discuss with the Minister the need for the proposed direction.
- (3) The Minister must not give a direction under subsection (1) about a particular case.
- (4) ASIC must comply with a direction under subsection (1).
- (5) The Minister must cause a copy of an instrument under subsection (1):
 - (a) to be published in the *Gazette* within 21 days after the instrument is made; and
 - (b) to be laid before each House of the Parliament within 15 sitting days of that House after the publication;but failure of the Minister to do so does not affect the instrument's validity.

12A Other functions and powers

- (1) ASIC has the functions and powers that are conferred on it by or under Division 2 of Part 2 of this Act and by or under the following Acts:

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- (a) the *Insurance Act 1973*;
 - (b) the *Insurance (Agents and Brokers) Act 1984*;
 - (c) the *Insurance Contracts Act 1984*;
 - (d) the *Superannuation (Resolution of Complaints) Act 1993*;
 - (e) the *Life Insurance Act 1995*;
 - (f) the *Retirement Savings Accounts Act 1997*;
 - (g) the *Superannuation Industry (Supervision) Act 1993*.
- (2) ASIC has the function of monitoring and promoting market integrity and consumer protection in relation to the Australian financial system.
- (3) ASIC has the function of monitoring and promoting market integrity and consumer protection in relation to the payments system by:
- (a) promoting the adoption of approved industry standards and codes of practice; and
 - (b) promoting the protection of consumer interests; and
 - (c) promoting community awareness of payments system issues; and
 - (d) promoting sound customer-banker relationships, including through:
 - (i) monitoring the operation of industry standards and codes of practice; and
 - (ii) monitoring compliance with such standards and codes.
- (4) Subsections (2) and (3) confer functions and powers to the extent to which they are not in excess of the legislative power of the Commonwealth.
- (5) ASIC may:
- (a) advise the Minister about any changes to a law listed in subsection (1) that ASIC thinks are needed to help overcome any problems that ASIC has encountered in the course of performing its functions or exercising any of its powers under that law; and
 - (b) advise the Minister and make such recommendations as it thinks fit about any matter relating to its functions in subsections (2) and (3).

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- (6) ASIC has power to do whatever is necessary for or in connection with, or reasonably incidental to, the performance of its functions.

Division 2—Unconscionable conduct and consumer protection in relation to financial services

Subdivision A—Application

12AA Constitutional operation of Division

- (1) Without prejudice to its effect apart from this section, this Division also has effect as provided by this section.
- (2) This Division has, by force of this subsection, the effect it would have if:
 - (a) references in this Division to trade or commerce were, by express provision, confined to trade or commerce:
 - (i) between Australia and places outside Australia; or
 - (ii) among the States; or
 - (iii) within a Territory, between a State and a Territory or between 2 Territories; or
 - (iv) by way of the supply of services to the Commonwealth or an authority or instrumentality of the Commonwealth; and
 - (b) section 12DJ were, by express provision, confined in its operation to engaging in conduct to the extent to which the conduct takes place in the course of or in relation to:
 - (i) trade or commerce between Australia and places outside Australia; or
 - (ii) trade or commerce among the States; or
 - (iii) trade or commerce within a Territory, between a State and a Territory or between 2 Territories; or
 - (iv) the supply of services to the Commonwealth or an authority or instrumentality of the Commonwealth; and
 - (c) reference in Subdivision E (sections 12EA to 12ED) to a contract for the supply of services or to the supply of services

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were, by express provision, confined to a contract made, or to the supply of services:

- (i) in the course of, or in relation to, trade or commerce between Australia and places outside Australia; or
 - (ii) in the course of, or in relation to, trade or commerce among the States; or
 - (iii) in the course of, or in relation to, trade or commerce within a Territory, between a State and a Territory or between 2 Territories; and
- (d) references in this Division to a corporation, except a reference in section 12BA, included a reference to a person other than a corporation.
- (3) In addition to the effect that this Division has as provided by subsection (2), the provisions of Subdivision C (sections 12CA to 12CB) and Subdivision D (sections 12DA to 12DN) have, by force of this subsection, the effect they would have if:
- (a) those provisions were, by express provision, confined in their operation to engaging in conduct to the extent to which the conduct involves the use of postal, telegraphic or telephonic services or takes place in a radio or television broadcast; and
 - (b) references in those provisions to a corporation included a reference to a person other than a corporation.
- (4) In addition to the effect that this Division has as provided by subsections (2) and (3), the provisions of Subdivision C (sections 12CA and 12CB) and Subdivision D (sections 12DA to 12DN) also have, by force of this subsection, the effect they would have if:
- (a) those provisions were, by express provision, confined in their operation to engaging in conduct in a Territory; and
 - (b) references in those provisions to a thing done by a corporation in trade or commerce included a reference to a thing done in the course of the promotional activities of a professional person.

12AC Division extends to some conduct outside Australia

- (1) This Division extends to the engaging in conduct outside Australia by:
 - (a) bodies corporate incorporated or carrying on business within Australia; or
 - (b) Australian citizens; or
 - (c) persons ordinarily resident within Australia.
- (2) If a claim under section 12GF is made in a proceeding, a person may rely at a hearing in respect of that proceeding on conduct to which a provision of this Division extends because of subsection (1) of this section only if the Minister consents in writing to the reliance.
- (3) A person other than the Minister or ASIC may apply to the Court for an order under subsection 12GM(1) or (2) in a proceeding in respect of conduct to which a provision of this Division extends because of subsection (1) of this section only if the Minister consents in writing to the application.
- (4) The Minister must give a consent under subsection (2) or (3) in respect of a proceeding unless, in the Minister's opinion:
 - (a) the law of the country in which the conduct concerned was engaged in required or specifically authorised the engaging in of the conduct; and
 - (b) it is not in the national interest to give the consent.

12AD Application of Division to Commonwealth and Commonwealth authorities

- (1) Subject to this section, this Division binds the Crown in right of the Commonwealth in so far as the Crown in right of the Commonwealth carries on a business, either directly or by an authority of the Commonwealth.
- (2) Subject to subsections (3), (4), (5) and (6), this Division applies as if:

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- (a) the Commonwealth, in so far as it carries on a business otherwise than by an authority of the Commonwealth; and
 - (b) each authority of the Commonwealth (whether or not acting as an agent of the Crown in right of the Commonwealth) in so far as it carries on a business;
- were a corporation.
- (3) Nothing in this Division makes the Crown in right of the Commonwealth liable to a pecuniary penalty or to be prosecuted for an offence.
 - (4) The protection in subsection (3) does not apply to an authority of the Commonwealth.
 - (5) For the purposes of this section, the following transactions do not amount to carrying on a business:
 - (a) a transaction involving only persons who are all acting for the Crown in right of the Commonwealth (and none of whom is an authority of the Commonwealth);
 - (b) a transaction involving only persons who are all acting for the same authority of the Commonwealth;
 - (c) a transaction involving only the Crown in right of the Commonwealth and one or more non-commercial authorities of the Commonwealth;
 - (d) a transaction involving only non-commercial authorities of the Commonwealth.
 - (6) Subsection (5) does not limit the things that do not amount to carrying on a business for the purposes of this section.
 - (7) For the purposes of this section, an authority of the Commonwealth is **non-commercial** if:
 - (a) it is constituted by only one person; and
 - (b) it is neither a trading corporation nor a financial corporation.

12AE Saving of other laws and remedies

- (1) Except as provided by subsection (2), Subdivision D (sections 12DA to 12DN) and Subdivision E (sections 12EA to

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12ED) are not intended to exclude or limit the concurrent operation of any law of a State or Territory.

- (2) If:
- (a) an act or omission of a person is both an offence against section 12GB and an offence under the law of a State or Territory; and
 - (b) the person is convicted of either of those offences;
- the person is not liable to be convicted of the other of those offences.
- (3) Except as expressly provided by Subdivision D (sections 12DA to 12DN) or Subdivision E (sections 12EA to 12ED), nothing in those Subdivisions is taken to limit, restrict or otherwise affect any right or remedy a person would have had if that Subdivision had not been enacted.
- (4) This Division does not affect the operation of:
- (a) the law relating to restraint of trade in so far as that law is capable of operating concurrently with this Division; or
 - (b) the law relating to breaches of confidence;
- but nothing in the law referred to in paragraph (a) or (b) affects the interpretation of this Division.

Subdivision B—Interpretation

12BA Interpretation

- (1) In this Division, unless the contrary intention appears:
- acquire**, in relation to services, includes accept.
- acquisition** of services has the meaning given by section 12BD.
- authority**, in relation to a State or Territory (including an external Territory), means:
- (a) a body corporate established for a purpose of the State or the Territory by or under a law of the State or Territory; or

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- (b) an incorporated company in which the State or the Territory, or a body corporate referred to in paragraph (a), has a controlling interest.

authority of the Commonwealth means:

- (a) a body corporate established for a purpose of the Commonwealth by or under a law of the Commonwealth or a law of a Territory; or
- (b) an incorporated company in which the Commonwealth, or a body corporate referred to in paragraph (a), has a controlling interest.

business includes a business not carried on for profit.

conduct has the meaning given by subsection (2).

consumer has the meaning given by section 12BC.

contract has the meaning given by section 12BE.

corporation means a body corporate that:

- (a) is a foreign corporation; or
- (b) is a trading corporation formed within the limits of Australia or is a financial corporation so formed; or
- (c) is incorporated in a Territory; or
- (d) is the holding company of a body corporate of a kind referred to in paragraph (a), (b) or (c).

covenant means a covenant (including a promise not under seal) annexed to or running with an estate or interest in land (whether at law or in equity and whether or not for the benefit of other land) and **proposed covenant** has a corresponding meaning.

engage in conduct has the meaning given by subsection (2).

Family Court Judge means a Judge of the Family Court (including the Chief Judge, the Deputy Chief Judge, a Judge Administrator or a Senior Judge).

financial corporation:

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- (a) means a financial corporation within the meaning of paragraph 51(xx) of the Constitution; and
- (b) includes a body corporate that carries on as its sole or principal business the business of:
 - (i) banking (other than State banking not extending beyond the limits of the State concerned); or
 - (ii) insurance (other than State insurance not extending beyond the limits of the State concerned).

financial product means:

- (a) a facility for taking money on deposit (otherwise than as part-payment for identified services) made available in the course of conducting a banking business within the meaning of the *Banking Act 1959*; or
 - (b) a security; or
 - (c) a futures contract; or
 - (d) a contract of insurance (including a life policy or a sinking fund policy within the meaning of the *Life Insurance Act 1995*); or
 - (e) a retirement savings account within the meaning of the *Retirement Savings Accounts Act 1997*; or
 - (f) a superannuation interest within the meaning of the *Superannuation Industry (Supervision) Act 1993*;
- but does not include a foreign exchange contract.

financial service means a service that:

- (a) consists of providing a financial product; or
- (b) is otherwise supplied in relation to a financial product.

foreign corporation means a foreign corporation within the meaning of paragraph 51(xx) of the Constitution and includes a body corporate that is incorporated in an external Territory.

misleading has the meaning given by section 12BB.

price includes a charge of any description.

provision, in relation to an understanding, means any matter forming part of the understanding.

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re-supply of services has the meaning given by section 12BD.

send includes deliver, and **sent** and **sender** have corresponding meanings.

services includes any rights (including rights in relation to, and interests in, real or personal property), benefits, privileges or facilities that are, or are to be, provided, granted or conferred in trade or commerce but does not include:

- (a) the supply of goods within the meaning of the *Trade Practices Act 1974*; or
- (b) the performance of work under a contract of service.

supply:

- (a) includes provide, grant or confer when used as a verb in relation to services; and
- (b) has a corresponding meaning when used as a noun; and **supplied** and **supplier** have corresponding meanings.

supply of services has the meaning given by section 12BD.

Territory means:

- (a) an internal Territory; or
- (b) the Territory of Christmas Island; or
- (c) the Territory of Cocos (Keeling) Islands.

the Court or **the Federal Court** means the Federal Court of Australia.

trade or commerce means trade or commerce within Australia or between Australia and places outside Australia.

trading corporation means a trading corporation within the meaning of paragraph 51(xx) of the Constitution.

unsolicited financial services means financial services supplied to a person without any request made by the person or on the person's behalf.

- (2) In this Division:

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- (a) a reference to engaging in conduct is a reference to doing or refusing to do any act, including:
 - (i) making, or giving effect to a provision of, a contract or arrangement; or
 - (ii) arriving at, or giving effect to a provision of, an understanding; or
 - (iii) requiring the giving of, or giving, a covenant; and
- (b) a reference to conduct, when that expression is used as a noun otherwise than as mentioned in paragraph (a), is a reference to doing or refusing to do any act, including:
 - (i) making, or giving effect to a provision of, a contract or arrangement; or
 - (ii) arriving at, or giving effect to a provision of, an understanding; or
 - (iii) requiring the giving of, or giving, a covenant; and
- (c) a reference to refusing to do an act includes a reference to:
 - (i) refraining (otherwise than inadvertently) from doing that act; or
 - (ii) making it known that that act will not be done; and
- (d) a reference to a person offering to do an act, or to do an act on a particular condition, includes a reference to the person making it known that the person will accept applications, offers or proposals for the person to do that act or to do that act on that condition, as the case may be.

12BB Misleading representations

- (1) For the purposes of section 12CB and Subdivision D (sections 12DA to 12DN), if a corporation makes a representation about a future matter (including the doing of, or the refusing to do, any act) and the corporation does not have reasonable grounds for making the representation, the representation is taken to be misleading.
- (2) For the purpose of applying subsection (1) to a proceeding concerning a representation made by a corporation about a future matter, the corporation is taken not to have had reasonable grounds

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for making the representation unless it adduces evidence to the contrary.

- (3) Subsection (1) does not limit by implication the meaning of a reference in this Division to:
- (a) a misleading representation; or
 - (b) a representation that is misleading in a material particular; or
 - (c) conduct that is misleading or is likely or liable to mislead.

12BC Consumers

- (1) For the purposes of this Division, unless the contrary intention appears, a person is taken to have acquired particular financial services as a consumer if, and only if:
- (a) the price of the services did not exceed the prescribed amount; or
 - (b) if the price of the services exceeded the prescribed amount—the services were of a kind ordinarily acquired for personal, domestic or household use; or
 - (c) if the services were acquired by a person within the meaning of subsection (2) and the price of the services exceeded the prescribed amount—the services were of a kind ordinarily acquired for business use.
- (2) For the purposes of this Division, *person* includes:
- (a) a person or corporation employing fewer than 20 people; or
 - (b) if the person or corporation is engaged in the manufacture of any goods—a person or corporation employing fewer than 100 people.
- (3) For the purposes of subsection (1):
- (a) the prescribed amount is:
 - (i) \$40,000; or
 - (ii) if a greater amount is prescribed for the purposes of this paragraph—that greater amount; and
 - (b) subject to paragraph (c), the price of services purchased by a person is taken to have been the amount paid or payable by the person for the services; and

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- (c) if a person purchased services together with other property or services, or with both other property and services, and a specified price was not allocated to the services in the contract under which they were purchased, the price of the services is taken to have been:
- (i) the price at which, at the time of the acquisition, the person could have purchased the services from the supplier without the other property or services; or
 - (ii) if, at the time of the acquisition, the services were only available for purchase from the supplier together with the other property or services but, at that time, services of the kind acquired were available for purchase from another supplier without other property or services—the lowest price at which the person could, at that time, reasonably have purchased services of that kind from another supplier; or
 - (iii) if, at the time of the acquisition, services of the kind acquired were not available for purchase from any supplier except together with other property or services—the value of the services at that time; and
- (d) if a person acquired services otherwise than by way of purchase, the price of the services is taken to have been:
- (i) the price at which, at the time of the acquisition, the person could have purchased the services from the supplier; or
 - (ii) if, at the time of the acquisition, the services were not available for purchase from the supplier, or were available only together with other property or services, but, at that time, services of the kind acquired were available for purchase from another supplier—the lowest price at which the person could, at that time, reasonably have purchased services of that kind from another supplier; or
 - (iii) if services of the kind acquired were not available, at the time of the acquisition, for purchase from any supplier, or were not available except together with other property or services—the value of the services at that time; and

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Section 12BD

- (e) without limiting by implication the meaning of the expression *services* in subsection 12BA(1), the obtaining of credit by a person in connection with the person's acquisition of services is taken to be the acquisition by the person of a service and any amount by which the amount paid or payable by the person for the services is increased by reason of the person's so obtaining credit is taken to be paid or payable by the person for that service.
- (4) If it is alleged in a proceeding under this Division, or in any other proceeding in respect of a matter arising under this Division, that a person was a consumer in relation to particular services, it is presumed that the person was a consumer in relation to those services unless the contrary is established.

12BD Acquisition, supply and re-supply

In this Division, unless the contrary intention appears:

- (a) a reference to the supply or acquisition of services includes a reference to agreeing to supply or acquire services; and
- (b) a reference to the supply or acquisition of services includes a reference to the supply or acquisition of services together with property or other services, or both; and
- (c) a reference to the re-supply of services (the *original services*) acquired from a person (the *original supplier*) includes a reference to:
 - (i) a supply of the original services to another person in an altered form or condition; and
 - (ii) a supply to another person of other services that are substantially similar to the original services and could not have been supplied if the original services had not been acquired by the person who acquired them from the original supplier.

12BE Application of Division in relation to leases and licences of land and buildings

In this Division:

Section 12CA

- (a) a reference to a contract includes a reference to a lease of, or a licence in respect of, land or a building or part of a building (despite the express references in this Division to such leases or licences); and
- (b) a reference to making or entering into a contract, in relation to such a lease or licence, is a reference to granting or taking the lease or licence.

Subdivision C—Unconscionable conduct

12CA Unconscionable conduct within the meaning of the unwritten law of the States and Territories

- (1) A corporation must not, in trade or commerce, engage in conduct in relation to financial services if the conduct is unconscionable within the meaning of the unwritten law, from time to time, of the States and Territories.
- (2) This section does not apply to conduct that is prohibited by section 12CB.

12CB Unconscionable conduct

- (1) A corporation must not, in trade or commerce, in connection with the supply or possible supply of financial services to a person, engage in conduct that is, in all the circumstances, unconscionable.
- (2) Without limiting the matters to which the Court may have regard for the purpose of determining whether a corporation has contravened subsection (1) in connection with the supply or possible supply of services to a person (the *consumer*), the Court may have regard to:
 - (a) the relative strengths of the bargaining positions of the corporation and the consumer; and
 - (b) whether, as a result of conduct engaged in by the corporation, the consumer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the corporation; and

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- (c) whether the consumer was able to understand any documents relating to the supply or possible supply of the services; and
 - (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the consumer or a person acting on behalf of the consumer by the corporation or a person acting on behalf of the corporation in relation to the supply or possible supply of the services; and
 - (e) the amount for which, and the circumstances under which, the consumer could have acquired identical or equivalent services from a person other than the corporation.
- (3) A corporation is not taken for the purposes of this section to engage in unconscionable conduct in connection with the supply or possible supply of financial services to a person merely because the corporation:
- (a) institutes legal proceedings in relation to that supply or possible supply; or
 - (b) refers a dispute or claim in relation to that supply or possible supply to arbitration.
- (4) For the purpose of determining whether a corporation has contravened subsection (1) in connection with the supply or possible supply of financial services to a person:
- (a) the Court must not have regard to any circumstances that were not reasonably foreseeable at the time of the alleged contravention; and
 - (b) the Court may have regard to conduct engaged in, or circumstances existing, before the commencement of this section.
- (5) A reference in this section to financial services is a reference to financial services of a kind ordinarily acquired for personal, domestic or household use.

Subdivision D—Consumer protection

12DA Misleading or deceptive conduct

- (1) A corporation must not, in trade or commerce, engage in conduct in relation to financial services that is misleading or deceptive or is likely to mislead or deceive.
- (1A) This section does not apply to dealings in securities.
- (2) Nothing in sections 12DB to 12DN limits by implication the generality of subsection (1).

12DB False or misleading representations

- (1) A corporation must not, in trade or commerce, in connection with the supply or possible supply of financial services, or in connection with the promotion by any means of the supply or use of financial services:
 - (a) falsely represent that services are of a particular standard, quality, value or grade; or
 - (b) falsely represent that a particular person has agreed to acquire services; or
 - (c) represent that services have sponsorship, approval, performance characteristics, uses or benefits they do not have; or
 - (d) represent that the corporation has a sponsorship, approval or affiliation it does not have; or
 - (e) make a false or misleading representation with respect to the price of services; or
 - (f) make a false or misleading representation concerning the need for any services; or
 - (g) make a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy.
- (2) This section does not apply to dealings in securities.

Section 12DC

12DC False representations and other misleading or offensive conduct in relation to securities that involve interests in land

- (1) A corporation must not, in trade or commerce, in connection with the sale or grant, or the possible sale or grant, of a security that consists of or includes an interest in land, or in connection with the promotion by any means of the sale or grant of an interest in land:
 - (a) represent that the corporation has a sponsorship, approval or affiliation it does not have; or
 - (b) make a false or misleading representation concerning the nature of the interest in the land, the price payable for the security, the location of the land, the characteristics of the land, the use to which the land is capable of being put or may lawfully be put or the existence or availability of facilities associated with the land; or
 - (c) offer gifts, prizes or other free items with the intention of not providing them or of not providing them as offered.
- (2) A corporation must not use physical force or undue harassment or coercion in connection with the sale or grant, or the possible sale or grant, of a security that consists of or includes an interest in land or the payment for an interest in land.
- (3) In this section:

interest, in relation to land, means:

 - (a) a legal or equitable estate or interest in the land; or
 - (b) a right of occupancy of the land, or of a building or part of a building erected on the land, arising by virtue of the holding of shares, or by virtue of a contract to purchase shares, in an incorporated company that owns the land or building; or
 - (c) a right, power or privilege over, or in connection with, the land.

12DD Cash price to be stated in certain circumstances

- (1) A corporation must not, in trade or commerce, in connection with:
 - (a) the supply or possible supply of financial services; or
-

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(b) the promotion by any means of the supply or use of financial services;

make a representation about an amount that, if paid, would constitute a part of the consideration for the supply of the services unless the corporation also specifies the cash price for the services.

(2) This section does not apply to dealings in securities.

12DE Offering gifts and prizes

A corporation must not, in trade or commerce, in connection with:

- (a) the supply or possible supply of financial services; or
- (b) the promotion by any means of the supply or use of financial services;

offer gifts, prizes or other free items with the intention of not providing them, or of not providing them as offered.

12DF Certain misleading conduct in relation to financial services

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

12DG Bait advertising

(1) A corporation must not, in trade or commerce, advertise financial services for supply at a specified price, if there are reasonable grounds, of which the corporation is aware or ought reasonably to be aware, for believing that the corporation will not be able to offer for supply those services at that price:

- (a) for a period that is; and
- (b) in quantities that are;

reasonable having regard to the nature of the market in which the corporation carries on business and the nature of the advertisement.

(2) A corporation that has, in trade or commerce, advertised financial services for supply at a specified price must offer such services for supply at that price:

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- (a) for a period that is; and
 - (b) in quantities that are;
reasonable having regard to the nature of the market in which the corporation carries on business and the nature of the advertisement.
- (3) In a prosecution of a corporation under Subdivision G (sections 12GA to 12GO) in relation to a failure to offer financial services to a person (the *customer*) in accordance with subsection (2), it is a defence if the corporation establishes that:
- (a) it offered to supply, or to procure another person to supply, services of the kind advertised to the customer within a reasonable time, in a reasonable quantity and at the advertised price; or
 - (b) it offered to supply immediately, or to procure another person to supply within a reasonable time, equivalent services to the customer in a reasonable quantity and at the price at which the first-mentioned services were advertised;
- and, in either case, if the offer was accepted by the customer, the corporation has so supplied, or procured another person to supply, services.

12DH Referral selling

A corporation must not, in trade or commerce, induce a consumer to acquire financial services by representing that the consumer will, after the contract to acquire the services is made, receive a rebate, commission or other benefit in return for:

- (a) giving the corporation the names of prospective customers;
or
- (b) otherwise assisting the corporation to supply financial services to other consumers;

if receipt of the rebate, commission or other benefit is contingent on an event occurring after that contract is made.

12DI Accepting payment without intending or being able to supply as ordered

A corporation must not, in trade or commerce, accept payment or other consideration for financial services if, at the time of the acceptance:

- (a) the corporation intends:
 - (i) not to supply the services; or
 - (ii) to supply services materially different from the services in respect of which the payment or other consideration is accepted; or
- (b) there are reasonable grounds, of which the corporation is aware or ought reasonably to be aware, for believing that the corporation will not be able to supply the services within the period specified by the corporation or, if no period is specified, within a reasonable time.

12DJ Harassment and coercion

A corporation must not use physical force, or undue harassment or coercion, in connection with:

- (a) the supply or possible supply of financial services to a consumer; or
- (b) the payment for financial services by a consumer.

12DK Pyramid selling of securities

- (1) A corporation contravenes this section if:
 - (a) the corporation is the promoter of, or (if there are more than one) one of the promoters of, or is a participant in, a trading scheme to which this section applies; and
 - (b) a person who is a participant in that trading scheme, or has applied or been invited to become a participant in that trading scheme, makes any payment to or for the benefit of the corporation; and
 - (c) the person is induced to make the payment because the prospect is held out to him or her of receiving payments or other benefits in respect of the introduction (whether by

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himself or herself or by another person) of other persons who become participants in that trading scheme.

- (2) A corporation also contravenes this section if:
- (a) the corporation is the promoter of, or (if there are more than one) one of the promoters of, is a participant in, or is otherwise acting in accordance with, a trading scheme to which this section applies; and
 - (b) the corporation, by holding out to any person the prospect of receiving payments or other benefits in respect of the introduction (whether by himself or herself or by another person) of other persons who become participants in that trading scheme, attempts to induce that person:
 - (i) if he or she is already a participant in that trading scheme, to make any payment to or for the benefit of the promoter or any of the promoters or to or for the benefit of a participant in that trading scheme; or
 - (ii) if he or she is not already a participant in that trading scheme, to become such a participant and to make a payment of a kind mentioned in subparagraph (i).
- (3) A corporation also contravenes this section if the corporation promotes, or takes part in the promotion of, a scheme under which:
- (a) a payment is to be made by a person who participates, or who has applied or been invited to participate, in the scheme to or for the benefit of the corporation or another person who takes part in the promotion of the scheme or to or for the benefit of another person who participates in the scheme; and
 - (b) the inducement for making the payment is the holding out to the person who makes or is to make the payment the prospect of receiving payments from other persons who may participate in the scheme.
- (4) For the purposes of subsection (1), (2) or (3):
- (a) a prospect of a kind mentioned in that subsection is taken to be held out to a person whether it is held out so as to confer on him or her a legally enforceable right or not; and
 - (b) in determining whether an inducement or attempt to induce is made by holding out a prospect of a kind mentioned in that

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- subsection, it is sufficient if a prospect of that kind constitutes or would constitute a substantial part of the inducement; and
- (c) any reference to the making of a payment to or for the benefit of a person includes a reference to the making of a payment partly to or for the benefit of that person and partly to or for the benefit of one or more other persons.
- (5) For the purposes of this section, a scheme is a trading scheme to which this section applies if the scheme includes the following elements:
- (a) securities are to be provided by the person promoting the scheme (the *promoter*) or, in the case of a scheme promoted by 2 or more persons acting in concert (the *promoters*), are to be provided by one or more of those persons; and
- (b) the securities so provided are to be supplied to or for other persons under transactions arranged or effected by persons who participate in the scheme (each of whom is in this section referred to as a *participant*), being persons not all of whom are promoters.
- (6) For the purposes of subsection (5):
- (a) a scheme is taken to include the element referred to in paragraph (5)(b) whether a participant who is not a promoter acts in relation to a transaction referred to in that paragraph in the capacity of an employee or agent of the promoter or of one of the promoters or in any other capacity; and
- (b) a scheme includes any arrangements made in connection with the carrying on of a business, whether those arrangements are made or recorded wholly or partly in writing or not; and
- (c) a reference to the provision of a security by a person includes a reference to the provision of a security under arrangements to which that person is a party.

12DL Unsolicited debit cards

- (1) A corporation must not send a person:
- (a) a debit card that allows access to an account that is a financial product; or

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- (b) an article that may be used as a debit card of that kind; except in accordance with subsection (2).
- (2) A corporation may send the person the card:
- (a) in pursuance of a request in writing by the person who will be under a liability to the person who issued the card in respect of the use of the card; or
 - (b) in renewal or replacement of, or in substitution for:
 - (i) a card of the same kind previously sent to the first-mentioned person in pursuance of a request in writing by the person who was under a liability to the person who issued the card previously so sent in respect of the use of that card; or
 - (ii) a card of the same kind previously sent to the first-mentioned person and used for a purpose for which it was intended to be used.
- (3) Subsection (1) applies only in relation to the sending of a card by or on behalf of the person who issued the card.
- (4) A corporation must not take any action that enables a person who has a credit card to use the card as a debit card except in accordance with a request in writing by the person.
- (5) In this section:

article includes a token, card or document.

credit card means:

- (a) any article of a kind commonly known as a credit card; or
- (b) any similar article intended for use in obtaining cash, goods or services on credit;

and includes any article of a kind that persons carrying on business commonly issue to their customers or prospective customers for use in obtaining goods or services from those persons on credit.

debit card means an article intended for use by a person in obtaining access to an account that is:

- (a) held by the person for the purpose of withdrawing or depositing cash or obtaining goods or services; and

(b) a financial product.

12DM Assertion of right to payment for unsolicited financial services

- (1) A corporation must not, in trade or commerce, assert a right to payment from a person for unsolicited financial services unless the corporation has reasonable cause to believe that there is a right to payment.
- (2) For the purposes of this section, a corporation is taken to assert a right to a payment from a person for unsolicited financial services if the corporation:
 - (a) makes a demand for the payment or asserts a present or prospective right to the payment; or
 - (b) threatens to bring any legal proceedings with a view to obtaining the payment; or
 - (c) places, or causes to be placed, the name of the person on a list of defaulters or debtors, or threatens to do so, with a view to obtaining the payment; or
 - (d) invokes, or causes to be invoked, any other collection procedure, or threatens to do so, with a view to obtaining the payment; or
 - (e) sends any invoice or other document stating the amount of the payment or setting out the price of the services and not stating as prominently (or more prominently) that no claim is made to the payment or to payment of the price.
- (3) For the purposes of this section, an invoice or other document purporting to have been sent by or on behalf of a corporation is taken to have been sent by that corporation unless the contrary is established.
- (4) In a proceeding against a corporation in respect of a contravention of this section, the burden lies on the corporation of proving that the corporation had reasonable cause to believe that there was a right to payment.

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12DN Application of provisions of Division to prescribed information providers

- (1) Nothing in section 12DA, 12DB, 12DC or 12DF applies to a prescribed publication of matter by a prescribed information provider, other than:
 - (a) a publication of matter in connection with:
 - (i) the supply or possible supply of financial services; or
 - (ii) the sale or grant, or possible sale or grant, of securities that consist of, or include, interests in land; or
 - (iii) the promotion by any means of the supply or use of financial services; or
 - (iv) the promotion by any means of the sale or grant of securities that consist of, or include, interests in land;if:
 - (v) the services were relevant services, or the interests in land were relevant interests in land, as the case may be, in relation to the prescribed information provider; or
 - (vi) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with:
 - (A) a person who supplies financial services of that kind, or who sells or grants securities of that kind; or
 - (B) a body corporate that is related to a body corporate that supplies financial services of that kind, or that sells or grants securities of that kind; or
 - (b) a publication of an advertisement.
- (2) For the purposes of this section, a publication by a prescribed information provider is a prescribed publication if:
 - (a) in any case—the publication was made by the prescribed information provider in the course of carrying on a business of providing information; or
 - (b) in the case of a person who is a prescribed information provider by virtue of paragraph (a), (b) or (c) of the definition of *prescribed information provider* in subsection (3)

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(whether or not the person is also a prescribed information provider by virtue of another operation of that definition)—the publication was by way of a radio or television broadcast by the prescribed information provider.

(3) In this section:

prescribed information provider means a person who carries on a business of providing information and, without limiting the generality of the foregoing, includes:

- (a) the holder of a licence granted under the *Broadcasting Services Act 1992*; and
- (b) a person who is the provider of a broadcasting service under a class licence under that Act; and
- (c) the holder of a licence continued in force by subsection 5(1) of the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992*; and
- (d) the Australian Broadcasting Corporation; and
- (e) the Special Broadcasting Service Corporation.

relevant financial services, in relation to a prescribed information provider, means financial services of a kind supplied by the prescribed information provider or, if the prescribed information provider is a body corporate, by a body corporate that is related to the prescribed information provider.

relevant interests in land, in relation to a prescribed information provider, means interests in land, being interests of a kind sold or granted by the prescribed information provider or, if the prescribed information provider is a body corporate, by a body corporate that is related to the prescribed information provider.

Subdivision E—Conditions and warranties in consumer transactions

12EA Conflict of laws

If:

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- (a) the proper law of a contract for the supply by a corporation of financial services to a consumer would, but for a term that it should be the law of some other country or a term to the like effect, be the law of any part of Australia; or
- (b) a contract for the supply by a corporation of financial services to a consumer contains a term that purports to substitute, or has the effect of substituting, provisions of the law of some other country, or of a State or Territory, for all or any of the provisions of this Subdivision (sections 12EA to 12ED);

this Subdivision applies to the contract notwithstanding that term.

12EB Application of provisions not to be excluded or modified

- (1) A term of a contract (including a term that is not set out in the contract but is incorporated in the contract by another term of the contract) is void if it purports to exclude, restrict or modify or has the effect of excluding, restricting or modifying:
 - (a) the application of all or any of the provisions of this Subdivision (sections 12EA to 12ED); or
 - (b) the exercise of a right conferred by such a provision; or
 - (c) any liability of the corporation for breach of a condition or warranty implied by such a provision.
- (2) A term of a contract is not taken to exclude, restrict or modify the application of a provision of this Subdivision unless the term does so expressly or is inconsistent with that provision.

12EC Limitation of liability for breach of certain conditions or warranties

- (1) Subject to this section, a term of a contract for the supply by a corporation of financial services other than services of a kind ordinarily acquired for personal, domestic or household use is not void under section 12EB merely because the term limits the liability of the corporation for a breach of a condition or warranty to:
 - (a) the supplying of the services again; or

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- (b) the payment of the cost of having the services supplied again.
- (2) Subsection (1) does not apply in relation to a term of a contract if the person to whom the services were supplied establishes that it is not fair or reasonable for the corporation to rely on that term of the contract.
- (3) In determining for the purposes of subsection (2) whether or not reliance on a term of a contract is fair or reasonable, a court must have regard to all the circumstances of the case and, in particular, to the following matters:
- (a) the strength of the bargaining positions of the corporation and the person to whom the services were supplied (the *buyer*) relative to each other, taking into account, among other things, the availability of equivalent services and suitable alternative sources of supply;
 - (b) whether the buyer received an inducement to agree to the term or, in agreeing to the term, had an opportunity to acquire the services or equivalent services from any source of supply under a contract that did not include that term;
 - (c) whether the buyer knew or ought reasonably to have known of the existence and extent of the term (having regard, among other things, to any custom of the trade and any previous course of dealing between the parties).

12ED Warranties in relation to the supply of financial services

- (1) In every contract for the supply of financial services by a corporation to a consumer in the course of a business, there is an implied warranty that:
- (a) the services will be rendered with due care and skill; and
 - (b) any materials supplied in connection with those services will be reasonably fit for the purpose for which they are supplied.
- (2) If:
- (a) a corporation supplies financial services to a consumer in the course of a business; and
 - (b) the consumer, expressly or by implication, makes known to the corporation:

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- (i) any particular purpose for which the services are required; or
 - (ii) the result that he or she desires the services to achieve;
- there is an implied warranty that:
- (c) the services supplied under the contract for the supply of the services; and
 - (d) any materials supplied in connection with those services; will be reasonably fit for that purpose or are of such a nature and quality that they might reasonably be expected to achieve that result, except if the circumstances show that the consumer does not rely, or that it is unreasonable for him or her to rely, on the corporation's skill or judgment.
- (3) A reference in this section to financial services does not include a reference to services that are, or are to be, provided, granted or conferred under a contract of insurance.

Subdivision F—Alternative dispute resolution

12FA Industry codes to be approved by ASIC

- (1) ASIC has the function of monitoring and promoting market integrity and consumer protection in relation to:
- (a) the Australian financial system; and
 - (b) the provision of financial services.
- Without limiting paragraph (b), ASIC has the function of promoting the adoption of, and approving and monitoring compliance with, industry standards and codes of practice (including standards and codes in relation to the resolution of disputes between the providers of financial services and consumers).
- (2) ASIC must not approve an industry code under subsection (1) unless ASIC is satisfied with the procedures for alternative dispute resolution, having regard to any of the following guidelines:
- (a) they do not permit a complaint or dispute to be considered unless it has first been lodged with the relevant corporation and:

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- (i) has been resolved by the corporation, but not to the satisfaction of the complainant; or
 - (ii) has not been resolved by the corporation and 90 days have elapsed since the complaint or dispute was lodged;
 - (b) they provide for any systemic, persistent or deliberate conduct to be reported to ASIC;
 - (c) they operate free of charge to the complainant;
 - (d) they cover a sufficiently broad range of complaints, with the terms of reference of the scheme to be determined after consultation with consumer organisations and ASIC;
 - (e) they provide for independence from the parties to the complaint;
 - (f) they are overseen by a body which includes consumer representation (appointed or approved by the Minister with responsibility for consumer affairs) and a person appointed by ASIC;
 - (g) they accord with the principles of natural justice (including that information used by the decision-maker is provided to the complainant unless prohibited by law, and that reasons for decisions are given in writing);
 - (h) they provide for decisions to be made by reference to what is fair in all the circumstances, observing applicable law and relevant judicial authority and having regard to good practice in the relevant industry;
 - (i) they have appropriate published procedures, including suitable standards of timeliness;
 - (j) they include arrangements for appropriate promotion of the procedures;
 - (k) they are supported by adequate resources, including staff whose responsibility is to assist consumers in making their complaints, if necessary by investigating the conduct of a financial services provider;
 - (l) decisions made under them will be observed by the relevant corporations;
 - (m) they provide adequate remedies;
 - (n) they provide for the maintenance and publication of appropriate statistics on its operations;
-

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- (o) they provide for the provision to ASIC and the relevant industry associations, details of the decisions made in respect of all complaints, or a representative selection of complaints, including the reasons for the decisions but excluding any information that would identify any of the parties to the complaint.
- (3) ASIC may revoke an approval given under subsection (1) if ASIC is satisfied that the code no longer meets, or substantially meets, the guidelines of subsection (2).

Subdivision G—Enforcement and remedies

12GA Interpretation

In this Subdivision, unless the contrary intention appears:

- (a) a reference to the Court in relation to a matter is a reference to any court having jurisdiction in the matter; and
- (b) a reference to the Federal Court is a reference to the Federal Court of Australia; and
- (c) a reference to a judgment is a reference to a judgment, decree or order, whether final or interlocutory.

12GB Offences against Subdivision D

- (1) A person who:
 - (a) contravenes; or
 - (b) aids, abets, counsels or procures a person to contravene; or
 - (c) induces, or attempts to induce, a person whether by threats or promises or otherwise, to contravene; or
 - (d) is in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of; or
 - (e) conspires with others to contravene;a provision of Subdivision D (sections 12DA to 12DN) other than section 12DA, is guilty of an offence punishable on conviction:
 - (f) in the case of a person who is not a body corporate—by a fine not exceeding 400 penalty units; or

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(g) in the case of a person who is a body corporate—by a fine not exceeding 2,000 penalty units.

(2) If:

- (a) a person is convicted of 2 or more offences constituted by, or relating to, contraventions of the same provision of Subdivision D (sections 12DA to 12DN); and
- (b) the contraventions appear to the Court to have been of the same nature or a substantially similar nature and to have occurred at or about the same time;

the Court must not, in respect of the offences, impose on the person fines that, in the aggregate, exceed the maximum fine that would be applicable in respect of one offence by that person against that provision. This applies whether or not the person is also convicted of an offence or offences constituted by, or relating to, another contravention or other contraventions of that provision that were of a different nature or occurred at a different time.

(3) If:

- (a) a person is convicted of an offence constituted by, or relating to, a contravention of a provision of Subdivision D (sections 12DA to 12DN); and
- (b) a fine has, or fines have, previously been imposed on the person by the Court for an offence or offences constituted by, or relating to, another contravention or other contraventions of the same provision, being a contravention that, or contraventions each of which, appears to the Court to have been of the same nature as, or of a substantially similar nature to, and to have occurred at or about the same time as, the contravention referred to in paragraph (a);

the Court must not, in respect of the offence referred to in paragraph (a), impose on the person a fine that exceeds the amount (if any) by which the maximum fine applicable (under subsection (1)) in respect of the offence referred to in paragraph (a) is greater than the amount of the fine, or the sum of the amounts of the fines, referred to in paragraph (b). This applies whether or not a fine has, or fines have, also previously been imposed on the person for an offence or offences constituted by, or relating to, a

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contravention or contraventions of that provision that were of a different nature or occurred at a different time.

- (4) In proceedings under this section against a person for contravening a provision of Subdivision D (sections 12DA to 12DN), the Court may:
 - (a) grant an injunction under section 12GD against the person in relation to:
 - (i) the conduct that constitutes, or is alleged to constitute, the contravention; or
 - (ii) other conduct of that kind; or
 - (b) make an order under section 12GE in relation to the contravention.
- (5) Sections 5, 7 and 7A of the *Crimes Act 1914* do not apply in relation to an offence against subsection (1).
- (6) A prosecution for an offence against subsection (1) may be commenced within 3 years after the commission of the offence.

12GC Enforcement and recovery of certain fines

- (1) If a person on whom a fine has been imposed for an offence against section 12GB or subsection 12GN(5) defaults in payment of the fine, a Court may:
 - (a) exercise any power that the Court has apart from this section with respect to the enforcement and recovery of fines imposed by the Court; or
 - (b) make an order, on the application of the Minister or ASIC, declaring that the fine is to have effect, and may be enforced, as if it were a judgment debt under a judgment of the Court.
- (2) If a person in relation to whom an order is made under subsection (1) in respect of a fine gives security for the payment of the fine, the Court must cancel the order in respect of the fine.
- (3) If the Court makes an order in relation to a person in respect of a fine, the Court may, at any time before the order is executed in respect of the fine, allow the person a specified time in which to

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pay the fine or allow the person to pay the fine by specified instalments, and, in that case:

- (a) the order must not be executed unless the person fails to pay the fine within that time or fails to pay an instalment at or before the time when it becomes payable, as the case may be; and
 - (b) if the person pays the fine within that time or pays all the instalments, as the case may be, the order is taken to have been discharged in respect of the fine.
- (4) Subject to subsection (7), an order under subsection (1) in respect of a fine ceases to have effect:
- (a) on payment of the fine; or
 - (b) if the fine is not paid—on full compliance with the order.
- (5) The term of a sentence of imprisonment imposed by an order under a law of a State or Territory applied by section 15A of the *Crimes Act 1914* in respect of a fine must be calculated at the rate of one day's imprisonment for each \$25 of the amount of the fine that is from time to time unpaid.
- (6) Subject to subsection (7), if a person is required to serve periods of imprisonment under an order or orders under subsection (1) in respect of 2 or more fines, those periods of imprisonment must be served consecutively.
- (7) Subject to subsection (8), if:
- (a) a person would, but for this subsection, be required under an order or orders under subsection (1) in respect of 3 or more fines to serve periods of imprisonment in respect of those fines exceeding in the aggregate 3 years; and
 - (b) those fines were imposed (whether or not in the same proceedings) for offences constituted by contraventions that occurred within a period of 2 years, being contraventions that appear to the Court to have been of the same nature or a substantially similar nature;

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the Court must, by order, declare that the order or orders are to cease to have effect in respect of those fines after the person has served an aggregate of 3 years' imprisonment in respect of those fines.

- (8) If subsection (7) would, but for this subsection, apply to a person with respect to offences committed by the person within 2 or more overlapping periods of 2 years, the Court must make an order under that subsection with respect to one only of those periods, being whichever period would give the person the maximum benefit from the application of that subsection.
- (9) For the purposes of subsection (8), the Court may vary or revoke an order made under subsection (7).
- (10) Paragraphs 15A(1)(b), (c) and (d) of the *Crimes Act 1914* do not apply with respect to fines referred to in subsection (1).

12GD Injunctions

- (1) If, on the application of the Minister, ASIC or any other person, the Court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute:
 - (a) a contravention of a provision of this Division; or
 - (b) attempting to contravene such a provision; or
 - (c) aiding, abetting, counselling or procuring a person to contravene such a provision; or
 - (d) inducing, or attempting to induce, whether by threats, promises or otherwise, a person to contravene such a provision; or
 - (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or
 - (f) conspiring with others to contravene such a provision;the Court may grant an injunction in such terms as the Court determines to be appropriate.

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- (2) If an application for an injunction under subsection (1) 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 a person has engaged, or is proposing to engage, in conduct of a kind mentioned in subsection (1).
- (3) If 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).
- (4) The Court may rescind or vary an injunction granted under subsection (1) or (3).
- (5) 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.
- (6) 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.
- (7) If the Minister or ASIC makes an application to the Court for the grant of an injunction under this section, the Court must not require

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the applicant or any other person, as a condition of granting an interim injunction, to give any undertakings as to damages.

- (8) If, in a case to which subsection (7) does not apply:
- (a) the Court would, but for this subsection, require a person to give an undertaking as to damages or costs; and
 - (b) the Minister gives the undertaking;
- the Court must accept the undertaking by the Minister and must not require a further undertaking from any other person.

12GE Order to disclose information or publish advertisement

Without limiting the generality of section 12GD, if, on the application of the Minister or ASIC, the Court is satisfied that a person has engaged in conduct constituting a contravention of a provision of Subdivision D (sections 12DA to 12DN), the Court may make either or both of the following orders:

- (a) an order requiring that person or a person involved in the contravention to disclose to the public, to a particular person or to persons included in a particular class of persons, in such manner as is specified in the order, such information, or information of such a kind, as is so specified, 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 that person or a person involved in the contravention to publish, at his or her 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.

12GF Actions for damages

- (1) A person who suffers loss or damage by conduct of another person that contravenes a provision of Subdivision D (sections 12DA to 12DN) may recover the amount of the loss or damage by action against that other person or against any person involved in the contravention.

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- (2) An action under subsection (1) may be commenced within 3 years after the date on which the cause of action accrued.

12GG Finding in proceedings to be evidence

In a proceeding against a person under section 12GF or in an application under subsection 12GM(2) for an order against a person, a finding of any fact by a court made in proceedings under section 12GD or 12GE, or for an offence against section 12GB, in which that person has been found to have contravened, or to have been involved in a contravention of, a provision of this Division is prima facie evidence of that fact. The finding may be proved by production of a document under the seal of the court from which the finding appears.

12GH Conduct by directors, employees or agents

- (1) If, in a proceeding under this Subdivision in respect of conduct engaged in by a body corporate, being conduct in relation to which the Division applies, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, employee or agent of the body corporate, being a director, employee or agent by whom the conduct was engaged in within the scope of the person's actual or apparent authority, had that state of mind.
- (2) Any conduct engaged in on behalf of a body corporate:
- (a) by a director, employee or agent of the body corporate within the scope of the person's actual or apparent authority; or
 - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, employee or agent of the body corporate, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, employee or agent;
- is taken, for the purposes of this Division, to have been engaged in also by the body corporate.

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- (3) If, in a proceeding under this Subdivision in respect of conduct engaged in by a person other than a body corporate, being conduct in relation to which a provision of this Division applies, it is necessary to establish the state of mind of the person, it is sufficient to show that an employee or agent of the person, being an employee or agent by whom the conduct was engaged in within the scope of the employee's or agent's actual or apparent authority, had that state of mind.
- (4) Conduct engaged in on behalf of a person (the *principal*) other than a body corporate:
- (a) by an employee or agent of the person within the scope of the actual or apparent authority of the employee or agent; or
 - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of an employee or agent of the principal, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent;
- is taken, for the purposes of this Division, to have been engaged in also by the principal.
- (5) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for the person's intention, opinion, belief or purpose.

12GI Defences

- (1) Subject to subsection (3), in a prosecution under this Subdivision in relation to a contravention of a provision of Subdivision D (sections 12DA to 12DN), it is a defence if the defendant establishes:
- (a) that the contravention in respect of which the proceeding was instituted was due to reasonable mistake; or
 - (b) that the contravention in respect of which the proceeding was instituted was due to reasonable reliance on information supplied by another person; or
 - (c) that:

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- (i) the contravention in respect of which the proceeding was instituted was due to the act or default of another person, to an accident or to some other cause beyond the defendant's control; and
 - (ii) the defendant took reasonable precautions and exercised due diligence to avoid the contravention.
- (2) In paragraphs (1)(b) and (c), *another person* does not include a person who was:
- (a) an employee or agent of the defendant; or
 - (b) in the case of a defendant being a body corporate, a director, employee or agent of the defendant;
- at the time when the contravention occurred.
- (3) If a defence provided by subsection (1) involves an allegation that a contravention was due to reliance on information supplied by another person or to the act or default of another person, the defendant is not, without leave of the Court, entitled to rely on that defence unless he or she has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person by whom the proceeding was instituted a notice in writing giving such information that would identify or assist in the identification of the other person as was then in his or her possession.
- (4) In a proceeding under this Subdivision in relation to a contravention of a provision of Subdivision D (sections 12DA to 12DN) committed by the publication of an advertisement, it is a defence if the defendant establishes that he or she is a person whose business it is to publish or arrange for the publication of advertisements and that he or she received the advertisement for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to a contravention of a provision of Subdivision D.

12GJ Jurisdiction of courts

- (1) Jurisdiction is conferred on the Federal Court in any matter:
- (a) arising under this Division; or

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- (b) arising under Part 3 in its application in relation to an investigation of a contravention of this Division;
in respect of which a civil proceeding may be instituted under this Subdivision or under Part 3 as so applying.
- (2) With respect to any matter arising under this Division in respect of which a civil proceeding is instituted by a person other than the Minister or ASIC:
- (a) the several courts of the States are invested with federal jurisdiction within the limits of their several jurisdictions, whether those limits are as to locality, subject-matter or otherwise; and
- (b) subject to the Constitution, jurisdiction is conferred on the several courts of the Territories.
- (3) Nothing in subsection (2) is taken to enable an inferior court of a State or Territory to grant a remedy other than a remedy of a kind that the court is able to grant under the law of that State or Territory.
- (4) The jurisdiction conferred by subsection (1) on the Federal Court is exclusive of the jurisdiction of any other court other than the jurisdiction of the several courts of the States and Territories under subsection (2) and the jurisdiction of the High Court under section 75 of the Constitution.

12GK Transfer of matters

- (1) If:
- (a) a civil proceeding instituted by a person other than the Minister or ASIC is pending in the Federal Court; and
- (b) a matter for determination in the proceeding arose under this Division;
- the Federal Court may, subject to subsection (2), upon the application of a party or of the Federal Court's own motion, transfer the matter to a court of a State or Territory and may also transfer to that court any other matter for determination in the proceeding.

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- (2) The Federal Court must not transfer a matter to another court under subsection (1) unless the other court has power to grant the remedies sought before the Federal Court in the matter and it appears to the Federal Court that:
- (a) the matter arises out of or is related to a proceeding that is pending in the other court; or
 - (b) it is otherwise in the interests of justice that the matter be determined by the other court.
- (3) If the Federal Court transfers a matter to another court under subsection (1):
- (a) further proceedings in the matter must be as directed by the other court; and
 - (b) the judgment of the other court in the matter is enforceable throughout Australia and the external Territories as if it were a judgment of the Federal Court.
- (4) If:
- (a) a proceeding is pending in a court (other than the Supreme Court) of a State or Territory; and
 - (b) a matter for determination in the proceeding arose under this Division;
- the court must, if directed to do so by the Federal Court, transfer to the Federal Court the matter and such other matters for determination in the proceeding, as the Federal Court decides, the determination of which would, apart from any law of a State or of the Northern Territory relating to cross-vesting of jurisdiction, be within the jurisdiction of the Federal Court.
- (5) If:
- (a) a proceeding is pending in a court (other than the Supreme Court) of a State or Territory; and
 - (b) a matter for determination in the proceeding arose under this Division;
- the court may, subject to subsection (6), upon the application of a party or of the court's own motion, transfer the matter to a court (other than the Supreme Court) of a State or Territory other than the State or Territory referred to in paragraph (a).

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- (6) The court must not transfer the matter to another court under subsection (5) unless the other court has power to grant the remedies sought in the matter and it appears to the court that:
 - (a) the matter arises out of or is related to a proceeding that is pending in the other court; or
 - (b) it is otherwise in the interests of justice that the matter be determined by the other court.
- (7) If a court transfers a matter to another court under subsection (5), further proceedings in the matter must be as directed by the other court.

12GL Transfer of certain proceedings to Family Court

- (1) If:
 - (a) a civil proceeding is pending in the Federal Court; and
 - (b) a matter for determination in the proceeding arises under this Division;the Federal Court may, on the application of a party to the proceeding or of its own motion, transfer the proceeding to the Family Court.
- (3) Subject to subsection (4), if a proceeding is transferred to the Family Court:
 - (a) the Family Court has jurisdiction to hear and determine the proceeding; and
 - (b) the Family Court also has jurisdiction to hear and determine matters not otherwise within its jurisdiction (whether under paragraph (a) or otherwise):
 - (i) that are associated with matters arising in the proceeding; or
 - (ii) that, apart from subsection 32(1) of the *Federal Court of Australia Act 1976*, the Federal Court would have had jurisdiction to hear and determine in the proceeding; and
 - (c) the Family Court may, in and in relation to the proceeding:
 - (i) grant such remedies; and
 - (ii) make orders of such kinds; and
 - (iii) issue, and direct the issue of, writs of such kinds;

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- as the Federal Court could have in and in relation to the proceeding; and
- (d) remedies, orders and writs granted, made or issued by the Family Court in and in relation to the proceeding have effect, and may be enforced by the Family Court, as if they had been granted, made or issued by the Federal Court; and
 - (e) appeals lie from judgments of the Family Court given in and in relation to the proceeding as if the judgments were judgments of the Federal Court constituted by a single Judge of that Court, and do not otherwise lie; and
 - (f) subject to paragraphs (a) to (e) (inclusive), this Division, the regulations, the *Federal Court of Australia Act 1976*, the Rules of Court made under that Act, and other laws of the Commonwealth, apply in and in relation to the proceeding as if:
 - (i) a reference to the Federal Court (other than in the expression *the Court or a Judge*) included a reference to the Family Court; and
 - (ii) a reference to a Judge of the Federal Court (other than in the expression *the Court or a Judge*) included a reference to a Family Court Judge; and
 - (iii) a reference to the expression *the Court or a Judge* when used in relation to the Federal Court included a reference to a Family Court Judge sitting in Chambers; and
 - (iv) a reference to a Registrar of the Federal Court included a reference to a Registrar of the Family Court; and
 - (v) any other necessary changes were made.
- (4) If any difficulty arises in the application of paragraphs (3)(c), (d) and (f) in or in relation to a particular proceeding, the Family Court may, on the application of a party to the proceeding or of its own motion, give such directions, and make such orders, as it considers appropriate to resolve the difficulty.
- (5) An appeal does not lie from a decision of the Federal Court in relation to the transfer of a proceeding under this Division to the Family Court.

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12GM Other orders

- (1) Without limiting the generality of section 12GD, if, in a proceeding instituted under, or for an offence against, this Division, the Court finds that a person who is a party to the proceeding has suffered, or is likely to suffer, loss or damage by conduct of another person that was engaged in contravention of a provision of this Division, the Court may, whether or not it grants an injunction under section 12GD or makes an order under section 12GE or 12GF, 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 (7) of this section) if the Court considers that the order or orders concerned will compensate the first-mentioned person in whole or in part for the loss or damage or will prevent or reduce the loss or damage.
- (2) Without limiting the generality of section 12GD, the Court may, on the application of:
 - (a) a person who has suffered, or is likely to suffer, loss or damage by conduct of another person that was engaged in contravention of a provision of this Division; or
 - (b) ASIC in accordance with subsection (3) on behalf of such a person or 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 (7)) if the Court considers that the order or orders concerned will:
 - (c) 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
 - (d) prevent or reduce the loss or damage suffered, or likely to be suffered, by such a person or persons.
- (3) If, in a proceeding instituted for an offence against section 12GB or instituted by ASIC or the Minister under section 12GD, a person is found to have engaged in conduct in contravention of a provision of this Division, ASIC may make an application under

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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. 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 may be made under subsection (2) in relation to a contravention of this Division notwithstanding that a proceeding has not been instituted under another provision of this Part in relation to that contravention.
- (5) An application under subsection (2) may be commenced:
 - (a) in the case of conduct in contravention of Subdivision C (sections 12CA and 12CB)—at any time within 2 years after the day on which the cause of action accrued; or
 - (b) in the case of conduct in contravention of Subdivision D (sections 12DA to 12DN)—at any time within 3 years after the day on which the cause of action accrued.
- (6) For the purpose of determining whether to make an order under this section in relation to a contravention of Subdivision C (sections 12CA and 12CB), the Court may have regard to the conduct of parties to the proceeding since the contravention occurred.
- (7) Without limiting the generality of subsections (1) and (2), the orders referred to in those subsections include the following:
 - (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 date before the date on which the order is made;
 - (b) an order varying such a contract or arrangement in such manner as is specified in the order and, if the Court thinks fit, declaring the contract or arrangement to have had effect as so

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- varied on and after a date before the date on which the order is made;
- (c) an order refusing to enforce any or all of the provisions of such a contract;
 - (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;
 - (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;
 - (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 his or her own expense, to supply specified services to the person who suffered, or is likely to suffer, the loss or damage;
 - (g) an order, in relation to an instrument creating or transferring an interest in land, directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct to execute an instrument that:
 - (i) varies, or has the effect of varying, the first-mentioned instrument; or
 - (ii) terminates or otherwise affects, or has the effect of terminating or otherwise affecting, the operation or effect of the first-mentioned instrument.
- (8) The powers conferred on the Court under this section in relation to a contract or covenant do not affect any powers that any other court may have in relation to the contract or covenant in proceedings instituted in that other court in respect of the contract or covenant.
- (9) In subsection (7):
- interest*, in relation to land, has the same meaning as in subsection 12DC(3).

12GN Power of Court to prohibit payment or transfer of money or other property

- (1) If:
- (a) proceedings have been commenced against a person for an offence against section 12GB; or
 - (b) an application has been made under section 12GD for an injunction against a person in relation to a contravention of a provision of this Division; or
 - (c) an action has been commenced under subsection 12GF(1) against a person in relation to a contravention of a provision of Subdivision D (sections 12DA to 12DN); or
 - (d) an application for an order under subsection 12GM(2) or (3) has been or may be made against a person in relation to a contravention of a provision of this Division;

the Court may, on the application of the Minister or ASIC, make an order or orders mentioned in subsection (2) if the Court is satisfied that:

- (e) it is necessary or desirable to do so for the purpose of preserving money or other property held by or on behalf of a person referred to in paragraph (a), (b), (c) or (d), as the case may be (the *relevant person*), if the relevant person is liable or may become liable under this Division to pay money by way of a fine, damages, compensation, refund or otherwise or to transfer, sell or refund other property; and
 - (f) it will not unduly prejudice the rights and interests of any other person.
- (2) The orders referred to in subsection (1) are the following:
- (a) an order prohibiting, either absolutely or subject to conditions, 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;
 - (b) an order prohibiting, either absolutely or subject to conditions, a person who is holding money or other property on behalf of the relevant person or on behalf of an associate

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- of the relevant person from paying all or any of the money, or transferring, or otherwise parting with possession of, the other property, to, or to another person at the direction or request of, the person on whose behalf the money or other property is held;
- (c) an order prohibiting, either absolutely or subject to conditions, the taking or sending by any person of money of the relevant person or of an associate of the relevant person to a place outside the State or Territory in which the money is held;
 - (d) an order prohibiting, either absolutely or subject to conditions, the taking, sending or transfer by any person of other property of the relevant person or of an associate of the relevant person to a place outside the State or Territory in which the other property is located;
 - (e) an order appointing, if the relevant person is a natural person, a receiver or trustee of the property or of part of the property of the relevant person with such powers as are specified in the order.
- (3) Subject to subsection (4), an order under this section may be expressed to operate:
- (a) for a period specified in the order; or
 - (b) until proceedings under any other provision of this Part in relation to which the order was made have been concluded.
- (4) An order under this section made on an application *ex parte* must not be expressed to operate for a period exceeding 30 days.
- (5) A person who contravenes or fails to comply with an order by the Court under this section that is applicable to the person is guilty of an offence punishable on conviction:
- (a) in the case of a person not being a body corporate—by a fine not exceeding 200 penalty units; or
 - (b) in the case of a person being a body corporate—by a fine not exceeding 1,000 penalty units.
- (6) Nothing in this section affects the powers that the Court has apart from this section.
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- (7) This section has effect subject to the *Bankruptcy Act 1966*.
- (8) A reference in this section to a person who is an associate of a relevant person is a reference to:
 - (a) a person holding money or other property on behalf of the relevant person; or
 - (b) if the relevant person is a body corporate—a wholly owned subsidiary of the relevant person.

12GO Enforcement of undertakings—Secretary of the Department

- (1) The Secretary of the Department may accept a written undertaking given by a person for the purposes of this section in connection with a matter in relation to which the Secretary has a power or function under this Division.
- (2) The person may withdraw or vary the undertaking at any time, but only with the consent of the Secretary of the Department.
- (3) If the Secretary of the Department considers that the person who gave the undertaking has breached any of its terms, the Secretary may apply to the Court for an order under subsection (4).
- (4) If the Court is satisfied that the person has breached a term of the undertaking, the Court may make all or any of the following orders:
 - (a) an order directing the person to comply with that term of the undertaking;
 - (b) an order directing the person to pay to the Commonwealth an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
 - (c) any order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
 - (d) any other order that the Court considers appropriate.

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Subdivision H—Miscellaneous

12HA Relationship of this Subdivision to Part 3

- (1) The powers (and any restrictions on them) in this Subdivision are in addition to any powers ASIC has under Part 3 when investigating a contravention, or suspected contravention, of a provision of this Division. The powers may be used only when ASIC is so investigating.
- (2) For the purposes of Part 3, an exercise of a power in this Subdivision is taken to be an exercise of that power under, or for the purposes of, Part 3.

12HB Disclosure of documents by ASIC

- (1) If:
 - (a) a proceeding is instituted against a corporation or other person under section 12GD; or
 - (b) an application is made under section 12GE or subsection 12GM(2) or 12GN(1) for an order against a corporation or other person;

ASIC must, at the request of the corporation or other person and upon payment of the prescribed fee (if any), give to the corporation or other person:

- (c) a copy of every document that has been given to, or obtained by, ASIC in connection with the matter to which the application, notice or proceeding relates and tends to establish the case of the corporation or other person; and
 - (d) a copy of any other document in ASIC's possession that comes to ASIC's attention in connection with the matter to which the application, notice or proceeding relates and tends to establish the case of the corporation or other person; not being a document obtained from the corporation or other person or prepared by an officer or professional adviser of ASIC.
- (2) If ASIC does not comply with a request under subsection (1), the Court must, subject to subsection (3), upon application by the

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corporation which, or other person who, made the request, make an order directing ASIC to comply with the request.

- (3) The Court may refuse to make an order under subsection (2) in respect of a document or part of a document if the Court considers it inappropriate to make the order by reason that the disclosure of the contents of the document or part of the document would prejudice any person, or for any other reason.
- (4) Before the Court gives a decision on an application under subsection (2), the Court may require any documents to be produced to it for inspection.
- (5) An order under this section may be expressed to be subject to conditions specified in the order.

12HC Prosecutions

- (1) Prosecutions for offences:
 - (a) against this Division; or
 - (b) against Part 3 in its application in relation to an investigation of a contravention of this Division;must be brought only in the Court.
- (2) Jurisdiction is conferred on the Court to hear and determine such prosecutions.
- (3) Proceedings before the Court under this section, other than proceedings instituted by:
 - (a) ASIC; or
 - (b) a person authorised in writing by ASIC; or
 - (c) a person authorised in writing by the Secretary of the Department;must not be instituted except with the consent in writing of the Minister or of a person authorised by the Minister in writing to give such consents.

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12HD Jurisdiction of Court to make declarations and orders

- (1) Subject to this section, a person may institute a proceeding in the Court seeking, in relation to a matter arising under this Division or under Part 3 in its application in relation to an investigation of a contravention of this Division, the making of:
 - (a) a declaration in relation to the operation or effect of any provision of:
 - (i) this Division other than the provisions of Subdivision E (sections 12EA to 12ED); or
 - (ii) Part 3 as so applying; or
 - (b) a declaration in relation to the validity of any act or thing done, proposed to be done or purporting to have been done, under this Division or Part 3 as so applying; or
 - (c) an order by way of, or in the nature of, prohibition, certiorari or mandamus;or both such a declaration and such an order, and the Court has jurisdiction to hear and determine the proceeding.
- (2) The Minister may institute a proceeding in the Court under this section and may intervene in any proceeding instituted in the Court under this section or in a proceeding instituted in any other court in which a party is seeking the making of a declaration or an order of a kind mentioned in subsection (1).
- (3) In this section, *proceeding* includes a cross-proceeding.

Part 3—Investigations and information-gathering

Division 1—Investigations

13 General powers of investigation

- (1) ASIC may make such investigation as it thinks expedient for the due administration of the corporations legislation (other than the excluded provisions) where it has reason to suspect that there may have been committed:
 - (a) a contravention of the corporations legislation (other than the excluded provisions); or
 - (b) a contravention of a law of the Commonwealth, or of a State or Territory in this jurisdiction, being a contravention that:
 - (i) concerns the management or affairs of a body corporate or managed investment scheme; or
 - (ii) involves fraud or dishonesty and relates to a body corporate or managed investment scheme or to securities or futures contracts.
- (2) Where ASIC has reason to suspect that unacceptable circumstances within the meaning of Subdivision B of Division 2 of Part 6.12 of the Corporations Act have, or may have, occurred, ASIC may make such investigation as it thinks expedient:
 - (a) for the purposes of determining whether or not to make an application under section 657C of that Act; or
 - (b) otherwise for the due administration of the corporations legislation (other than the excluded provisions).
- (6) If ASIC has reason to suspect that a contravention of a provision of Division 2 of Part 2 may have been committed, ASIC may make such investigation as it thinks appropriate.

14 Minister may direct investigations

- (1) Where, in the Minister's opinion, it is in the public interest in respect of this jurisdiction for a particular matter to which

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subsection (2) applies to be investigated, he or she may by writing direct ASIC to investigate that matter.

- (2) This subsection applies to a matter relating to any of the following:
- (a) an alleged or suspected contravention of the corporations legislation (other than the excluded provisions);
 - (b) an alleged or suspected contravention of a law of the Commonwealth, or of a State or Territory in this jurisdiction, being a contravention that:
 - (i) concerns the management or affairs of a body corporate; or
 - (ii) involves fraud or dishonesty and relates to a body corporate, securities or futures contracts;
 - (c) the affairs, or particular affairs, of a corporation;
 - (d) dealing in securities;
 - (e) dealing in futures contracts;
 - (f) the establishment or conducting of a stock market or futures market;
 - (g) the provision of clearing house facilities for a futures market;
 - (j) the giving of advice, analyses or reports about securities or futures contracts.
- (3) ASIC must comply with a direction under subsection (1).
- (4) A direction under subsection (1) does not prevent ASIC from delegating a function or power.

15 Investigation after report of receiver or liquidator

If a report has been lodged under section 422 or 533 of the Corporations Act, ASIC may investigate a matter to which the report relates for the purpose of determining whether or not a person ought to be prosecuted for an offence against the corporations legislation (other than the excluded provisions).

16 Interim report on investigation

- (1) Where, in the course of an investigation under this Division, ASIC forms the opinion that:

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- (a) a serious contravention of a law of the Commonwealth, or of a State or Territory in this jurisdiction, has been committed; or
 - (b) to prepare an interim report about the investigation would enable or assist the protection, preservation or prompt recovery of property; or
 - (c) there is an urgent need for the corporations legislation (other than the excluded provisions) to be amended;
- it must prepare an interim report that relates to the investigation and sets out:
- (d) if paragraph (a) applies—its findings about the contravention, and the evidence and other material on which those findings are based; or
 - (e) if paragraph (b) applies—such matters as, in its opinion, will so enable or assist; or
 - (f) if paragraph (c) applies—its opinion about amendment of that legislation, and its reasons for that opinion;
- and such other matters relating to, or arising out of, the investigation as it thinks fit.
- (2) ASIC may prepare an interim report about an investigation under this Division and must do so if the Minister so directs.
 - (3) A report under subsection (2) must set out such matters relating to, or arising out of, the investigation as ASIC thinks fit or the Minister directs.

17 Final report on investigation

- (1) At the end of an investigation under section 13 or 15, ASIC may prepare a report about the investigation and must do so if the Minister so directs.
- (2) At the end of an investigation under section 14, ASIC must prepare a report about the investigation.
- (3) A report under this section must set out:
 - (a) ASIC's findings about the matters investigated; and
 - (b) the evidence and other material on which those findings are based; and

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- (c) such other matters relating to, or arising out of, the investigation as ASIC thinks fit or the Minister directs.

18 Distribution of report

- (1) As soon as practicable after preparing a report under this Division, ASIC must give a copy of the report to the Minister.
- (2) Where a report, or part of a report, under this Division relates to a serious contravention of a law of the Commonwealth, or of a State or Territory in this jurisdiction, ASIC may give a copy of the whole or a part of the report to:
 - (a) the Australian Federal Police; or
 - (b) the National Crime Authority; or
 - (c) the Director of Public Prosecutions; or
 - (d) a prescribed agency.
- (3) Where a report, or part of a report, under this Division relates to a person's affairs to a material extent, ASIC may, at the person's request or of its own motion, give to the person a copy of the report or of part of the report.
- (4) The Minister may cause the whole or a part of a report under this Division to be printed and published.

Division 2—Examination of persons

19 Notice requiring appearance for examination

- (1) This section applies where ASIC, on reasonable grounds, suspects or believes that a person can give information relevant to a matter that it is investigating, or is to investigate, under Division 1.
- (2) ASIC may, by written notice in the prescribed form given to the person, require the person:
 - (a) to give to ASIC all reasonable assistance in connection with the investigation; and
 - (b) to appear before a specified member or staff member for examination on oath and to answer questions.
- (3) A notice given under subsection (2) must:
 - (a) state the general nature of the matter referred to in subsection (1); and
 - (b) set out the effect of subsection 23(1) and section 68.

20 Proceedings at examination

The remaining provisions of this Division apply where, pursuant to a requirement made under section 19 for the purposes of an investigation under Division 1, a person (in this Division called the *examinee*) appears before another person (in this Division called the *inspector*) for examination.

21 Requirements made of examinee

- (1) The inspector may examine the examinee on oath or affirmation and may, for that purpose:
 - (a) require the examinee to either take an oath or make an affirmation; and
 - (b) administer an oath or affirmation to the examinee.

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- (2) The oath or affirmation to be taken or made by the examinee for the purposes of the examination is an oath or affirmation that the statements that the examinee will make will be true.
- (3) The inspector may require the examinee to answer a question that is put to the examinee at the examination and is relevant to a matter that ASIC is investigating, or is to investigate, under Division 1.

22 Examination to take place in private

- (1) The examination must take place in private and the inspector may give directions about who may be present during it, or during a part of it.
- (2) A person must not be present at the examination unless he or she:
 - (a) is the inspector, the examinee or a member; or
 - (b) is a staff member approved by ASIC; or
 - (c) is entitled to be present by virtue of:
 - (i) a direction under subsection (1); or
 - (ii) subsection 23(1).

Penalty: 10 penalty units or imprisonment for 3 months, or both.

23 Examinee's lawyer may attend

- (1) The examinee's lawyer may be present at the examination and may, at such times during it as the inspector determines:
 - (a) address the inspector; and
 - (b) examine the examinee;about matters about which the inspector has examined the examinee.
- (2) If, in the inspector's opinion, a person is trying to obstruct the examination by exercising rights under subsection (1), the inspector may require the person to stop addressing the inspector, or examining the examinee, as the case requires.

24 Record of examination

- (1) The inspector may, and must if the examinee so requests, cause a record to be made of statements made at the examination.
- (2) If a record made under subsection (1) is in writing or is reduced to writing:
 - (a) the inspector may require the examinee to read it, or to have it read to him or her, and may require him or her to sign it; and
 - (b) the inspector must, if requested in writing by the examinee to give to the examinee a copy of the written record, comply with the request without charge but subject to such conditions (if any) as the inspector imposes.

25 Giving to other persons copies of record

- (1) ASIC may give a copy of a written record of the examination, or such a copy together with a copy of any related book, to a person's lawyer if the lawyer satisfies ASIC that the person is carrying on, or is contemplating in good faith, a proceeding in respect of a matter to which the examination related.
- (2) If ASIC gives a copy to a person under subsection (1), the person, or any other person who has possession, custody or control of the copy or a copy of it, must not, except in connection with preparing, beginning or carrying on, or in the course of, a proceeding:
 - (a) use the copy or a copy of it; or
 - (b) publish, or communicate to a person, the copy, a copy of it, or any part of the copy's contents.

Penalty: 10 penalty units or imprisonment for 3 months, or both.

- (3) ASIC may, subject to such conditions (if any) as it imposes, give to a person a copy of a written record of the examination, or such a copy together with a copy of any related book.

26 Copies given subject to conditions

If a copy is given to a person under subsection 24(2) or 25(3) subject to conditions, the person, and any other person who has

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possession, custody or control of the copy or a copy of it, must comply with the conditions.

Penalty: 10 penalty units or imprisonment for 3 months, or both.

27 Record to accompany report

- (1) If a report about the investigation referred to in section 20 is prepared under section 17, each record (if any) of the examination must accompany the report.
- (2) If:
 - (a) in ASIC's opinion, a statement made at an examination is relevant to any other investigation under Division 1; and
 - (b) a record of the statement was made under section 24; and
 - (c) a report about the other investigation is prepared under section 17;a copy of the record must accompany the report.

Division 3—Inspection of books

28 When certain powers may be exercised

A power conferred by this Division (other than sections 29, 35, 36 and 39A) may only be exercised:

- (a) for the purposes of the performance or exercise of any of ASIC's functions and powers under the corporations legislation; or
- (b) for the purposes of ensuring compliance with the corporations legislation; or
- (c) in relation to:
 - (i) an alleged or suspected contravention of the corporations legislation; or
 - (ii) an alleged or suspected contravention of a law of the Commonwealth, or of a State or Territory in this jurisdiction, being a contravention that concerns the management or affairs of a body corporate, or involves fraud or dishonesty and relates to a body corporate, securities or futures contracts; or
- (d) for the purposes of an investigation under Division 1.

29 ASIC may inspect books without charge

- (1) A book that the corporations legislation (other than the excluded provisions) requires a person to keep must be open for inspection (without charge) by a person authorised in writing by ASIC.
- (2) A person authorised under this section may require a person in whose possession the book is to make the book available for inspection by the first-mentioned person.
- (3) An authorisation under this section may be of general application or may be limited by reference to the books to be inspected.

Section 30

30 Notice to produce books about affairs of body corporate or registered scheme

- (1) ASIC may give to:
- (a) a body corporate that is not an exempt public authority; or
 - (b) an eligible person in relation to such a body corporate;
- a written notice requiring the production to a specified member or staff member, at a specified place and time, of specified books relating to affairs of the body.
- (2) ASIC may give to:
- (a) the responsible entity of a registered scheme; or
 - (b) an eligible person in relation to the responsible entity;
- a written notice requiring the production to a specified member or staff member, at a specified place and time, of specified books relating to the operation of the scheme.

31 Notice to produce books about securities

- (1) ASIC may give to:
- (a) a securities exchange; or
 - (b) a member of the board of a securities exchange; or
 - (c) a person who is or has been (either alone or together with any other person or persons) a dealer, an investment adviser or a securities representative of a person; or
 - (d) a nominee controlled by a person of a kind referred to in paragraph (c) or jointly controlled by 2 or more persons at least one of whom is such a person; or
 - (e) an eligible person in relation to a person of a kind referred to in paragraph (a), (b), (c) or (d); or
 - (f) any other person who, in ASIC's opinion, has been a party to a dealing in securities;
- a written notice requiring the production to a specified member or staff member, at a specified place and time, of specified books relating to:
- (g) the business or affairs of a securities exchange; or
 - (h) a dealing in securities; or

- (j) advice given, or an analysis or report issued or published, about securities; or
 - (k) the character or financial position of, or a business carried on by, a person of a kind referred to in paragraph (c) or (d); or
 - (m) an audit of, or a report of an auditor about, a dealing in securities or accounts or records of a dealer or investment adviser.
- (2) A reference in subsection (1) to a dealing in securities, or to a business carried on by a person, includes a reference to a dealing in securities by a person as a trustee, or to a business carried on by a person as a trustee, as the case may be.

32 Notice to produce books about futures contracts

- (1) ASIC may give to:
- (a) a futures exchange; or
 - (b) a clearing house for a futures market; or
 - (c) a futures association; or
 - (d) a member of the board of a body corporate that is a futures exchange, a clearing house for a futures market, or a futures association; or
 - (e) a person who is or has been (either alone or together with any other person or persons) a futures broker, a futures adviser or a futures representative of a person; or
 - (f) a nominee controlled by a person of a kind referred to in paragraph (e) or jointly controlled by 2 or more persons at least one of whom is such a person; or
 - (g) an eligible person in relation to a person of a kind referred to in a preceding paragraph; or
 - (h) any other person who, in ASIC's opinion, has been a party to a dealing in a futures contract;
- a written notice requiring the production to a specified member or staff member, at a specified place and time, of specified books relating to:
- (j) the business or affairs of a futures exchange, of a clearing house for a futures market, or of a futures association; or
 - (k) a dealing in a futures contract; or

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- (m) advice given, or an analysis or report issued or published, about futures contracts; or
 - (n) the character or financial position of, or a business carried on by, a person referred to in paragraph (e) or (f); or
 - (p) an audit of, or a report of an auditor about, a dealing in a futures contract or accounts or records of a futures broker or futures adviser.
- (2) A reference in subsection (1) to a dealing in a futures contract, or to a business carried on by a person, includes a reference to a dealing in a futures contract by a person as a trustee, or to a business carried on by a person as a trustee, as the case may be.

32A Notice to produce books about financial services

For the purposes of Division 2 of Part 2, ASIC may give to:

- (a) a person who supplies, or has supplied, a financial service; or
- (b) an eligible person in relation to that person;

a written notice requiring the production to a specified member or staff member, at a specified place and time, of specified books relating to:

- (c) the supply of the financial service; or
- (d) the financial service.

33 Notice to produce documents in person's possession

ASIC may give to a person a written notice requiring the production to a specified member or staff member, at a specified place and time, of specified books that are in the first-mentioned person's possession and relate to:

- (a) affairs of a body corporate; or
- (ab) affairs of a registered scheme; or
- (b) a matter referred to in any of paragraphs 31(1)(g) to (m), inclusive, and 32(1)(j) to (p), inclusive; or
- (c) a matter referred to in paragraph 32A(c) or (d).

34 ASIC may authorise persons to require production of books

- (1) ASIC may by writing authorise a member or staff member to make a requirement of a kind that this Division empowers ASIC to make.
- (2) An authorisation under this section may be of general application or may be limited by reference to either or both of the following:
 - (a) the persons of whom requirements may be made;
 - (b) the books production of which may be required.
- (3) Where an authorisation of a person is in force under this section, the person may make a requirement in accordance with the authorisation as if, in sections 30, 31, 32, 32A and 33:
 - (a) a reference to ASIC were a reference to the person; and
 - (b) a reference to specified books were a reference to books that the person specifies, whether in the requirement or not and whether orally or in writing, to the person of whom the requirement is made; and
 - (c) a reference to production to a specified person were a reference to production to the first-mentioned person.

35 Application for warrant to seize books not produced

- (1) Where a member or staff member has reasonable grounds to suspect that there are, or may be within the next 3 days, on particular premises in Australia, books:
 - (a) whose production has been required under this Division; and
 - (b) that have not been produced in compliance with that requirement;he or she may:
 - (c) lay before a magistrate an information on oath setting out those grounds; and
 - (d) apply for the issue of a warrant to search the premises for those books.
- (2) On an application under this section, the magistrate may require further information to be given, either orally or by affidavit, in connection with the application.

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36 Grant of warrant

- (1) This section applies where, on an application under section 35, the magistrate is satisfied that there are reasonable grounds to suspect that there are, or may be within the next 3 days, on particular premises, particular books:
 - (a) whose production has been required under this Division; and
 - (b) that have not been produced in compliance with that requirement.
- (2) The magistrate may issue a warrant authorising a member of the Australian Federal Police, whether or not named in the warrant, together with any person so named, with such assistance, and by such force, as is necessary and reasonable:
 - (a) to enter on or into the premises; and
 - (b) to search the premises; and
 - (c) to break open and search anything, whether a fixture or not, in or on the premises; and
 - (d) to take possession of, or secure against interference, books that appear to be any or all of those books.
- (3) If the magistrate issues such a warrant, he or she must set out on the information laid before him or her under subsection 35(2) for the purposes of the application:
 - (a) which of the grounds set out in the information; and
 - (b) particulars of any other grounds;he or she has relied on to justify the issue of the warrant.
- (4) A warrant under this section must:
 - (a) specify the premises and books referred to in subsection (1); and
 - (b) state whether entry is authorised to be made at any time of the day or night or only during specified hours; and
 - (c) state that the warrant ceases to have effect on a specified day that is not more than 7 days after the day of issue of the warrant.

37 Powers where books produced or seized

- (1) This section applies where:
 - (a) books are produced to a person under a requirement made under this Division; or
 - (b) under a warrant issued under section 36, a person:
 - (i) takes possession of books; or
 - (ii) secures books against interference; or
 - (c) by virtue of a previous application of subsection (8) of this section, books are delivered into a person's possession.
- (2) If paragraph (1)(a) applies, the person may take possession of any of the books.
- (3) The person may inspect, and may make copies of, or take extracts from, any of the books.
- (4) The person may use, or permit the use of, any of the books for the purposes of a proceeding.
- (5) The person may retain possession of any of the books for so long as is necessary:
 - (a) for the purposes of exercising a power conferred by this section (other than this subsection and subsection (7)); or
 - (b) for any of the purposes referred to in paragraphs 28(a), (b) and (d); or
 - (c) for a decision to be made about whether or not a proceeding to which the books concerned would be relevant should be begun; or
 - (d) for such a proceeding to be begun and carried on.
- (6) No-one is entitled, as against the person, to claim a lien on any of the books, but such a lien is not otherwise prejudiced.
- (7) While the books are in the person's possession, the person:
 - (a) must permit another person to inspect at all reasonable times such (if any) of the books as the other person would be entitled to inspect if they were not in the first-mentioned person's possession; and
 - (b) may permit another person to inspect any of the books.

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- (8) Unless subparagraph (1)(b)(ii) applies, the person may deliver any of the books into the possession of ASIC or of a person authorised by it to receive them.
- (9) If paragraph (1)(a) or (b) applies, the person, or a person into whose possession the person delivers any of the books under subsection (8), may require:
- (a) if paragraph (1)(a) applies—a person who so produced any of the books; or
 - (b) in any case—a person who was a party to the compilation of any of the books;
- to explain to the best of his or her knowledge and belief any matter about the compilation of any of the books or to which any of the books relate.
- (10) In this section:
- proceeding* includes:
- (a) in relation to a contravention of Division 2 of Part 2—a proceeding under a law of the Commonwealth, a State or a Territory; and
 - (b) otherwise—a proceeding under a law of the Commonwealth, or of a State or Territory in this jurisdiction.

38 Powers where books not produced

Where a person fails to produce particular books in compliance with a requirement made by another person under this Division, the other person may require the first-mentioned person to state, to the best of his or her knowledge and belief:

- (a) where the books may be found; and
- (b) who last had possession, custody or control of the books and where that person may be found.

39 Power to require person to identify property of body corporate

A person who has power under this Division to require another person to produce books relating to affairs of a body corporate may, whether or not that power is exercised, require the other person, so far as the other person can do so:

- (a) to identify property of the body; and
- (b) to explain how the body has kept account of that property.

39A ASIC may give copy of book relating to registered scheme to another person

- (1) ASIC may, subject to such conditions (if any) as it imposes, give to a person a copy of any book in its possession that relates to a registered scheme.
- (2) If a copy of a book is given to a person under subsection (1) subject to conditions, the person, and any other person who has possession, custody or control of the copy or a copy of it, must comply with the conditions.

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Division 4—Requirements to disclose information about securities or futures contracts

40 When certain powers may be exercised

A power conferred by section 41 or 44 may only be exercised:

- (a) for the purposes of the performance or exercise of any of ASIC's functions and powers under the corporations legislation (other than the excluded provisions); or
- (b) for the purposes of ensuring compliance with the corporations legislation (other than the excluded provisions); or
- or
- (c) in relation to:
 - (i) an alleged or suspected contravention of the corporations legislation (other than the excluded provisions); or
 - (ii) an alleged or suspected contravention of a law of the Commonwealth, or of a State or Territory in this jurisdiction, being a contravention that concerns the management or affairs of a body corporate, or involves fraud or dishonesty and relates to a body corporate, securities or futures contracts; or
- (d) for the purposes of an investigation under Division 1.

41 Acquisitions and disposals of securities

- (1) ASIC may require a dealer to disclose to it, in relation to an acquisition or disposal of securities:
 - (a) the name of the person from or through whom, or on whose behalf, the securities were acquired; or
 - (b) the name of the person to or through whom, or on whose behalf, the securities were disposed of;as the case may be, and the nature of the instructions given to the dealer in relation to the acquisition or disposal.
- (2) ASIC may require a person to disclose to it, in relation to an acquisition or disposal of securities by the person, whether or not

the person acquired or disposed of the securities as trustee for, or for or on behalf of, another person, and, if so:

- (a) the name of the other person; and
 - (b) the nature of any instructions given to the first-mentioned person in relation to the acquisition or disposal.
- (3) ASIC may require a person who conducts a stock market to disclose to ASIC, in relation to an acquisition or disposal of securities on that stock market, the names of the persons who acted in the acquisition or disposal.

43 Exercise of certain powers of ASIC in relation to securities

- (1) This section applies where ASIC considers that:
- (a) it may be necessary to exercise, in relation to securities of a body corporate, a power under section 775 of the Corporations Act; or
 - (b) a contravention of section 845, or Division 2 of Part 7.11, of the Corporations Act may have been committed in relation to securities of a body corporate; or
 - (c) a contravention of Chapter 6C of the Corporations Act may have been committed in relation to shares in a body corporate; or
 - (d) a contravention of a law of the Commonwealth, or of a State or Territory in this jurisdiction, may have been committed, being a contravention that involves fraud or dishonesty and relates to securities of a body corporate; or
 - (e) unacceptable circumstances within the meaning of Part 6.9 of the Corporations Act have, or may have, occurred:
 - (i) in relation to an acquisition of shares in a body corporate; or
 - (ii) as a result of conduct engaged in by a person in relation to shares in, or the affairs of, a body corporate; or
 - (f) a person has, or may have, contravened section 657F of the Corporations Act.
- (2) ASIC may require a director, secretary or executive officer of the body to disclose to ASIC information of which he or she is aware and that:

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- (a) may have affected a dealing that has taken place; or
 - (b) may affect a dealing that may take place;
- in securities of the body.
- (3) If ASIC believes on reasonable grounds that a person can give, information about particular matters, being any or all of the following:
- (a) a dealing in securities of the body;
 - (b) advice, or an analysis or report, that a dealer, an investment adviser, or a securities representative of a person, has given, issued or published about such securities;
 - (c) the financial position of a business carried on by a person who:
 - (i) is or has been (either alone or together with any other person or persons) a dealer or investment adviser; and
 - (ii) has dealt in, has given advice about, or has issued or published an analysis or report about, such securities;
 - (d) the financial position of a business carried on by a nominee controlled by a person of a kind referred to in paragraph (c) or jointly controlled by 2 or more persons at least one of whom is such a person;
 - (e) an audit of, or a report of an auditor about, accounts or records of a dealer or investment adviser, being accounts or records relating to dealings in such securities;
- ASIC may require the person to disclose to it the information that the person has about those particular matters.
- (4) ASIC must not exercise a power conferred by subsection (2) or (3) except:
- (a) if paragraph (1)(a) applies—for the purpose of determining whether or not to exercise a power as mentioned in that paragraph; or
 - (b) if paragraph (1)(b), (c) or (d) applies—for the purpose of investigating the possible contravention; or
 - (c) if paragraph (1)(e) or (f) applies—for the purpose of determining whether or not to make an application under section 657C or 657G of the Corporations Act.

44 Dealings in futures contracts

- (1) ASIC may require a futures broker to disclose to it, in relation to a dealing by the futures broker in a futures contract, whether or not the dealing was effected on another person's behalf, and, if so:
 - (a) the name of the other person; and
 - (b) the nature of the instructions given to the futures broker in relation to the dealing.
- (2) ASIC may require a person to disclose to it, in relation to a dealing in a futures contract effected on the person's instructions, whether or not the person gave the instructions as trustee for, or for or on behalf of, another person, and, if so:
 - (a) the name of the other person; and
 - (b) the nature of any instructions given to the first-mentioned person in relation to the dealing.
- (3) ASIC may require a futures exchange to disclose to it, in relation to a dealing in a futures contract on a futures market of that futures exchange, the names of the members of the futures exchange who were concerned in any act or omission in relation to the dealing.
- (4) ASIC may require a clearing house for a futures market to disclose to ASIC, in relation to a dealing in a futures contract on that futures market, the names of the members of the clearing house who were concerned in any act or omission in relation to the dealing.

46 Exercise of certain powers of ASIC in relation to futures contracts

- (1) ASIC must not exercise a power conferred by this section except:
 - (a) where it considers that it may be necessary to give a direction under section 1138 of the Corporations Act—for the purpose of determining whether or not to give such a direction; or
 - (b) where it considers that there may have been committed:
 - (i) a contravention of Part 8.7 (other than sections 1258 and 1267) of the Corporations Act; or
 - (ii) a contravention of a law of the Commonwealth, or of a State or Territory in this jurisdiction, being a

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contravention that involves fraud or dishonesty and relates to futures contracts;

for the purpose of investigating the possible contravention.

- (2) Where ASIC believes on reasonable grounds that a person can give information about particular matters, being any or all of the following:
- (a) a dealing in futures contracts;
 - (b) advice, or an analysis or report, that a futures broker, a futures adviser, or a futures representative of a person, has given, issued or published about futures contracts;
 - (c) the financial position of a business carried on by a person who is or has been (either alone or together with any other person or persons) a futures broker or futures adviser;
 - (d) the financial position of a business carried on by a nominee controlled by a person of a kind referred to in paragraph (c) or jointly controlled by 2 or more persons at least one of whom is such a person;
 - (e) an audit of, or a report of an auditor about, accounts or records of a futures broker or futures adviser, being accounts or records relating to dealings in futures contracts;

ASIC may require the person to disclose to it the information that the person has about those particular matters.

47 Disclosures to take place in private

- (1) A disclosure to ASIC pursuant to a requirement made under this Division must take place in private and ASIC may give directions about who may be present during it, or during a part of it.
- (2) A person must not be present during a disclosure unless he or she:
- (a) is a member; or
 - (b) is a staff member approved by ASIC; or
 - (c) is entitled to be present by virtue of:
 - (i) a direction under subsection (1); or
 - (ii) subsection 48(1).

Penalty: 10 penalty units or imprisonment for 3 months, or both.

48 Lawyer of person making disclosure may attend

- (1) The lawyer of a person making a disclosure to ASIC pursuant to a requirement made under this Division may be present during the disclosure and may, at such times during it as the representative of ASIC presiding at the meeting during which the disclosure is made determines, address the representatives of ASIC about the disclosure.
- (2) If, in the presiding representative's opinion, a person is trying to obstruct the disclosure by exercising rights under subsection (1), the presiding representative may require the person to stop addressing the representatives of ASIC.

Division 5—Proceedings after an investigation

49 ASIC may cause prosecution to be begun

- (1) This section applies where:
 - (a) as a result of an investigation; or
 - (b) from a record of an examination; conducted under this Part, it appears to ASIC that a person:
 - (c) may have committed an offence against the corporations legislation; and
 - (d) ought to be prosecuted for the offence.
- (2) ASIC may cause a prosecution of the person for the offence to be begun and carried on.
- (3) If:
 - (a) ASIC, on reasonable grounds, suspects or believes that a person can give information relevant to a prosecution for the offence; or
 - (b) the offence relates to matters being, or connected with, affairs of a body corporate, or to matters including such matters;ASIC may, whether before or after a prosecution for the offence is begun, by writing given to the person, or to an eligible person in relation to the body, as the case may be, require the person or eligible person to give all reasonable assistance in connection with such a prosecution.
- (4) Subsection (3) does not apply in relation to:
 - (a) the person referred to in subsection (1); or
 - (b) a person who is or has been that person's lawyer.
- (5) Nothing in this section affects the operation of the *Director of Public Prosecutions Act 1983*.

50 ASIC may cause civil proceeding to be begun

Where, as a result of an investigation or from a record of an examination (being an investigation or examination conducted under this Part), it appears to ASIC to be in the public interest for a person to begin and carry on a proceeding for:

- (a) the recovery of damages for fraud, negligence, default, breach of duty, or other misconduct, committed in connection with a matter to which the investigation or examination related; or
- (b) recovery of property of the person;

ASIC:

- (c) if the person is a company—may cause; or
- (d) otherwise—may, with the person's written consent, cause; such a proceeding to be begun and carried on in the person's name.

Division 6—Hearings

51 Power to hold hearings

ASIC may hold hearings for the purposes of the performance or exercise of any of its functions and powers under the corporations legislation (other than the excluded provisions), other than a function or power conferred on it by Division 1 of this Part or by section 657C or 657G of the Corporations Act.

52 General discretion to hold hearing in public or private

- (1) Subject to sections 53 and 54, ASIC may direct that a hearing take place in public or take place in private.
- (2) In exercising its discretion under subsection (1), ASIC must have regard to:
 - (a) whether evidence that may be given, or a matter that may arise, during the hearing is of a confidential nature or relates to the commission, or to the alleged or suspected commission, of an offence; and
 - (b) any unfair prejudice to a person's reputation that would be likely to be caused if the hearing took place in public; and
 - (c) whether it is in the public interest that the hearing take place in public; and
 - (d) any other relevant matter.

53 Request by person appearing at hearing that it take place in public

- (1) Subject to section 54, where:
 - (a) the corporations legislation (other than the excluded provisions) requires ASIC to give a person an opportunity to appear at a hearing; and
 - (b) the person requests that the hearing or part of the hearing take place in public;the hearing or part must take place in public.

- (2) Despite subsection (1), where ASIC is satisfied, having regard to the matters referred to in subsection 52(2), that it is desirable that a hearing or part of a hearing take place in private, it may direct that the hearing or part take place in private.

54 Certain hearings to take place in private

Where the corporations legislation (other than the excluded provisions and this section) requires a hearing to take place in private, the hearing must take place in private.

55 ASIC may restrict publication of certain material

- (1) Where, at a hearing that is taking place in public or in private, ASIC is satisfied that it is desirable to do so, ASIC may give directions preventing or restricting the publication of evidence given before, or of matters contained in documents lodged with, ASIC.
- (2) In determining whether or not to give a direction under subsection (1), ASIC must have regard to:
 - (a) whether evidence that has been or may be given, or a matter that has arisen or may arise, during the hearing is of a confidential nature or relates to the commission, or to the alleged or suspected commission, of an offence against an Australian law; and
 - (b) any unfair prejudice to a person's reputation that would be likely to be caused unless ASIC exercises its powers under this section; and
 - (c) whether it is in the public interest that ASIC exercises its powers under this section; and
 - (d) any other relevant matter.

56 Who may be present when hearing takes place in private

- (1) ASIC may give directions about who may be present during a hearing that is to take place in private.
- (2) A direction under subsection (1) does not prevent:

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- (a) a person whom the corporations legislation (other than the excluded provisions) requires to be given the opportunity to appear at a hearing; or
 - (b) a person representing under section 59:
 - (i) a person of a kind referred to in paragraph (a) of this subsection; or
 - (ii) a person who, by virtue of such a direction, is entitled to be present at a hearing;
- from being present during the hearing.
- (3) Where ASIC directs that a hearing take place in private, a person must not be present at the hearing unless he or she:
 - (a) is a member; or
 - (b) is a staff member approved by ASIC; or
 - (c) is entitled to be present by virtue of:
 - (i) a direction under subsection (1); or
 - (ii) subsection (2).

Penalty: 10 penalty units or imprisonment for 3 months.

57 Involvement of person entitled to appear at hearing

- (1) This section applies where the corporations legislation (other than the excluded provisions) requires ASIC to give a person an opportunity to appear at a hearing and to make submissions and give evidence to it.
- (2) ASIC must appoint a place and time for the hearing and cause written notice of that place and time to be given to the person.
- (3) If the person does not wish to appear at the hearing, the person may, before the day of the hearing, lodge with ASIC any written submissions that the person wishes ASIC to take into account in relation to the matter concerned.

58 Power to summon witnesses and take evidence

- (1) A member may, by written summons in the prescribed form given to a person:

- (a) require the person to appear before ASIC at a hearing to give evidence, to produce specified documents, or to do both; and
 - (b) require the person to attend from day to day unless excused, or released from further attendance, by a member.
- (2) At a hearing, ASIC may take evidence on oath or affirmation, and for that purpose a member may:
- (a) require a witness at the hearing to either take an oath or make an affirmation; and
 - (b) administer an oath or affirmation to a witness at the hearing.
- (3) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the evidence the person will give will be true.
- (4) The member presiding at a hearing:
- (a) may require a witness at the hearing to answer a question put to the witness; and
 - (b) may require a person appearing at the hearing pursuant to a summons issued under this section to produce a document specified in the summons.
- (5) ASIC may permit a witness at a hearing to give evidence by tendering, and if ASIC so requires, verifying by oath, a written statement.

59 Proceedings at hearings

- (1) A hearing must be conducted with as little formality and technicality, and with as much expedition, as the requirements of the corporations legislation (other than the excluded provisions) and a proper consideration of the matters before ASIC permit.
- (2) At a hearing, ASIC:
 - (a) is not bound by the rules of evidence; and
 - (b) may, on such conditions as it thinks fit, permit a person to intervene; and
 - (c) must observe the rules of natural justice.

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- (3) Subject to subsection (4), Division 4 of Part 4 (other than section 104) applies, so far as practicable, in relation to a hearing as if the hearing were a meeting of ASIC.
- (4) At a hearing before a Division of ASIC, 2 members of the Division form a quorum.
- (5) At a hearing, a natural person may appear in person or be represented by an employee of the person approved by ASIC.
- (6) A body corporate may be represented at a hearing by an officer of the body corporate approved by ASIC.
- (7) An unincorporated association, or a person in the person's capacity as a member of an unincorporated association, may be represented at a hearing by a member or officer of the association approved by ASIC.
- (8) Any person may be represented at a hearing by a barrister or solicitor of the Supreme Court of a State or Territory or of the High Court.

60 ASIC to take account of evidence and submissions

ASIC must take into account:

- (a) evidence given, or a submission made, to it at a hearing; or
 - (b) a submission lodged with it under section 57;
- in making a decision on a matter to which the evidence or submission relates.

61 Reference to Court of question of law arising at hearing

- (1) ASIC may, of its own motion or at a person's request, refer to the Court for decision a question of law arising at a hearing.
- (3) Where a question has been referred under subsection (1), ASIC must not, in relation to a matter to which the hearing relates:
 - (a) give while the reference is pending a decision to which the question is relevant; or
 - (b) proceed in a manner, or make a decision, that is inconsistent with the Court's opinion on the question.

- (4) Where a question is referred under subsection (1):
 - (a) ASIC must send to the Court all documents that were before ASIC in connection with the hearing; and
 - (b) at the end of the proceeding in the Court in relation to the reference, the Court must cause the documents to be returned to ASIC.

62 Protection of members etc.

- (1) A member has, in the performance or exercise of any of his or her functions and powers as a member in relation to a hearing, the same protection and immunity as a Justice of the High Court.
- (1A) A delegate of a member has, in the performance or exercise of any delegated function or power in relation to a hearing, the same protection and immunity as a Justice of the High Court.
- (2) A barrister, solicitor or other person appearing on a person's behalf at a hearing has the same protection and immunity as a barrister has in appearing for a party in a proceeding in the High Court.
- (3) Subject to this Act, a person who is required by a summons under section 58 to appear at a hearing, or a witness at a hearing, has the same protection as a witness in a proceeding in the High Court.

Division 7—Offences

63 Non-compliance with requirements made under this Part

- (1) A person must not, without reasonable excuse, fail to comply with a requirement made under section 19, subsection 21(3), section 30, 31, 32, 32A, 33 or 34, subsection 37(9) or section 38 or 39.

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

- (2) A person must not, without reasonable excuse, fail to comply with a requirement made under section 41, 42, 43, 44, 45 or 46.

Penalty: 50 penalty units or imprisonment for 12 months, or both.

- (3) A person must not, without reasonable excuse, fail to comply with a requirement made under subsection 21(1) or 29(2), paragraph 24(2)(a) or subsection 49(3) or 58(1), (2) or (4).

Penalty: 10 penalty units or imprisonment for 3 months, or both.

- (4) A person must comply with a requirement made under subsection 23(2) or 48(2).

Penalty: 5 penalty units.

64 False information

- (1) A person must not:

(a) in purported compliance with a requirement made under this Part; or

(b) in the course of an examination of the person; give information, or make a statement, that is false or misleading in a material particular.

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

- (2) A person must not, at a hearing, give evidence that is false or misleading in a material particular.

Penalty: 10 penalty units or imprisonment for 3 months, or both.

- (3) It is a defence to a prosecution for a contravention of subsection (1) or (2) if it is proved that the defendant, when giving the information or evidence or making the statement, believed on reasonable grounds that it was true and not misleading.

65 Obstructing person acting under this Part

- (1) A person must not, without reasonable excuse:
- (a) obstruct or hinder a person in the exercise of a power under this Part; or
 - (b) obstruct or hinder a person who is executing a warrant issued under section 36.

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

- (2) The occupier, or person in charge, of premises that a person enters under a warrant issued under section 36 must provide to that person all reasonable facilities and assistance for the effective exercise of his or her powers under the warrant.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

66 Contempt of ASIC

- (1) A person must not:
- (a) obstruct or hinder ASIC or a member in the performance or exercise of any of ASIC's functions and powers; or
 - (b) disrupt a hearing.

Penalty: 50 penalty units or imprisonment for 1 year, or both.

- (2) A person must not, without reasonable excuse, contravene a direction given under subsection 55(1).

Penalty: 50 penalty units or imprisonment for 1 year, or both.

- (3) An offence constituted by a contravention of subsection (1) or (2) is punishable on summary conviction.

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67 Concealing books relevant to investigation

- (1) Where ASIC is investigating, or is about to investigate, a matter, a person must not:
 - (a) in any case—conceal, destroy, mutilate or alter a book relating to that matter; or
 - (b) if a book relating to that matter is in a particular State or Territory—take or send the book out of that State or Territory or out of Australia.

Penalty: 200 penalty units or imprisonment for 5 years, or both.

- (2) It is a defence to a prosecution for a contravention of subsection (1) if it is proved that the defendant intended neither to defeat the purposes of the corporations legislation, nor to delay or obstruct an investigation, or a proposed investigation, by ASIC.

68 Self-incrimination

- (1) For the purposes of this Part, of Division 3 of Part 10, and of Division 2 of Part 11, it is not a reasonable excuse for a person to refuse or fail:
 - (a) to give information; or
 - (b) to sign a record; or
 - (c) to produce a book;in accordance with a requirement made of the person, that the information, signing the record or production of the book, as the case may be, might tend to incriminate the person or make the person liable to a penalty.

- (2) Subsection (3) applies where:
 - (a) before:
 - (i) making an oral statement giving information; or
 - (ii) signing a record;pursuant to a requirement made under this Part, Division 3 of Part 10 or Division 2 of Part 11, a person (other than a body corporate) claims that the statement, or signing the record, as the case may be, might tend to incriminate the person or make the person liable to a penalty; and

- (b) the statement, or signing the record, as the case may be, might in fact tend to incriminate the person or make the person so liable.
- (3) The statement, or the fact that the person has signed the record, as the case may be, is not admissible in evidence against the person in:
 - (a) a criminal proceeding; or
 - (b) a proceeding for the imposition of a penalty; other than a proceeding in respect of:
 - (c) in the case of the making of a statement—the falsity of the statement; or
 - (d) in the case of the signing of a record—the falsity of any statement contained in the record.

69 Legal professional privilege

- (1) This section applies where:
 - (a) under this Part, Division 3 of Part 10, or Division 2 of Part 11, a person requires a lawyer:
 - (i) to give information; or
 - (ii) to produce a book; and
 - (b) giving the information would involve disclosing, or the book contains, as the case may be, a privileged communication made by, on behalf of or to the lawyer in his or her capacity as a lawyer.
- (2) The lawyer is entitled to refuse to comply with the requirement unless:
 - (a) if the person to whom, or by or on behalf of whom, the communication was made is a body corporate that is under official management or being wound up—the official manager or liquidator of the body; or
 - (b) otherwise—the person to whom, or by or on behalf of whom, the communication was made; consents to the lawyer complying with the requirement.

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- (3) If the lawyer so refuses, he or she must, as soon as practicable, give to the person who made the requirement a written notice setting out:
- (a) if the lawyer knows the name and address of the person to whom, or by or on behalf of whom, the communication was made—that name and address; and
 - (b) if subparagraph (1)(a)(i) applies and the communication was made in writing—sufficient particulars to identify the document containing the communication; and
 - (c) if subparagraph (1)(a)(ii) applies—sufficient particulars to identify the book, or the part of the book, containing the communication.

Penalty: 10 penalty units or imprisonment for 3 months, or both.

70 Powers of Court where non-compliance with Part

- (1) This section applies where ASIC is satisfied that a person has, without reasonable excuse, failed to comply with a requirement made under this Part (other than Division 8).
- (2) ASIC may by writing certify the failure to the Court.
- (3) If ASIC does so, the Court may inquire into the case and may order the person to comply with the requirement as specified in the order.

Division 8—ASIC's powers where non-compliance with Part

71 Orders by ASIC

This Division applies where, in ASIC's opinion, information about:

- (a) affairs of a body corporate; or
- (b) securities; or
- (c) futures contracts;

needs to be found out for the purposes of the exercise of any of ASIC's powers under this Part but cannot be found out because a person has failed to comply with a requirement made under this Part.

72 Orders in relation to securities of a body corporate

If paragraph 71(a) applies, ASIC may make one or more of the following:

- (a) an order restraining a specified person from disposing of any interest in specified securities of the body corporate referred to in that paragraph;
- (b) an order restraining a specified person from acquiring any interest in specified securities of the body;
- (c) an order restraining the exercise of voting or other rights attached to specified securities of the body;
- (d) an order directing the holder of securities in respect of which an order under this section is in force to give written notice of that order to any person whom the holder knows to be entitled to exercise a right to vote attached to the securities;
- (e) an order directing the body not to pay, except in the course of winding up, a sum due from the body in respect of specified securities of the body;
- (f) an order directing the body not to register the transfer or transmission of specified securities of the body;

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- (g) an order directing the body not to issue to a person who holds shares in the body shares that the body proposed to issue to the person:
 - (i) because the person holds shares in the body; or
 - (ii) pursuant to an offer or invitation made or issued to the person because the person holds shares in the body.

73 Orders in relation to securities generally

If paragraph 71(b) applies, ASIC may make one or more of the following:

- (a) an order restraining a specified person from disposing of any interest in specified securities;
- (b) an order restraining a specified person from acquiring any interest in specified securities;
- (c) an order restraining the exercise of voting or other rights attached to specified securities;
- (d) an order directing the holder of securities in respect of which an order under this section is in force to give written notice of that order to any person whom the holder knows to be entitled to exercise a right to vote attached to the securities;
- (e) an order directing a body corporate not to pay, except in the course of winding up, a sum due from the body in respect of specified securities;
- (f) an order directing a body corporate not to register the transfer or transmission of specified securities;
- (g) an order directing a body corporate not to issue to a person who holds shares in the body shares that the body proposed to issue to the person:
 - (i) because the person holds such shares; or
 - (ii) pursuant to an offer or invitation made or issued to the person because the person holds such shares.

74 Orders in relation to futures contracts

- (1) If paragraph 71(c) applies, ASIC may make one or more of the following:

- (a) an order restraining a specified person from disposing of specified futures contracts;
 - (b) an order restraining a specified person from acquiring specified futures contracts;
 - (c) an order restraining a specified person from exercising rights under specified futures contracts;
 - (d) an order requiring a specified person to dispose of specified futures contracts, or to dispose of specified futures contracts in a specified manner.
- (2) An order under subsection (1) does not prejudice or affect a right of a futures exchange, or of a clearing house for a futures exchange:
- (a) to cause a futures contract to be closed out, or to close out a futures contract, because of a failure to meet a call for a deposit or margin; or
 - (b) to enter into a liquidating trade in order so to cause a futures contract to be closed out, or in order so to close out a futures contract; or
 - (c) to cause to be registered in a person's name, or to register in a person's name, a futures contract that was previously registered in another person's name.
- (3) In this section:
- right* includes a right enforceable neither at law nor in equity.

75 Orders under this Division

- (1) ASIC may make an order varying or revoking an order in force under this Division.
- (2) An order under this Division must be made by notice published in the *Gazette*.
- (3) Where an order is made under this Division (other than subsection (1)), ASIC must cause to be given to the person to whom the order is directed:
 - (a) a copy of the order; and
 - (b) a copy of each order varying or revoking it.

Part 3 Investigations and information-gathering

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- (4) Where an order under this Division relates to securities, ASIC must cause:
- (a) a copy of the order; and
 - (b) a copy of each order varying or revoking it;
- to be given to:
- (c) in any case—the person who issued or made available, or who will issue or make available, the securities; or
 - (d) if the securities are rights or options—the person against whom the right or option is, or would be enforceable.
- (5) A person must comply with an order in force under this Division.
- Penalty: 25 penalty units or imprisonment for 6 months, or both.

Division 9—Evidentiary use of certain material

76 Statements made at an examination: proceedings against examinee

- (1) A statement that a person makes at an examination of the person is admissible in evidence against the person in a proceeding unless:
 - (a) because of subsection 68(3), the statement is not admissible in evidence against the person in the proceeding; or
 - (b) the statement is not relevant to the proceeding and the person objects to the admission of evidence of the statement; or
 - (c) the statement is qualified or explained by some other statement made at the examination, evidence of the other statement is not tendered in the proceeding and the person objects to the admission of evidence of the first-mentioned statement; or
 - (d) the statement discloses matter in respect of which the person could claim legal professional privilege in the proceeding if this subsection did not apply in relation to the statement, and the person objects to the admission of evidence of the statement.
- (2) Subsection (1) applies in relation to a proceeding against a person even if it is heard together with a proceeding against another person.
- (3) Where a written record of an examination of a person is signed by the person under subsection 24(2) or authenticated in any other prescribed manner, the record is, in a proceeding, prima facie evidence of the statements it records, but nothing in this Part limits or affects the admissibility in the proceeding of other evidence of statements made at the examination.

77 Statements made at an examination: other proceedings

Where direct evidence by a person (the *absent witness*) of a matter would be admissible in a proceeding, a statement that the absent witness made at an examination of the absent witness and that

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tends to establish that matter is admissible in the proceeding as evidence of that matter:

- (a) if it appears to the court or tribunal that:
 - (i) the absent witness is dead or is unfit, because of physical or mental incapacity, to attend as a witness; or
 - (ii) the absent witness is outside the State or Territory in which the proceeding is being heard and it is not reasonably practicable to secure his or her attendance; or
 - (iii) all reasonable steps have been taken to find the absent witness but he or she cannot be found; or
- (b) if it does not so appear to the court or tribunal—unless another party to the proceeding requires the party tendering evidence of the statement to call the absent witness as a witness in the proceeding and the tendering party does not so call the absent witness.

78 Weight of evidence admitted under section 77

- (1) This section applies where evidence of a statement made by a person at an examination of the person is admitted under section 77 in a proceeding.
- (2) In deciding how much weight (if any) to give to the statement as evidence of a matter, regard is to be had to:
 - (a) how long after the matters to which it related the statement was made; and
 - (b) any reason the person may have had for concealing or misrepresenting a material matter; and
 - (c) any other circumstances from which it is reasonable to draw an inference about how accurate the statement is.
- (3) If the person is not called as a witness in the proceeding:
 - (a) evidence that would, if the person had been so called, have been admissible in the proceeding for the purpose of destroying or supporting his or her credibility is so admissible; and

- (b) evidence is admissible to show that the statement is inconsistent with another statement that the person has made at any time.
- (4) However, evidence of a matter is not admissible under this section if, had the person been called as a witness in the proceeding and denied the matter in cross-examination, evidence of the matter would not have been admissible if adduced by the cross-examining party.

79 Objection to admission of statements made at examination

- (1) A party (the *adducing party*) to a proceeding may, not less than 14 days before the first day of the hearing of the proceeding, give to another party to the proceeding written notice that the adducing party:
 - (a) will apply to have admitted in evidence in the proceeding specified statements made at an examination; and
 - (b) for that purpose, will apply to have evidence of those statements admitted in the proceeding.
- (2) A notice under subsection (1) must set out, or be accompanied by writing that sets out, the specified statements.
- (3) Within 14 days after a notice is given under subsection (1), the other party may give to the adducing party a written notice:
 - (a) stating that the other party objects to specified statements being admitted in evidence in the proceeding; and
 - (b) specifies, in relation to each of those statements, the grounds of objection.
- (4) The period prescribed by subsection (3) may be extended by the court or tribunal or by agreement between the parties concerned.
- (5) On receiving a notice given under subsection (3), the adducing party must give to the court or tribunal a copy of:
 - (a) the notice under subsection (1) and any writing that subsection (2) required to accompany that notice; and
 - (b) the notice under subsection (3).

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- (6) Where subsection (5) is complied with, the court or tribunal may either:
 - (a) determine the objections as a preliminary point before the hearing of the proceeding begins; or
 - (b) defer determination of the objections until the hearing.
- (7) Where a notice has been given in accordance with subsections (1) and (2), the other party is not entitled to object at the hearing of the proceeding to a statement specified in the notice being admitted in evidence in the proceeding, unless:
 - (a) the other party has, in accordance with subsection (3), objected to the statement being so admitted; or
 - (b) the court or tribunal gives the other party leave to object to the statement being so admitted.

80 Copies of, or extracts from, certain books

- (1) A copy of, or an extract from, a book relating to:
 - (a) affairs of a body corporate; or
 - (b) a matter referred to in any of paragraphs 31(1)(g) to (m), inclusive, and 32(1)(j) to (p), inclusive; or
 - (c) a matter referred to in paragraph 32A(c) or (d);is admissible in evidence in a proceeding as if the copy were the original book, or the extract were the relevant part of the original book, as the case may be, whether or not the copy or extract was made under section 37.
- (2) A copy of, or an extract from, a book is not admissible in evidence under subsection (1) unless it is proved that the copy or extract is a true copy of the book, or of the relevant part of the book, as the case may be.
- (3) For the purposes of subsection (2), a person who has compared:
 - (a) a copy of a book with the book; or
 - (b) an extract from a book with the relevant part of the book;may give evidence, either orally or by an affidavit or statutory declaration, that the copy or extract is a true copy of the book or relevant part, as the case may be.

81 Report under Division 1

Subject to section 82, where a copy of a report under Division 1 purports to be certified by ASIC as a true copy of such a report, the copy is admissible in a proceeding (other than a criminal proceeding) as prima facie evidence of:

- (a) ASIC's report of its opinion for the purposes of paragraph 461(1)(h) or subparagraph 583(c)(iii) of the Corporations Act; and
- (b) any facts or matters that the report states ASIC to have found to exist.

82 Exceptions to admissibility of report

- (1) This section applies where a party to a proceeding tenders a copy of a report as evidence against another party.
- (2) The copy is not admissible under section 81 in the proceeding as evidence against the other party unless the court or tribunal is satisfied that:
 - (a) a copy of the report has been given to the other party; and
 - (b) the other party, and the other party's lawyer, have had a reasonable opportunity to examine that copy and to take its contents into account in preparing the other party's case.
- (3) Before or after the copy referred to in subsection (1) is admitted in evidence, the other party may apply to cross-examine, in relation to the report, a specified person who, or 2 or more specified persons each of whom:
 - (a) was concerned in preparing the report or making a finding about a fact or matter that the report states ASIC to have found to exist; or
 - (b) whether or not pursuant to a requirement made under this Part, gave information, or produced a book, on the basis of which, or on the basis of matters including which, such a finding was made.
- (4) The court or tribunal must grant an application made under subsection (3) unless it considers that, in all the circumstances, it is not appropriate to do so.

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(5) If:

- (a) the court or tribunal grants an application or applications made under subsection (3); and
- (b) a person to whom the application or any of the applications relate, or 2 or more such persons, is or are unavailable, or does not or do not attend, to be cross-examined in relation to the report; and
- (c) the court or tribunal is of the opinion that to admit the copy under section 81 in the proceeding as evidence against the other party without the other party having the opportunity so to cross-examine the person or persons would unfairly prejudice the other party;

the court or tribunal must refuse so to admit the copy, or must treat the copy as not having been so admitted, as the case requires.

83 Material otherwise admissible

Nothing in this Division renders evidence inadmissible in a proceeding in circumstances where it would have been admissible in that proceeding if this Division had not been enacted.

Division 10—Miscellaneous**84 Requirement made of a body corporate**

Where a provision of this Part empowers a person to make a requirement of a body corporate, the provision also empowers the person to make that requirement of a person who is or has been an officer of the body.

85 Evidence of authority

A person (the *inspector*), other than ASIC, who is about to make, or has made, a requirement of another person under this Part (other than Division 6) must, if the other person requests evidence of the inspector's authority to make the requirement, produce to the other person:

- (a) a current identity card that was issued to the inspector by ASIC and incorporates a photograph of the inspector; and
- (b) if the requirement will be, or was, made under an authorisation by ASIC—a document that was issued by ASIC and sets out the effect of so much of the authorisation as is relevant to making the requirement; and
- (c) otherwise—such evidence (if any) of the inspector's authority to make the requirement as ASIC determines.

86 Giving documents to natural persons

Section 109X of the Corporations Act has effect for the purposes of this Part as if a reference in subsection (2) of that section to leaving a document at an address were a reference to leaving it at that address with a person whom the person leaving the document believes on reasonable grounds:

- (a) to live or work at that address; and
- (b) to have attained the age of 16 years.

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87 Place and time for production of books

A provision of this Part that empowers a person to require the production of books at a place and time specified by the person is taken:

- (a) to require the person to specify a place and time that are reasonable in all the circumstances; and
- (b) if it is reasonable in all the circumstances for the person to require the books to be produced forthwith—to empower the person to require the books to be produced forthwith.

88 Application of Crimes Act and Evidence Act

- (1) For the purposes of Part III of the *Crimes Act 1914*, an examination or a hearing is a judicial proceeding.
- (2) Part 2.2, sections 69, 70, 71 and 147 and Division 2 of Part 4.6 of the *Evidence Act 1995* apply to an examination in the same way that they apply to a proceeding to which that Act applies under section 4 of that Act.

89 Allowances and expenses

- (1) A person who, pursuant to a requirement made under section 19, appears for examination is entitled to the prescribed allowances and expenses (if any).
- (2) A person who, pursuant to a summons issued under section 58, appears at a hearing is entitled to be paid:
 - (a) if the summons was issued at another person's request—by that other person; or
 - (b) otherwise—by ASIC;the prescribed allowances and expenses (if any).
- (3) ASIC may pay such amount as it thinks reasonable on account of the costs and expenses (if any) that a person incurs in complying with a requirement made under this Part.

90 Expenses of investigation under Division 1

Subject to section 91, ASIC must pay the expenses of an investigation.

91 Recovery of expenses of investigation

(1) Where:

- (a) a person is convicted of an offence against a law of the Commonwealth, or of a State or Territory in this jurisdiction, in a prosecution; or
- (b) a judgment is awarded, or a declaration or other order is made, against a person in a proceeding in a court of this jurisdiction; or
- (ba) a person is convicted of an offence against Division 2 of Part 2 in a prosecution; or
- (bb) a judgment is awarded, or a declaration or other order is made, against a person under Division 2 of Part 2 in a proceeding in a court;

begun as a result of an investigation under Division 1, ASIC may make one of the following orders:

- (c) an order that the person pay the whole, or a specified part, of the expenses of the investigation;
 - (d) an order that the person reimburse ASIC to the extent of a specified amount of such of the expenses of the investigation as ASIC has paid;
 - (e) an order that the person pay, or reimburse ASIC in respect of, the whole, or a specified part, of the cost to ASIC of making the investigation, including the remuneration of a member or staff member concerned in the investigation.
- (2) An order under this section must be in writing and must specify when and how the payment or reimbursement is to be made.
- (3) A person must comply with an order under this section that is applicable to the person.

Penalty: 50 penalty units or imprisonment for 1 year, or both.

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- (4) ASIC may recover in a court of competent jurisdiction as a debt due to ASIC so much of the amount payable under an order made under this section as is not paid in accordance with the order.
- (5) A report under Division 1 may include recommendations about the making of orders under this section.

92 Compliance with Part

A person is neither liable to a proceeding, nor subject to a liability, merely because the person has complied, or proposes to comply, with a requirement made, or purporting to have been made, under this Part.

93 Effect of Part

- (1) Except as expressly provided, nothing in this Part limits the generality of anything else in this Part.
- (2) The functions and powers that this Part confers are in addition to, and do not derogate from, any other function or power conferred by a law of the Commonwealth, a State or a Territory.

93AA Enforcement of undertakings

- (1) ASIC may accept a written undertaking given by a person in connection with a matter in relation to which ASIC has a function or power under this Act.
- (2) The person may withdraw or vary the undertaking at any time, but only with ASIC's consent.
- (3) If ASIC considers that the person who gave the undertaking has breached any of its terms, ASIC may apply to the Court for an order under subsection (4).
- (4) If the Court is satisfied that the person has breached a term of the undertaking, the Court may make all or any of the following orders:
 - (a) an order directing the person to comply with that term of the undertaking;

Section 93AA

- (b) an order directing the person to pay to the Commonwealth an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
- (c) any order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
- (d) any other order that the Court considers appropriate.

Part 3A—Enforceable undertakings in relation to registered schemes

93A Undertakings by responsible entity

- (1) ASIC may accept a written undertaking given by the responsible entity of a registered scheme in connection with a matter:
 - (a) concerning the registered scheme; and
 - (b) in relation to which ASIC has a power or function under the corporations legislation (other than the excluded provisions).
- (2) The responsible entity may withdraw or vary the undertaking at any time, but only with ASIC's consent.
- (3) If ASIC considers that the responsible entity has breached any of the terms of the undertaking, ASIC may apply to the Court for an order under subsection (4).
- (4) If the Court is satisfied that the responsible entity has breached a term of the undertaking, the Court may make all or any of the following orders:
 - (a) an order directing the responsible entity to comply with that term of the undertaking;
 - (b) an order directing the responsible entity to transfer to scheme property an amount up to the amount of any financial benefit that the responsible entity has obtained directly or indirectly and that is reasonably attributable to the breach;
 - (c) any order that the Court considers appropriate directing the responsible entity to compensate any person who has suffered loss or damage as a result of the breach;
 - (d) any other order that the Court considers appropriate.
- (5) ASIC must keep a record of the full text of the undertaking.
- (6) ASIC must make available to a person who asks for it a copy of the text of the undertaking, but ASIC must delete from the copy information:

- (a) that the responsible entity has asked it not to release; and
 - (b) that ASIC is satisfied:
 - (i) is commercial in confidence; or
 - (ii) should not be disclosed because it would be against the public interest to do so; or
 - (iii) consists of personal details of an individual.
- (7) If ASIC makes available a copy that has information deleted from it, the copy must include a note stating that information has been deleted.

Part 4—ASIC's business

Division 1—General

94 Arrangement of ASIC's business

Subject to section 12, ASIC may give directions about the arrangement of ASIC's business.

95 ASIC to establish offices

- (1) For the purpose of performing its functions and exercising its powers under the corporations legislation, ASIC:
 - (a) must establish a regional office in each State and Territory in this jurisdiction; and
 - (b) may establish a regional office in a State that is not in this jurisdiction; and
 - (c) may establish such other offices as it thinks fit.
- (2) In deciding on the number and location of its offices, ASIC must seek to ensure that:
 - (a) for the purposes of the corporations legislation (other than the excluded provisions)—it serves adequately the needs of business communities in the States and Territories in this jurisdiction; and
 - (b) for the purposes of Division 2 of Part 2—it serves adequately the needs of business communities throughout Australia.

96 Regional Commissioners

For each regional office established under subsection 95(1) there is to be a different Regional Commissioner, employed by ASIC under subsection 120(3), who must manage the office.

Division 2—Divisions of ASIC

97 ASIC may establish Division

- (1) ASIC may direct in writing that a Division of ASIC consisting of at least 2 specified members is to, either generally or as otherwise provided by the direction, perform or exercise specified functions or powers of ASIC.
- (2) A direction under this section that is in force and does not specify the Chairperson as a member of the Division must specify such a member as the Division's chairperson.

98 Effect of direction establishing Division

- (1) Where a direction under section 97 is in force, this section has effect for the purposes of the performance or exercise by the Division, in accordance with the direction, of functions or powers of ASIC.
- (2) ASIC is taken to consist of the Division.
- (3) If the Chairperson is not a member of the Division, the member whom the direction specifies as the Division's chairperson is taken to be the Chairperson.
- (4) A meeting of the Division is taken to be a meeting of ASIC, but 2 members of the Division form a quorum at a meeting of the Division.

99 ASIC may reconstitute Division

Where a direction under section 97 is in force, ASIC may at any time revoke the direction or amend it in relation to the Division's membership or in any other respect.

100 Effect of reconstituting Division

- (1) This section has effect where, as at the time when a direction is amended under section 99 so as to change a Division's

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membership, the Division as constituted before the change has, in relation to a particular matter, begun but not yet completed the performance of functions, or the exercise of powers, in accordance with the direction as in force before the amendment.

- (2) The Division as constituted after the change may, in relation to that matter, perform functions, and exercise powers, in accordance with the direction as in force after the amendment.

101 Multiple Divisions

A Division of ASIC may perform functions, or exercise powers, of ASIC even though another such Division is performing such functions, or exercising such powers, at the same time.

Division 3—Delegation by ASIC

102 Delegation

- (1) ASIC may, by writing under its common seal, delegate to a person all or any of its functions and powers.
- (2) ASIC must not, without the Minister's approval, delegate a function or power to a person other than:
 - (a) a member; or
 - (b) a staff member; or
 - (c) a person who, by virtue of the regulations, is a prescribed person in relation to the delegation; or
 - (d) a person appointed by APRA under section 45 of the *Australian Prudential Regulation Authority Act 1998*; or
 - (e) a member of the staff of the Australian Competition and Consumer Commission referred to in subsection 27(1) of the *Trade Practices Act 1974*.
- (2A) ASIC must not delegate a function or power to an APRA staff member within the meaning of the *Australian Prudential Regulation Authority Act 1998*, unless the Chief Executive Officer of APRA has agreed to the delegation in writing.
- (2B) ASIC must not delegate a function or power to:
 - (a) a person referred to in paragraph (2)(e); or
 - (b) a person engaged under section 27A of the *Trade Practices Act 1974*;unless the Chairperson of the Australian Competition and Consumer Commission has agreed to the delegation in writing.
- (3) In subsections (1) and (2):

person includes a body.
- (4) In exercising its power under subsection (1), ASIC must seek to ensure that:

Part 4 ASIC's business

Division 3 Delegation by ASIC

Section 102

- (a) the persons who make decisions affecting a particular business community are located as close to that community as practicable; and
 - (b) for the purposes of the corporations legislation (other than the excluded provisions)—members of business communities in the States and Territories in this jurisdiction have prompt and convenient access to decision-making and to ASIC's facilities; and
 - (c) for the purposes of Division 2 of Part 2—members of business communities throughout Australia have prompt and convenient access to decision-making and to ASIC's facilities.
- (5) In the performance of a function, or the exercise of a power, delegated under this section, the delegate is subject to ASIC's directions.
- (6) Where a function or power conferred on ASIC by or under a law (including this Act) and delegated under this section is performed or exercised by the delegate, it is, for the purposes of that law and this Act, taken to have been performed or exercised by ASIC.

Division 4—Meetings of ASIC

103 Convening of meetings

- (1) The Chairperson may convene a meeting to be held at a place and time he or she determines.
- (2) The Chairperson must convene such meetings as he or she thinks necessary for the efficient performance of ASIC's functions.
- (3) If so requested in writing by 2 of the members, the Chairperson must convene a meeting.

104 Approved methods of communication

- (1) If all the members who are not absent from office so agree, a meeting may be held by means of a method of communication, or by means of a combination of methods of communication, approved by ASIC for the purposes of that meeting.
- (2) For the purposes of this Part, a member who participates in a meeting held as permitted by subsection (1) is present at the meeting even if he or she is not physically present at the same place as another member participating in the meeting.
- (3) In this section:
meeting includes a part of a meeting.

105 Quorum

- At a meeting:
- (a) if ASIC consists of 3 or 4 members—2 members; or
 - (b) in any other case—3 members;
- form a quorum.

Section 106

106 Who is to preside at meetings

- (1) The Chairperson must preside at all meetings at which he or she is present.
- (2) If the Chairperson is not present at a meeting but the Deputy Chairperson is present, the Deputy Chairperson must preside.
- (3) If neither the Chairperson nor the Deputy Chairperson is present at a meeting, the members present must elect one of their number to preside.

107 Procedure at meetings

- (1) Questions arising at a meeting must be determined by a majority of the votes of the members present at the meeting.
- (2) The member presiding at a meeting has a deliberative vote but not a casting vote.

Part 5—ASIC's members

Division 1—Terms and conditions

108 Term of office as member

- (1) Subject to this Act, a person appointed as a member holds office for such term of at most 5 years as is specified in the instrument of appointment, but is eligible for re-appointment.
- (2) A person who has attained the age of 65 years must not be appointed as a full-time member.
- (3) A person must not be appointed as a full-time member for a term extending beyond the day on which he or she will attain the age of 65 years.

109 Term of office as Chairperson or Deputy Chairperson

- (1) Subject to this Act, a member appointed as Chairperson or Deputy Chairperson holds office as such until:
 - (a) in any case—the end of his or her current term as a member;
or
 - (b) in any case—he or she otherwise stops being a member; or
 - (c) in the case of a member appointed as Deputy Chairperson—he or she is appointed as Chairperson;whichever happens first.
- (2) A person is not ineligible to be appointed under section 10 merely because he or she has been so appointed before.

110 Resignation

A person may resign as a member, as Chairperson, or as Deputy Chairperson, by writing signed and delivered to the Governor-General.

Section 111

111 Termination of appointment

- (1) The Governor-General may terminate a member's appointment because of misbehaviour, or the physical or mental incapacity, of the member or if the member:
 - (a) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or assigns remuneration or property for their benefit; or
 - (b) is a full-time member and engages without the Minister's consent in paid employment outside the duties of the member's office; or
 - (c) is a full-time member and is absent from duty, except on leave of absence, for 14 consecutive days, or for 28 days in any period of 12 months; or
 - (d) is a part-time member and is absent, except on leave granted in accordance with subsection 113(2), from 3 consecutive meetings of ASIC; or
 - (e) without reasonable excuse, contravenes section 123, subsection 124(2), (4) or (6) or section 125; or
 - (f) contravenes section 128.
- (2) The Governor-General may, with the consent of a full-time member who is:
 - (a) an eligible employee; or
 - (b) a member of the superannuation scheme established by deed under the *Superannuation Act 1990*;retire the member from office on the ground of incapacity.
- (3) In spite of anything contained in this section, a member who:
 - (a) is an eligible employee; and
 - (b) has not reached his or her maximum retiring age within the meaning of the *Superannuation Act 1976*;is not capable of being retired from office on the ground of invalidity within the meaning of Part IVA of that Act unless the Commonwealth Superannuation Board of Trustees No. 2 has given a certificate under section 54C of that Act.
- (4) In spite of anything contained in this section, a member who:

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- (a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; and
 - (b) is under 60 years of age;
- is not capable of being retired from office on the ground of invalidity within the meaning of that Act unless the Commonwealth Superannuation Board of Trustees No. 1 has given a certificate under section 13 of that Act.

112 Remuneration and allowances etc.

- (1) A member must be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination of that remuneration by the Tribunal is in operation, a member must be paid such remuneration as the Minister determines in writing.
- (2) A member must be paid such allowances, and, subject to subsection (3), provided with such other benefits, as the Minister determines in writing.
- (3) The benefits in respect of which the Minister may make a determination under subsection (2) are such benefits (including benefits by way of financial or other assistance in connection with housing, transport, insurance, long service leave and superannuation) as, in the Minister's opinion, are necessary or desirable to assist a member in, or place the member in a position that may facilitate, the performance of his or her functions.
- (4) ASIC may reimburse a member for any loss or expenditure incurred by the member because of, or in the course of, the performance of his or her functions.
- (5) This section has effect subject to the *Remuneration Tribunal Act 1973*.

113 Leave of absence

- (1) A full-time member has such recreation leave entitlements as are determined by the Remuneration Tribunal.
- (2) The Minister may:

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- (a) grant a full-time member leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines; and
- (b) grant a part-time member leave of absence from a meeting of ASIC.

114 Superannuation arrangements

- (1) The Minister may make a written determination about the provision of superannuation benefits for or in relation to a specified full-time member who, when the determination is made, is not an eligible employee or a member of the superannuation scheme established by deed under the *Superannuation Act 1990*.
- (2) The Minister may, by writing, vary or revoke a determination made under subsection (1), even if it has been varied at least once before.
- (3) The Minister must not make a determination under subsection (1), or vary or revoke a determination so made, except in accordance with arrangements approved by the Minister under the *Superannuation Benefits (Supervisory Mechanisms) Act 1990*.
- (4) Superannuation benefits may be provided in accordance with a determination under subsection (1) as that determination is in force when the benefits are provided.

115 Other terms and conditions

A member holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as the Minister determines in writing.

Division 2—Acting appointments

116 Acting members

- (1) The Minister may:
 - (a) appoint a person to act as a full-time member during any period when there are less than 8 persons who are members or are acting as members in accordance with this paragraph or paragraph (b); or
 - (b) appoint a person to act as a part-time member during any period when there are less than 8 persons who are members or are acting as members in accordance with this paragraph or paragraph (a) and there are at least 3 persons who are full-time members or are acting as members in accordance with paragraph (a); or
 - (c) appoint a person to act as a full-time member or as a part-time member during any period when a full-time member (other than the Chairperson or the Deputy Chairperson) or a part-time member, as the case may be, is absent from office, is acting as Deputy Chairperson in accordance with section 118 or, in the case of a part-time member, is, for any reason, unable to perform the functions of his or her office.
- (2) Except so far as the contrary intention appears, a reference in this Act to a member of ASIC includes a reference to a person who is acting as a member under subsection (1).

117 Acting Chairperson

The Minister may appoint a member to act as Chairperson:

- (a) during a vacancy in the office of Chairperson, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Chairperson is absent from office.

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118 Acting Deputy Chairperson

The Minister may appoint a member to act as Deputy Chairperson:

- (a) during a vacancy in the office of Deputy Chairperson, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Deputy Chairperson is absent from office or is acting as Chairperson.

119 Limitation on appointments to act during vacancy

A person appointed under section 116, 117 or 118 to act during a vacancy must not continue for more than 12 months to act during the vacancy.

Division 3—Delegation by members

119A Delegation by members

- (1) A member may, in writing, delegate to a person all or any of his or her functions and powers.
- (2) A member must not, without the Minister's approval, delegate a function or power to a person other than:
 - (a) a staff member; or
 - (b) a person who, by virtue of the regulations, is a prescribed person in relation to the delegation.
- (3) In the performance of a function, or the exercise of a power, delegated under this section, the delegate is subject to the member's directions.

Part 6—ASIC's staff

120 Staff

- (1) Subject to this Part, ASIC's staff must be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) ASIC and the APS employees assisting ASIC together constitute a Statutory Agency; and
 - (b) the Chairperson of ASIC is the Head of that Statutory Agency.
- (3) In addition to the staff referred to in subsection (1), the Chairperson may, on the Commonwealth's behalf, employ under written agreements such persons as the Chairperson thinks necessary for the performance or exercise of any of its functions and powers.
- (4) The terms and conditions of employment of persons employed under subsection (3) are such as the Chairperson determines from time to time with the Minister's written approval.

121 Consultants etc.

- (1) The Chairperson may, on the Commonwealth's behalf, engage, under written agreements, as consultants to, or to perform services for, ASIC in connection with the performance or exercise of any of its functions or powers, persons having suitable qualifications and experience.
- (2) The terms and conditions of engagement of persons engaged under subsection (1) are such as the Chairperson determines from time to time.

122 Staff seconded to ASIC

In addition to the other staff members:

Section 122

- (a) officers and employees of Agencies (within the meaning of the *Public Service Act 1999*), and of authorities of the Commonwealth, whose services are made available to ASIC in connection with the performance or exercise of any of its functions or powers; and
 - (b) persons whose services are so made available under arrangements made under section 249;
- are to assist ASIC.

Part 7—Preventing conflicts of interest and misuse of information

Division 1—Disclosure of interests

123 Members to disclose certain interests to Minister

- (1) A member must, in accordance with this section, disclose to the Minister:
 - (a) any direct or indirect pecuniary interest that the member has or acquires in:
 - (i) a body corporate carrying on business in Australia; or
 - (ii) a business in Australia; and
 - (b) any direct or indirect pecuniary interest that the member has or acquires in interests (including securities, futures contracts or other financial products) regulated by ASIC; and
 - (c) any agreement, understanding or expectation that the member will:
 - (i) resume a previous business relationship (whether or not that relationship existed immediately before the member's appointment); or
 - (ii) enter into a new business relationship;
when the member ceases to be a member; and
 - (d) any severance arrangement or ongoing financial arrangement that takes account of an agreement, understanding or expectation that must be disclosed under paragraph (c).
- (2) For the purpose of paragraph (1)(b), interests are regulated by ASIC if ASIC has a function or power in relation to any aspect of the acquisition, holding, disposal or provision of the interests, or of interests of that kind.
- (3) In disclosing an indirect pecuniary interest in securities, futures contracts or other financial products, the member must identify the particular securities, futures contracts or products.

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- (4) Paragraphs (1)(c) and (d) apply to agreements or understandings entered into, or expectations arising, before or after the member's appointment.
- (5) Paragraph (1)(c) does not require a member to disclose an expectation to enter into a new business relationship unless the member can identify the other party, or one or more other parties, to the relationship. Disclosure is required whether or not the field of business or legal nature of the relationship has been determined.
- (6) A disclosure under this section must be made in writing.

124 Members to disclose certain interests to Chairperson

- (1) This section has effect where a member:
 - (a) is to take part, or is taking part, in determining a matter before ASIC; and
 - (b) has or acquires a direct or indirect pecuniary interest, or a direct or indirect interest of any other kind, that could conflict with the proper performance of the member's functions in relation to determining the matter.
- (2) If the member is not the Chairperson, the member must disclose the interest to the Chairperson.
- (3) If the member is not the Chairperson and the Chairperson becomes aware that the member has the interest, the Chairperson must:
 - (a) if the Chairperson considers that the member should not take part, or not continue to take part, as the case requires, in determining the matter—direct the member accordingly; or
 - (b) in any other case—cause the member's interest to be disclosed to the persons concerned in the matter.
- (4) The member must comply with a direction under paragraph (3)(a).
- (5) If the member is the Chairperson, he or she must cause his or her interest to be disclosed to the persons concerned in the matter.
- (6) Subject to subsection (4), the member must not take part, or continue to take part, as the case requires, in determining the

Section 125

matter unless everyone concerned in it consents to the member so taking part.

- (7) Sections 27F to 27L of the *Commonwealth Authorities and Companies Act 1997* do not apply to members.

125 Notification of interests to ASIC

- (1) This section has effect where a person, in the course of:
- (a) performing functions or services as a staff member (otherwise than as a person appointed or engaged under the *Public Service Act 1999*); or
 - (b) performing a function, or exercising a power, as an ASIC delegate; or
 - (c) performing functions or services by way of assisting an ASIC delegate;

is required to consider a matter in which the person has a direct or indirect pecuniary or other interest that could involve a conflict with the proper performance or exercise by the person of those functions, services or powers.

- (2) The person must forthwith give to ASIC a written notice:
- (a) stating that he or she is required to consider the matter and has an interest in it; and
 - (b) setting out particulars of the interest.
- (3) The person must do whatever is necessary to avoid the conflict referred to in subsection (1).

Penalty: 50 penalty units or imprisonment for 12 months, or both.

126 Defence

It is a defence to a prosecution of a person for a contravention of section 125 if it is established that when the person was required to consider the matter he or she was not aware of a fact or thing whose existence obliged him or her to comply with that section in relation to the matter.

Division 2—Confidentiality

127 Confidentiality

- (1) ASIC must take all reasonable measures to protect from unauthorised use or disclosure information:
- (a) given to it in confidence in or in connection with the performance of its functions or the exercise of its powers under the corporations legislation (other than the excluded provisions); or
 - (b) that is protected information.
- (1A) Disclosing summaries of information or statistics derived from information is authorised use and disclosure of the information provided that information relating to any particular person cannot be found out from those summaries or statistics.
- (1B) Disclosing:
- (a) the names of entities that are RSA providers or RSA institutions for the purposes of the RSA Act; or
 - (b) the addresses at which business relating to entities referred to in paragraph (a) is conducted; or
 - (c) any other information that is reasonably necessary to enable members of the public to contact a person who performs functions in relation to an RSA (within the meaning of the RSA Act);
- is authorised use and disclosure of the information.
- (1C) Disclosing any or all of the following information about an RSA provider is authorised use and disclosure of the information:
- (a) whether or not the RSA provider has lodged a return under section 44 of the RSA Act in respect of a particular year of income;
 - (b) whether or not a notice, or a particular kind of notice, has been given under section 92 of the RSA Act in relation to an RSA provider in respect of a particular year of income.
- (1D) Disclosing:

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- (a) the names of:
 - (i) superannuation funds, approved deposit funds and pooled superannuation trusts that are superannuation entities for the purposes of the SIS Act; or
 - (ii) superannuation entities that are non-complying superannuation funds or non-complying approved deposit funds, or are not pooled superannuation trusts, as the case may be, in relation to a specified year of income for the purposes of Part IX of the Income Tax Assessment Act; or
 - (iii) superannuation funds and approved deposit funds that are eligible roll-over funds for the purposes of Part 24 of the SIS Act; and
 - (b) the addresses at which business relating to funds or trusts referred to in paragraph (a) is conducted; and
 - (d) any other information that is reasonably necessary to enable members of the public to contact a person who performs functions in relation to a superannuation entity (within the meaning of the SIS Act);
- is authorised use and disclosure of the information.
- (1E) Disclosing any or all of the following information about a fund, scheme or trust (of a type referred to in subsection (1D)) is authorised use and disclosure of the information:
- (a) whether or not the trustee of the fund, scheme or trust has lodged a return under section 36 of the SIS Act in respect of a particular year of income;
 - (b) whether or not a decision has been made by APRA to give a notice, or a particular kind of notice, in relation to the fund, scheme or trust under section 40 of the SIS Act in relation to a particular year of income;
 - (c) whether or not a notice or a particular kind of notice has been given by APRA or ASIC under section 40 or 254 of the SIS Act in relation to the fund, scheme or trust, in respect of a particular year of income;
 - (d) in the case of a superannuation fund—whether or not the trustee of the fund has told APRA that the trustee is willing to accept a particular kind of contribution.

- (2) For the purposes of subsection (1), the disclosure of information as required or permitted by a law of the Commonwealth or a prescribed law of a State or internal Territory is taken to be authorised use and disclosure of the information.
- (2A) Disclosing information to one of the following is authorised use and disclosure of the information:
- (a) the Minister;
 - (b) the Secretary of the Department for the purpose of advising the Minister, or an officer authorised for that purpose;
 - (c) APRA.
- (3) For the purposes of subsection (1), the disclosure of information by a person for the purposes of:
- (a) performing the person's functions as:
 - (i) a member, staff member or ASIC delegate; or
 - (ii) a person who is acting as a member or staff member or who is authorised to perform or exercise a function or power of, or on behalf of, ASIC; or
 - (b) the performance of functions or services by the person by way of assisting an ASIC delegate;
- is taken to be authorised use and disclosure of the information.
- (4) Where the Chairperson is satisfied that particular information:
- (a) will enable or assist an agency, being CASAC, the Panel, the Disciplinary Board, the Review Board or any other agency within the meaning of the *Freedom of Information Act 1982*, to perform or exercise any of the agency's functions or powers; or
 - (aa) will enable or assist:
 - (i) the Australian Bureau of Criminal Intelligence; or
 - (ii) the Australian Financial Institutions Commission; or
 - (iii) the Superannuation Complaints Tribunal;to perform any of its functions or powers; or
 - (ab) will enable or assist an officer of the Commonwealth Attorney-General's Department who is in the office known as the Office of Law Enforcement Co-ordination to perform any of his or her functions or powers; or

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- (b) will enable or assist the government, or an agency, of a State or Territory to perform a function or exercise a power; or
 - (c) will enable or assist a government, or an agency, of a foreign country to perform a function, or exercise a power, conferred by a law in force in that foreign country; or
 - (d) will enable or assist a prescribed professional disciplinary body to perform one of its functions;
- the disclosure of the information to the agency, government or disciplinary body by a person whom the Chairperson authorises for the purpose is taken to be authorised use and disclosure of the information.
- (4A) The Chairperson may impose conditions to be complied with in relation to information disclosed under subsection (4).
 - (4B) The disclosure of information to a body corporate specified in regulations under subsection (4C) (including a body corporate that is a foreign company) is authorised use and disclosure of the information if:
 - (a) the Chairperson is satisfied that the information will enable or assist the body corporate to monitor compliance with, enforce, or perform functions or exercise powers under:
 - (i) the Corporations Act; or
 - (iaa) the business law of a State that is not in this jurisdiction; or
 - (ia) the business law of a foreign country; or
 - (ii) the business rules, or the listing rules (if any), of the body corporate; and
 - (b) the disclosure is by a person authorised by the Chairperson for the purpose.
 - (4C) The regulations may specify a body corporate for the purposes of subsection (4B) if, and only if, the body corporate:
 - (a) conducts a stock market or a futures market; or
 - (b) is the securities clearing house or a clearing house for a futures exchange.

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(4D) The Chairperson may impose conditions to be complied with by a body corporate and its officers, employees and agents in relation to information disclosed to the body corporate under subsection (4B).

(4E) A person must comply with a condition imposed under subsection (4D).

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

(4EA) If ASIC discloses information to a disciplinary body under paragraph (4)(d), the body or a member of the body:

- (a) must not disclose the information to any other person; and
- (b) must not use the information for any purpose other than for deciding whether or not to take disciplinary or other action or for taking that action.

Penalty: Imprisonment for 2 years.

(4F) If information is disclosed to a body corporate under subsection (4B), the body corporate, or an officer, employee or agent of the body corporate, must not, without the written consent of the Chairperson:

- (a) disclose the information to a person who is not an officer, employee or agent of the body corporate; or
- (b) use the information otherwise than for the purpose of monitoring compliance with, enforcing, or performing functions or exercising powers under:
 - (i) the Corporations Act; or
 - (iaa) the business law of a State that is not in this jurisdiction; or
 - (ia) the business law of a foreign country; or
 - (ii) the business rules, or the listing rules (if any), of the body corporate.

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

(5) The Chairperson may delegate all or any of his or her functions and powers under subsection (4), (4A), (4B), (4D) or (4F) to a member or staff member.

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- (6) Nothing in any of subsections (1A), (1B), (1C), (1D), (1E), (2), (2A), (3), (4) and (4B) limits:
- (a) anything else in any of those subsections; or
 - (b) what may otherwise constitute, for the purposes of subsection (1), authorised use or disclosure of information.
- (9) In this section:

Income Tax Assessment Act means the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*.

protected information means information disclosed or obtained, or a document given or produced, (whether before or after the commencement of this section), for the purposes of a function in section 12A and relating to the affairs of:

- (a) a body or person regulated by ASIC; or
- (b) a body corporate (including a body corporate that has ceased to exist) that has at any time been, or is, related (within the meaning of the Corporations Act) to a body regulated by ASIC; or
- (c) a person who has been, is, or proposes to be, a customer of a body or person regulated by ASIC;

other than information that has already been lawfully made available to the public from other sources.

RSA Act means the *Retirement Savings Accounts Act 1997*.

SIS Act means the *Superannuation Industry (Supervision) Act 1993*.

Division 3—Restrictions on dealing in futures contracts

128 Certain persons not to deal on the basis of certain information

Where:

- (a) because of being, or having at any time been, or acting as, or having at any time acted as, a member or staff member; or
- (b) because of being, or having at any time been, an ASIC delegate; or
- (c) in the course of assisting, or because of assisting, or having at any time assisted, an ASIC delegate;

a person has acquired information that is not generally available but that, if it were, would be likely to affect materially the price for dealing in a futures contract, the person must not deal in, or procure another person to deal in, that futures contract or a futures contract of the same kind as that futures contract.

Penalty: 200 penalty units or imprisonment for 5 years, or both.

129 Compensation to other parties where section 128 contravened

- (1) A person who contravenes section 128 is liable to compensate any other party to the transaction for any loss sustained by that party because of any difference between the price at which the dealing in the futures contract took place and the price at which it would be likely to have taken place if the information had been generally available.
- (2) Subsection (1) does not affect any other liability of a person who contravenes section 128.

130 Amount of compensation

- (1) Where a person is liable under section 129 to compensate another person for a loss in relation to a transaction, the amount of the compensation is:

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- (a) if the first-mentioned person has already been found by a court to be liable under section 129 to pay an amount or amounts to a person or persons in relation to the 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 to pay; or
 - (b) in any other case—the amount of that loss.
- (2) For the purposes of subsection (1), the onus of establishing that the transaction in relation to which a person is liable to pay compensation is the same as the transaction in relation to which the person has already been found liable to pay an amount or amounts lies on that person.

131 Limitation of actions

An action under section 129 is not maintainable more than 2 years after the day on which the transaction was completed.

132 ASIC may sue

ASIC may, if it considers that it is in the public interest to do so, bring an action under section 129 in the name, and for the benefit, of a person.

Part 8—Finance

Division 1—General

133 Payments to ASIC by Commonwealth

- (1) There is to be paid to ASIC such money as is appropriated by the Parliament for the purposes of ASIC.
- (2) The Minister for Finance may give directions about the amounts in which, and the times at which, money payable under subsection (1) is to be paid to ASIC.

134 ASIC's money

ASIC's money consists of:

- (a) money paid to ASIC under subsection 133(1); and
- (b) any other money paid to ASIC (including money paid by a State or Territory, but not including money received by ASIC on behalf of a State or Territory in the course of performing functions or exercising powers pursuant to an agreement or arrangement entered into under subsection 11(8)).

135 How ASIC's money to be applied

- (1) ASIC's money may be applied only:
 - (a) in paying or discharging expenses, charges, obligations or liabilities that:
 - (i) ASIC; or
 - (ii) the Panel; or
 - (iii) the Disciplinary Board; or
 - (iv) the AASB;incurs or undertakes in connection with performing or exercising any of its functions and powers; or
 - (b) in paying remuneration or allowances payable under this Act (other than remuneration or allowances payable to members of CASAC); or

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- (c) in connection with the provision, in accordance with subsection 112(2), of benefits to members; or
 - (d) in connection with the provision, in accordance with subsection 114(4), of superannuation benefits; or
 - (e) in making, in respect of a full-time member who is not an eligible employee, contributions under a superannuation or retirement scheme, however established.
- (2) Nothing in subsection (1) limits the generality of anything else in that subsection.
 - (3) Subsection (1) does not prevent investment of surplus money of ASIC under section 18 of the *Commonwealth Authorities and Companies Act 1997*.
 - (4) This section and subsection 18(3) of the *Commonwealth Authorities and Companies Act 1997* have effect subject to a provision that the corporations legislation (other than the excluded provisions) makes about money or property that vests in ASIC under such a law.
 - (5) The Minister may by writing require ASIC to pay to the Commonwealth so much of ASIC's money as:
 - (a) is not immediately required for the purposes of ASIC; and
 - (b) does not exceed a specified amount.
 - (6) ASIC must comply with a requirement under subsection (5) and must realise so much of the property in which money has been invested under subsection 18(3) of the *Commonwealth Authorities and Companies Act 1997* as is necessary in order to so comply.
 - (7) Money paid by ASIC to the Commonwealth under subsection (5) forms part of the Consolidated Revenue Fund.

137 Limitation on contracts and leases

- (1) Except as otherwise provided by the regulations, ASIC must not, without the approval of the Minister:
 - (a) enter into a contract under which ASIC is to pay or receive an amount exceeding \$250,000 or, if a higher amount is prescribed, that higher amount; or

- (b) enter into a lease of land for a period exceeding 10 years.
- (2) In paragraph (1)(a):

contract does not include an agreement entered into under subsection 120(3) or 121(1) or an agreement entered into in the exercise of a power conferred by subsection 18(3) of the *Commonwealth Authorities and Companies Act 1997*.

138 Extra matters to be included in annual report

- (1) A report on ASIC under section 9 of the *Commonwealth Authorities and Companies Act 1997* must:
- (a) describe the specific goals ASIC has pursued, and the priorities it has followed, during the year, in performing its functions and pursuing the objects referred to in subsection 1(2); and
 - (b) describe what progress ASIC has made during that year towards achieving those goals; and
 - (c) describe any matters that, during that year, have adversely affected ASIC's effectiveness or have hindered ASIC in pursuing any of those goals and objectives; and
 - (d) describe the performance indicators used by ASIC and ASIC's performance against those indicators.
- (2) The report must also set out information about the exercise during the year of ASIC's powers under Part 15 of the *Retirement Savings Accounts Act 1997* and under Part 29 of the *Superannuation Industry (Supervision) Act 1993*.
- (3) In relation to ASIC's functions under the *Insurance (Agents and Brokers) Act 1984*, the report must include information about:
- (a) the number of persons registered by ASIC for the time being as foreign insurance agents, life insurance brokers or general insurance brokers, respectively; and
 - (b) any suspensions or cancellations effected by ASIC under section 25 or 31H of that Act during the period to which the report relates; and
 - (c) any prosecutions for offences against that Act during that period; and

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- (d) any insolvency of an insurance intermediary that came to ASIC's notice during that period; and
 - (e) any other matters (if any) as are prescribed.
- (4) In relation to ASIC's functions under subsection 12FA(1), the report must include information about ASIC's monitoring and promotion of market integrity and consumer protection in relation to:
- (a) the Australian financial system; and
 - (b) the provision of financial services.

139 Liability to taxation

- (1) Subject to subsection (2), ASIC is not subject to taxation under:
- (a) a law of the Commonwealth (other than a law imposing sales tax, the *Debits Tax Act 1982* or the *Fringe Benefits Tax Act 1986*); or
 - (b) a law of a State or Territory.
- (2) The regulations may provide that subsection (1) does not apply in relation to taxation under a specified law.

Division 2—Trust property

140 ASIC may accept property on trust

ASIC may accept gifts, bequests and devises made to ASIC on trust and may act as trustee of money or other property vested in ASIC on trust.

141 Trust money to be paid into bank account

ASIC must ensure that trust money is paid into an account or accounts:

- (a) maintained by ASIC under subsection 18(2) of the *Commonwealth Authorities and Companies Act 1997*; and
- (b) containing only trust money.

142 How trust property to be applied

- (1) Notwithstanding section 135, money or other property that ASIC holds on trust must be applied or dealt with in accordance with ASIC's powers and duties as trustee, and not otherwise.
- (2) Money that ASIC holds on trust may be invested in any manner in which:
 - (a) the terms of the trust authorise ASIC to invest the money; or
 - (b) a law in force in a State or internal Territory authorises trustees to invest trust funds.

Part 9—The Companies and Securities Advisory Committee

Division 1—General

146 CASAC is a body corporate

CASAC:

- (a) is a body corporate, with perpetual succession; and
- (b) is to have a common seal; and
- (c) may acquire, hold and dispose of real and personal property; and
- (d) may sue and be sued in its corporate name.

Note 1: CASAC was established by section 145 of the *Australian Securities and Investments Commission Act 1989* and is continued in existence by section 261 of this Act.

Note 2: The *Commonwealth Authorities and Companies Act 1997* applies to CASAC. That Act deals with matters relating to Commonwealth authorities, including reporting and accountability, banking and investment, and conduct of officers.

147 Membership

- (1) CASAC consists of the following members, namely, the Chairperson of ASIC and such other members as hold office in accordance with this Part.
- (2) The members (other than the Chairperson of ASIC) are to be appointed by the Minister on a part-time basis.
- (3) The Minister must, by writing, appoint a member (other than the Chairperson of ASIC) as the Convenor of CASAC.
- (4) The Minister must appoint a person as a member only if the Minister is satisfied that the person is qualified for appointment by virtue of his or her knowledge of, or experience in, one or more of the following fields, namely, business, the administration of companies, the financial markets, law, economics and accounting.

- (5) In appointing the members:
- (a) the Minister must have regard to the desirability of the views of business communities in this jurisdiction being adequately represented among the members; and
 - (b) the Minister must ensure so far as practicable that at any time there is at least one member of CASAC from each State in this jurisdiction and the Northern Territory.
- (6) For the purposes of subsection (5), a member is from a particular State or Territory if he or she is a resident of that State or Territory.

148 Functions

CASAC's functions are, on its own initiative or when requested by the Minister, to advise the Minister, and to make to the Minister such recommendations as it thinks fit, about any matter connected with:

- (a) a proposal to make corporations legislation, or to make amendments of the corporations legislation (other than the excluded provisions); or
- (b) the operation or administration of the corporations legislation (other than the excluded provisions); or
- (c) law reform in relation to the corporations legislation (other than the excluded provisions); or
- (d) companies, securities or the futures industry; or
- (e) a proposal for improving the efficiency of the securities markets or futures markets.

149 Term of office as member

Subject to this Act, a person appointed as a member holds office for such term of at least one year and at most 3 years as is specified in the instrument of appointment, but is eligible for re-appointment.

150 Resignation

A person appointed as a member may resign as a member by writing signed by the person and delivered to the Minister.

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151 Termination of appointment

The Minister may terminate the appointment of a member:

- (a) because of the physical or mental incapacity of the member;
or
- (b) if the member becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or assigns remuneration or property for their benefit.

152 Remuneration and allowances etc.

- (1) A member must be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination of that remuneration by the Tribunal is in operation, a member must be paid such remuneration as the Minister determines in writing.
- (2) A member must be paid such allowances as the Minister determines in writing.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.
- (4) In this section:
member does not include the Chairperson of ASIC.

153 Meetings

- (1) Where the Convenor is absent from a meeting, the members who are present at the meeting may appoint one of their number to act as Convenor for the purposes of that meeting.
- (2) The procedure at a meeting must be determined by the members present.

154 CASAC to inform itself in any manner

For the purposes of the performance by CASAC of any of its functions, CASAC may inform itself in such manner as it sees fit.

155 Publication of advice or recommendations

- (1) The Minister may, after consulting CASAC, publish any advice or recommendations given to him or her by CASAC.
- (2) Nothing in subsection (1) affects the power of CASAC to publish any advice or recommendations that it has given to the Minister.

Division 2—Staff and finance

156 Staff

- (1) Subject to this Part, CASAC's staff must be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the Convenor and the APS employees assisting the Convenor together constitute a Statutory Agency; and
 - (b) the Convenor is the Head of that Statutory Agency.
- (3) In addition to the staff referred to in subsection (1), CASAC may, on the Commonwealth's behalf, employ under written agreements such persons as CASAC thinks necessary for the performance or exercise of any of its functions and powers.
- (4) The terms and conditions of employment of persons employed under subsection (3) are such as CASAC determines from time to time with the Minister's written approval.

157 Consultants etc.

- (1) CASAC may, on the Commonwealth's behalf, engage, under written agreements, as consultants to, or to perform services for, CASAC, in connection with the performance or exercise of any of its functions or powers, persons having suitable qualifications and experience.
- (2) The terms and conditions of engagement of persons engaged under subsection (1) are such as CASAC determines from time to time.

158 Staff seconded to CASAC

In addition to the other staff of CASAC:

- (a) officers and employees of Agencies (within the meaning of the *Public Service Act 1999*), and of authorities of the Commonwealth, whose services are made available to

CASAC in connection with the performance or exercise of any of its functions or powers; and

- (b) persons whose services are so made available under arrangements made under section 249; are to assist CASAC.

159 Payments to CASAC by Commonwealth

- (1) There is to be paid to CASAC such money as is appropriated by the Parliament for the purposes of CASAC.
- (2) The Minister for Finance may give directions about the amounts in which, and the times at which, money payable under subsection (1) is to be paid to CASAC.

160 CASAC's money

CASAC's money consists of:

- (a) money paid to CASAC under subsection 159(1); and
- (b) any other money paid to CASAC.

161 How CASAC's money to be applied

- (1) CASAC's money may be applied only:
 - (a) in paying or discharging expenses, charges, obligations, or liabilities, that CASAC incurs or undertakes in connection with performing or exercising any of its functions and powers; or
 - (b) in paying remuneration or allowances payable under this Act to members of CASAC.
- (2) Nothing in subsection (1) limits the generality of anything else in that subsection.
- (3) Subsection (1) does not prevent investment of surplus money of CASAC under section 18 of the *Commonwealth Authorities and Companies Act 1997*.

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- (4) This section has effect subject to a provision that a law of the Commonwealth makes about money or property that vests in CASAC under such a law.
- (5) The Minister may by writing require CASAC to pay to the Commonwealth so much of CASAC's money as:
 - (a) is not immediately required for the purposes of CASAC; and
 - (b) does not exceed a specified amount.
- (6) CASAC must comply with a requirement under subsection (5) and must realise so much of the property in which money has been invested under subsection 18(3) of the *Commonwealth Authorities and Companies Act 1997* as is necessary in order to so comply.
- (7) Money paid by CASAC to the Commonwealth under subsection (5) forms part of the Consolidated Revenue Fund.

163 Limitation on contracts and leases

- (1) Except as otherwise provided by the regulations, CASAC must not, without the approval of the Minister:
 - (a) enter into a contract under which CASAC is to pay or receive an amount exceeding \$50,000 or, if a higher amount is prescribed, that higher amount; or
 - (b) enter into a lease of land for a period exceeding 10 years.
- (2) In paragraph (1)(a):

contract does not include an agreement entered into under subsection 156(3) or 157(1).

165 Liability to taxation

- (1) Subject to subsection (2), CASAC is not subject to taxation under:
 - (a) a law of the Commonwealth (other than a law imposing sales tax, the *Debts Tax Act 1982* or the *Fringe Benefits Tax Act 1986*); or
 - (b) a law of a State or Territory.
- (2) The regulations may provide that subsection (1) does not apply in relation to taxation under a specified law.

166 CASAC may accept property on trust

CASAC may accept gifts, bequests and devises made to CASAC on trust and may act as trustee of money or other property vested in CASAC on trust.

167 Trust money to be paid into bank account

CASAC must ensure that trust money is paid into an account or accounts:

- (a) maintained by CASAC under subsection 18(2) of the *Commonwealth Authorities and Companies Act 1997*; and
- (b) containing only trust money.

168 How trust property to be applied

- (1) Notwithstanding section 161, money or other property that CASAC holds on trust must be applied or dealt with in accordance with CASAC's powers and duties as trustee, and not otherwise.
- (2) Money that CASAC holds on trust may be invested in any manner in which:
 - (a) the terms of the trust authorise CASAC to invest the money;
or
 - (b) a law in force in a State or internal Territory authorises trustees to invest trust funds.

Part 10—The Corporations and Securities Panel

Division 1—General

172 Membership

- (1) The Panel consists of such members, not fewer than 5, as hold office in accordance with this Part.

Note: The Panel was established by section 171 of the *Australian Securities and Investments Commission Act 1989* and is continued in existence by section 261 of this Act.

- (2) The Governor-General is to appoint the members on the nomination of the Minister.
- (3) Each of the members may be appointed as a full-time member or as a part-time member.
- (4) The Minister must nominate a person as a member only if the Minister is satisfied that the person is qualified for appointment by virtue of his or her knowledge of, or experience in, one or more of the following fields, namely, business, the administration of companies, the financial markets, law, economics and accounting.
- (4A) Each person who is the Minister for a State in this jurisdiction or the Northern Territory may from time to time give to the Minister the names of persons who, in the opinion of the first-mentioned Minister:
- (a) are qualified for appointment as members of the Panel by virtue of their knowledge of, or experience in, one or more of the following fields, namely, business, the administration of companies, the financial markets, law, economics and accounting; and
 - (b) ought to be considered for appointment as members of the Panel.
- (4B) In nominating persons as members of the Panel, the Minister must ensure so far as practicable that, at any time, at least one member

of the Panel is a person whose name has been given to the Minister under subsection (4A).

- (5) The performance of the functions or the exercise of the powers of the Panel is not affected merely because its membership is not as prescribed by subsections (1) and (3), unless a continuous period of 3 months has elapsed since its membership ceased to be as so prescribed.

173 President

The Governor-General is to appoint as President of the Panel a person who is, or is to be, a member.

174 Functions and powers of Panel

The Panel has the functions and powers conferred on it by or under the corporations legislation (other than the excluded provisions).

175 Term of office as member

- (1) Subject to this Act, a person appointed as a member holds office for such term of at most 5 years as is specified in the instrument of appointment, but is eligible for re-appointment.
- (2) A person who has attained the age of 65 years must not be appointed as a full-time member.
- (3) A person must not be appointed as a full-time member for a term extending beyond the day on which he or she will attain the age of 65 years.

176 Term of office as President

- (1) Subject to this Act, a person appointed as President holds office as such until:
 - (a) the end of his or her current term as a member; or
 - (b) he or she otherwise stops being a member;whichever happens first.

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- (2) A person is not ineligible to be appointed under section 173 merely because he or she has been so appointed before.

177 Resignation

A person may resign as a member or President by writing signed and delivered to the Governor-General.

178 Termination of appointment

- (1) The Governor-General may terminate a member's appointment because of misbehaviour, or the physical or mental incapacity, of the member or if the member:
- (a) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or assigns remuneration or property for their benefit; or
 - (b) is a full-time member and engages without the Minister's consent in paid employment outside the duties of the member's office; or
 - (c) is a full-time member and is absent from duty, except on leave granted in accordance with section 180, for 14 consecutive days, or for 28 days in any period of 12 months; or
 - (d) contravenes section 128; or
 - (e) without reasonable excuse, contravenes section 185.
- (2) The Governor-General may, with the consent of a full-time member who is an eligible employee, retire the member from office on the ground of incapacity.

179 Remuneration and allowances

- (1) A member must be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination of that remuneration by the Tribunal is in operation, a member must be paid such remuneration as the Minister determines in writing.
- (2) A member must be paid such allowances as the Minister determines in writing.

- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

180 Leave of absence

- (1) A full-time member has such recreation leave entitlements as are determined by the Remuneration Tribunal.
- (2) The Minister may grant a full-time member leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines.

181 Other terms and conditions

A member holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as the Minister determines in writing.

182 Acting President

- (1) The Minister may appoint a member to act as President:
- (a) during a vacancy in the office of President, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when the President is absent from office.
- (2) A person appointed under subsection (1) to act during a vacancy must not continue for more than 12 months to act during the vacancy.

183 Annual report

- (1) The Panel must, as soon as practicable after 30 June, and in any event before 31 October, in each year:
- (a) prepare a report describing the operations of the Panel during the year that ended on 30 June in that year; and
 - (b) give to the Minister a copy of the report.
- (2) Where a copy of a report is given to the Minister under subsection (1), he or she must cause a copy of the report to be laid

Part 10 The Corporations and Securities Panel

Division 1 General

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before each House of the Parliament within 15 sitting days of that House after he or she receives the first-mentioned copy.

Division 2—Conduct of Panel's business

184 Constitution of Panel in relation to particular matters

- (1) The Panel must, for the purposes of the performance or exercise of its functions or powers in relation to a particular matter, be constituted by 3 members in respect of whom a direction is in force under this section in relation to that matter.
- (2) The President may give directions about the members (the *sitting members*) who are to constitute the Panel for the purposes of performing or exercising its functions or powers in relation to particular matters.
- (3) A direction under subsection (2) must:
 - (a) unless the sitting members include the President—designate one of them as President; and
 - (b) in any case—designate one of the sitting members as Deputy President;of the Panel as constituted in relation to the matter concerned.
- (4) Where the President gives a direction as to the sitting members, he or she may:
 - (a) at any time after the giving of the direction and before the commencement of proceedings in relation to the matter; or
 - (b) if one of those persons ceases to be a member, or ceases to be available for the purposes of proceedings in relation to a matter, during the proceedings or after the completion of the proceedings but before the matter to which the proceedings relate is determined—at any time after the person so ceases to be a member or to be available;revoke the direction and give a further direction under subsection (2) as to the additional members.
- (4A) The regulations may make provision in relation to the constitution of the Panel for the purposes of conducting a review under section 657EA or 657EB of the Corporations Act.
- (5) In this section:

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functions or powers means functions or powers of the Panel under the corporations legislation (other than the excluded provisions).

185 Disclosure of interests by members

- (1) Where a member is, or is to be, a member of the Panel as constituted for the purposes of the performance or exercise of its functions or powers in relation to a particular matter and the member has or acquires any interest, pecuniary or otherwise, that could conflict with the proper performance of the member's functions in relation to that matter:
 - (a) the member must disclose the interest to the President and to the parties involved in the matter; and
 - (b) except with the President's consent, the member must not take part in the performance or exercise of the Panel's functions or powers in relation to the matter.
- (1A) The President must not, under paragraph (1)(b), consent to a member taking part in the performance or exercise of the Panel's functions or powers in relation to a matter unless the President believes, on reasonable grounds, that the member's interest is immaterial or indirect and will not prevent the member from acting impartially in relation to the matter.
- (2) Where the President becomes aware that a member who is, or is to be, a member of the Panel as constituted for the purposes of the performance or exercise of its functions or powers in relation to a particular matter has in relation to that matter such an interest as is mentioned in subsection (1), then:
 - (a) the President must revoke the direction given under subsection 184(2) in relation to the matter unless the President believes, on reasonable grounds, that the member's interest is immaterial or indirect and will not prevent the member from acting impartially in relation to the matter; or
 - (b) if the President is not required to revoke that direction under paragraph (a), the President must cause the member's interest to be disclosed to the parties involved in the matter.
- (3) In this section:

functions or powers means functions or powers of the Panel under the corporations legislation (other than the excluded provisions).

186 Application of Divisions 2 and 3 of Part 7

Divisions 2 and 3 of Part 7 apply in relation to the Panel, and in relation to a member of the Panel, as if:

- (a) a reference in section 127 to ASIC included a reference to the Panel; and
- (b) a reference in paragraph 128(1)(a) to a member of ASIC included a reference to a member of the Panel.

Division 3—Panel proceedings

187 Interpretation

For the purposes of the performance or exercise, in relation to a particular matter, of any of the Panel's functions and powers, this Division has effect as if:

- (a) a reference to the Panel were a reference to the Panel as constituted in relation to that matter; and
- (b) a reference to a member were a reference to a member of the Panel as so constituted; and
- (c) if the President is not a member of the Panel as so constituted—a reference to the President were a reference to the member designated, in a direction in force under subsection 184(2), as the President of the Panel as so constituted; and
- (d) a reference to the Deputy President were a reference to the member designated, in a direction in force under subsection 184(2), as Deputy President of the Panel as so constituted.

188 Power to conduct proceedings

- (1) The Panel may conduct proceedings for the purposes of the performance or exercise of any of its functions and powers.
- (2) The President may convene proceedings to be held at a place and time he or she determines.

190 Panel may restrict publication of certain material

- (1) Where, during Panel proceedings, the Panel is satisfied that it is desirable to do so, the Panel may give directions preventing or restricting the publication of submissions or evidence made or given to, or of matters contained in documents lodged with, the Panel.
- (2) In determining whether or not to give a direction under subsection (1), the Panel must have regard to:

- (a) whether submissions or evidence made or given, or that may be made or given, or a matter that has arisen or may arise, during the proceedings is of a confidential nature or relates to the commission, or to the alleged or suspected commission, of an offence against an Australian law; and
 - (b) any unfair prejudice to a person's reputation that would be likely to be caused unless the Panel exercises its powers under this section; and
 - (c) whether it is in the public interest that the Panel exercises its powers under this section; and
 - (d) any other relevant matter.
- (3) In this section:

Panel proceedings includes a part of Panel proceedings.

192 Power to summon witnesses and take evidence

- (1) A member may, by written summons in the prescribed form given to a person:
 - (a) require the person to appear before the Panel at Panel proceedings to give evidence, to produce specified documents, or to do both; and
 - (b) require the person to attend from day to day unless excused, or released from further attendance, by a member.
- (2) In Panel proceedings, the Panel may take evidence on oath or affirmation, and for that purpose a member may:
 - (a) require a witness in the proceedings to either take an oath or make an affirmation; and
 - (b) administer an oath or affirmation to a witness in the proceedings.
- (3) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the evidence the person will give will be true.
- (4) The member presiding at Panel proceedings:
 - (a) may require a witness in the proceedings to answer a question put to the witness; and

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- (b) may require a person appearing in the proceedings pursuant to a summons issued under this section to produce a document specified in the summons.
- (6) If:
 - (a) a person appears in Panel proceedings pursuant to a summons issued under this section; and
 - (b) the summons was issued at a person's request;the person appearing is entitled to be paid the prescribed allowances and expenses (if any) by the person at whose request the summons was issued.
- (7) The Panel may pay such amount as it thinks reasonable on account of the costs and expenses (if any) that a person incurs in complying with a requirement made under this section.

193 Quorum

In Panel proceedings, 2 members form a quorum.

194 Legal representation in proceedings before the Panel

A party to Panel proceedings may be legally represented in the proceedings only with the leave of the Panel.

195 Procedure

- (1) Subject to subsections (2) to (4), the Panel may determine the procedural rules to be followed in Panel proceedings.
- (2) Panel proceedings are to be conducted in accordance with (in order of priority):
 - (a) the requirements of this Division; and
 - (b) the requirements of the regulations.
- (3) Without limiting paragraph (2)(b), the regulations may deal with:
 - (a) making submissions or giving evidence in Panel proceedings; and
 - (b) the right (if any) to appear, or be represented, in Panel proceedings; and

- (c) the matters that the Panel is to take into account when making a decision in the course of Panel proceedings.
- (4) The rules of procedural fairness, to the extent that they are not inconsistent with the provisions of this Act or the regulations made under it, apply to Panel proceedings.

197 Protection of members etc.

- (1) A member has, in the performance or exercise of any of his or her functions and powers as a member in relation to Panel proceedings, the same protection and immunity as a Justice of the High Court.
- (3) Subject to this Act, a person who is required by a summons under section 192 to appear in Panel proceedings, or a witness in Panel proceedings, has the same protection as a witness in a proceeding in the High Court.

198 Non-compliance with requirements made under section 192

A person must not, without reasonable excuse, fail to comply with a requirement made under subsection 192(1), (2) or (4).

Penalty: 10 penalty units or imprisonment for 3 months, or both.

199 False evidence

- (1) A person must not:
 - (a) in a written submission given to the Panel for the purposes of Panel proceedings; or
 - (b) while appearing before the Panel in Panel proceedings; give information or evidence that is false or misleading in a material particular.

Penalty: 10 penalty units or imprisonment for 3 months, or both.

- (2) It is a defence to a prosecution for a contravention of subsection (1) if it is proved that the defendant, when giving the information or evidence, believed on reasonable grounds that it was true and not misleading.

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200 Contempt of Panel

- (1) A person must not:
 - (a) obstruct or hinder the Panel or a member in the performance or exercise of any of the Panel's functions and powers; or
 - (b) disrupt Panel proceedings.

Penalty: 50 penalty units or imprisonment for 1 year, or both.

- (2) A person must not, without reasonable excuse, contravene a direction given under subsection 190(1).

Penalty: 50 penalty units or imprisonment for 1 year, or both.

- (3) An offence constituted by a contravention of subsection (1) or (2) is punishable on summary conviction.

201 Powers of Court where non-compliance with section 192

- (1) This section applies where the Panel, as constituted for the purposes of particular Panel proceedings, is satisfied that a person has, without reasonable excuse, failed to comply with a requirement made under section 192 in, or in relation to, those proceedings.
- (2) The Panel as so constituted may by writing certify the failure to the Court.
- (3) If the Panel does so, the Court may inquire into the case and may order the person to comply with the requirement as specified in the order.

201A Undertakings to the Panel

- (1) In Panel proceedings, the Panel may accept a written undertaking from a person affected, or likely to be affected, by the proceedings about a matter relevant to the proceedings.
- (2) The person may withdraw or vary the undertaking at any time, but only with the consent of the Panel.

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- (3) If the Panel considers that the person has breached any of the terms of the undertaking, the Panel may apply to the Court for an order under subsection (4).
- (4) If the Court is satisfied that the person has breached a term of the undertaking, the Court may make all or any of the following orders:
 - (a) an order directing the person to comply with that term of the undertaking;
 - (b) any order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
 - (c) any other order that the Court considers appropriate.

Part 11—Companies Auditors and Liquidators Disciplinary Board

Division 1—Constitution of Disciplinary Board

203 Membership of Disciplinary Board

- (1) The Disciplinary Board consists of:
 - (a) a Chairperson; and
 - (b) a member selected by the Minister from a panel of 5 persons, being persons resident in Australia, nominated by the National Council of the Institute of Chartered Accountants in Australia; and
 - (c) a member selected by the Minister from a panel of 5 persons, being persons resident in Australia, nominated by the National Council of the Australian Society of Certified Practising Accountants.

Note: The Disciplinary Board was established by section 202 of the *Australian Securities and Investments Commission Act 1989* and is continued in existence by section 261 of this Act.

- (2) A person is not eligible for appointment as Chairperson unless he or she is enrolled as a barrister, as a solicitor, as a barrister and solicitor or as a legal practitioner of the High Court, of any federal court or of the Supreme Court of a State or Territory and has been so enrolled for a period of at least 5 years.
- (3) The Chairperson and each of the other members are to be appointed by the Minister on a part-time basis.

204 Functions and powers of Disciplinary Board

The Disciplinary Board has the functions and powers conferred on it by or under the corporations legislation (other than the excluded provisions).

205 Term of office

Subject to this Act, the Chairperson, each other member and each deputy of a member holds office for such term of at most 3 years as is specified in the instrument of his or her appointment, but is eligible for re-appointment.

206 Resignation from office

A person may resign his or her office as Chairperson, member or deputy of a member by writing signed and delivered to the Minister.

207 Termination of appointment

- (1) The Minister may terminate the appointment of the Chairperson, any other member or a deputy of a member because of misbehaviour or physical incapacity.
- (2) If the Chairperson, any other member or a deputy of a member:
 - (a) is absent, without leave of the Disciplinary Board, from 3 consecutive meetings of the Board (being, in the case of a deputy of a member, meetings that the deputy is required to attend); or
 - (b) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or assigns remuneration or property for their benefit; or
 - (c) is convicted in Australia of an offence punishable by imprisonment for 12 months or longer; or
 - (d) becomes of unsound mind; or
 - (e) fails, without reasonable excuse, to comply with section 211;the Minister must terminate his or her appointment.

208 Acting Chairperson

The Minister may appoint a person who is eligible for appointment as Chairperson to act as Chairperson:

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- (a) during a vacancy in the office of Chairperson, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Chairperson is absent from office.

209 Appointment of deputies

- (1) The Minister may:
 - (a) appoint a person selected by him or her from the panel referred to in paragraph 203(1)(b) to be the deputy of the member referred to in that paragraph; and
 - (b) appoint a person selected by him or her from the panel referred to in paragraph 203(1)(c) to be the deputy of the member referred to in that paragraph.
- (2) A deputy of a member is entitled to attend meetings of the Disciplinary Board at which the member is not present and, while so attending, is taken to be a member of the Disciplinary Board.

210 Meetings

- (1) The Chairperson must convene such meetings of the Disciplinary Board as he or she considers necessary for the performance of its functions.
- (2) The Chairperson must preside at all meetings of the Disciplinary Board.
- (3) At a meeting of the Disciplinary Board, the Chairperson and one member constitute a quorum.
- (4) A question arising at a meeting of the Disciplinary Board must be determined by a majority of votes of the persons present and voting.
- (5) At a meeting, the Chairperson has a deliberative vote and, in the event of an equality of votes, also has a casting vote.
- (6) Subject to this section, the procedures for convening meetings of the Disciplinary Board and for the conduct of business by the Disciplinary Board must be as the Disciplinary Board determines.

211 Disclosure of interests

- (1) For the purposes of this section, *member* includes a deputy of a member.
- (2) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Disciplinary Board must, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of his or her interest at a meeting of the Disciplinary Board.
- (3) A disclosure under subsection (2) must be recorded in the minutes of the meeting of the Disciplinary Board and the member must not, unless the Minister or the Disciplinary Board otherwise determines:
 - (a) be present during any deliberation of the Disciplinary Board with respect to that matter; or
 - (b) take part in any decision of the Disciplinary Board with respect to that matter.
- (4) For the purpose of the making of a determination by the Disciplinary Board under subsection (3) in relation to a member who has made a disclosure under subsection (2), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates must not:
 - (a) be present during any deliberation of the Disciplinary Board for the purpose of making the determination; or
 - (b) take part in the making by the Disciplinary Board of the determination.

212 Remuneration and allowances

- (1) In this section:
member includes a deputy of a member.
- (2) A member must be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination of that remuneration by the Tribunal is in operation, a member must be paid such remuneration as the Minister determines in writing.

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- (3) A member must be paid such allowances as the Minister determines in writing.
- (4) This section has effect subject to the *Remuneration Tribunal Act 1973*.

213 Confidentiality

- (1) The Disciplinary Board must take all reasonable measures to protect from unauthorised use or disclosure information given to it in confidence in or in connection with the performance of its functions or the exercise of its powers under the corporations legislation (other than the excluded provisions).
- (2) For the purposes of subsection (1), the disclosure of information:
 - (a) as required or permitted by a law of the Commonwealth or a prescribed law of a State or Territory; or
 - (b) in order to enable or assist an authority or person in:
 - (i) a State or Territory; or
 - (ii) a country outside Australia and the external Territories; to perform or exercise a function or power that corresponds, or is analogous, to any of the Disciplinary Board's, or ASIC's functions and powers;is taken to be authorised disclosure of the information.

214 Annual report

- (1) The Disciplinary Board must, as soon as practicable after 30 June, and in any event before 31 October, in each year:
 - (a) prepare a report describing the operations of the Disciplinary Board during the year that ended on 30 June in that year; and
 - (b) give to the Minister a copy of the report.
- (2) Where a copy of a report is given to the Minister under subsection (1), he or she must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after he or she receives the first-mentioned copy.

Division 2—Hearings by Disciplinary Board

215 Definition

In this Division:

hearing means a hearing held by the Disciplinary Board under this Division.

216 Hearings

- (1) The Disciplinary Board may, at a meeting of the Disciplinary Board, hold a hearing for the purpose of the performance of its functions, or the exercise of its powers.
- (2) Subject to subsection (3), hearings must take place in private.
- (3) If a person (other than ASIC) who is entitled to be given an opportunity to appear at a hearing requests that the hearing take place in public, the hearing must, subject to any directions of the Disciplinary Board under subsection (5), take place in public.
- (4) The Disciplinary Board may give directions as to the persons who may be present at a hearing that is to take place in private.
- (5) Where, at a hearing that is taking place in public at the request of a person, the Disciplinary Board is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter or in order to protect the interests of any other person, the Disciplinary Board may:
 - (a) direct that a part of the hearing take place in private and give directions as to the persons who may be present; or
 - (b) give directions preventing or restricting the publication of evidence given before the Disciplinary Board or of matters contained in documents lodged with or produced to the Disciplinary Board.
- (6) Nothing in a direction given by the Disciplinary Board under subsection (4) or paragraph (5)(a) prevents the presence at a hearing of:

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- (a) a person representing ASIC pursuant to subsection 218(3); or
 - (b) a person who is entitled to be given an opportunity to appear at the hearing; or
 - (c) a person representing, pursuant to subsection 218(3), a person referred to in paragraph (b); or
 - (d) a person representing, pursuant to subsection 218(3), a person who, by reason of a direction given by the Disciplinary Board under subsection (4), or paragraph (5)(a), of this section is entitled to be present at the hearing.
- (7) Where the Disciplinary Board directs that a hearing or part of a hearing take place in private, a person (other than the Chairperson, a member, or a member of the staff of the Disciplinary Board approved by the Disciplinary Board) must not be present at the hearing unless he or she is entitled to be present by virtue of the direction or by virtue of subsection (6).
- Penalty: 10 penalty units or imprisonment for 3 months.
- (8) Where the Disciplinary Board is required to give a person an opportunity to appear at a hearing, the Disciplinary Board must appoint a day, time and place for the hearing and cause notice in writing of the day, time and place to be given to the person.
- (9) A person who is entitled to be given an opportunity to appear at a hearing and who does not wish to appear at the hearing may, before the day of the hearing, lodge with the Disciplinary Board in writing any submissions that he, she or it wishes the Disciplinary Board to take into account in relation to the matter.
- (10) The Disciplinary Board must take into account a submission made to or lodged with, or evidence adduced before, the Disciplinary Board when making any decision on the matter to which the submission or evidence relates.

217 Power to summon witnesses and take evidence

- (1) The Chairperson or a member may summon a person to appear at a hearing to give evidence and to produce such documents (if any) as are referred to in the summons, being documents relating to the matters that are the subject of the hearing.

- (2) The Disciplinary Board may, at a hearing, take evidence on oath or affirmation and for that purpose the Chairperson may:
 - (a) require a person appearing at the hearing to give evidence to either take an oath or make an affirmation; and
 - (b) administer an oath or affirmation to a person so appearing at the hearing.
- (3) The oath or affirmation to be taken or made by a person for the purposes of subsection (2) is an oath or affirmation that the evidence he or she will give will be true.

218 Proceedings at hearings

- (1) At a hearing:
 - (a) the proceedings must be conducted with as little formality and technicality, and with as much expedition, as the requirements of the corporations legislation (other than the excluded provisions) and a proper consideration of the matters before the Disciplinary Board permit; and
 - (b) the Disciplinary Board is not bound by the rules of evidence; and
 - (c) the Disciplinary Board may, on such conditions as it thinks fit, permit a person to intervene in the proceedings.
- (2) The Disciplinary Board must observe the rules of natural justice at and in connection with a hearing.
- (3) At a hearing:
 - (a) ASIC may be represented by:
 - (i) a staff member, or a member or acting member, of ASIC; or
 - (ii) a person authorised by ASIC for the purpose; and
 - (b) a natural person may appear in person or may be represented by an employee of the person approved by the Disciplinary Board; and
 - (c) a body corporate (other than ASIC) may be represented by an employee, or by a director or other officer, of the body corporate approved by the Disciplinary Board; and

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- (d) an unincorporated association of persons or a member of an unincorporated association of persons may be represented by a member or officer of the association approved by the Disciplinary Board; and
 - (e) any person may be represented by a barrister or solicitor of the Supreme Court of a State or Territory or of the High Court.
- (4) A person who attends at a hearing pursuant to a summons issued under subsection 217(1) is entitled to be paid:
- (a) in a case where the summons was issued at another person's request—by that other person; or
 - (b) in any other case—by the Disciplinary Board;
- such allowances and expenses as are provided for by the regulations.
- (5) The Disciplinary Board may permit a person appearing as a witness at a hearing to give evidence by tendering, and, if the Disciplinary Board thinks fit, verifying by oath, a written statement.

219 Failure of witnesses to attend and answer questions

- (1) A person served, as prescribed, with a summons to appear as a witness at a hearing must not, without reasonable excuse:
- (a) fail to attend as required by the summons; or
 - (b) fail to attend from day to day unless excused, or released from further attendance, by the Chairperson.
- (2) A person appearing as a witness at a hearing must not, without reasonable excuse:
- (a) when required pursuant to subsection 217(2) to either take an oath or make an affirmation—refuse or fail to comply with the requirement; or
 - (b) refuse or fail to answer a question that he or she is required to answer by the Chairperson; or
 - (c) refuse or fail to produce a document that he or she was required to produce by a summons under subsection 217(1) served on him or her as prescribed.

(3) A person must not, at a hearing, give evidence that is false or misleading.

(4) A person must not contravene subsection (1), (2) or (3).

Penalty: 10 penalty units or imprisonment for 3 months.

(5) A person who contravenes subsection (3) is not guilty of an offence against subsection (4) if it is proved that he or she, when giving the evidence, believed on reasonable grounds that it was true and not misleading.

(6) Where the Disciplinary Board is satisfied that:

(a) a person served, as prescribed, with a summons to appear as a witness at a hearing has, without reasonable excuse, failed to attend as required by paragraph (1)(a) or (b); or

(b) a person appearing as a witness at a hearing has, without reasonable excuse:

(i) when required pursuant to subsection 217(2) either to take an oath or make an affirmation; or

(ii) when required by the Chairperson to answer a question; or

(iii) when required to produce a document by a summons under subsection 217(1) served on him or her as prescribed;

refused or failed to comply with the requirement;

the Chairperson may, by instrument in writing, certify the failure to attend or the refusal or failure to comply with the requirement, as the case may be, to the Court.

(7) Where a certificate is given under subsection (6), the Court may inquire into the case and, if it is satisfied that the person to whom the certificate relates has, without reasonable excuse, failed to attend or refused or failed to comply with a requirement as mentioned in the certificate:

(a) may order the person to attend or to comply with the requirement at a hearing to be held at a time and place specified in the order; or

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- (b) may punish the person in the same manner as if he or she had been guilty of contempt of the Court and, if it thinks fit, also make an order under paragraph (a).

220 Contempt of Disciplinary Board

- (1) A person must not:
 - (a) obstruct or hinder the Disciplinary Board or a member in the performance or exercise of any of the Disciplinary Board's functions and powers; or
 - (b) disrupt a hearing.

Penalty: 10 penalty units or imprisonment for 3 months.

- (2) A person must not, without reasonable excuse, contravene a direction given under paragraph 216(5)(b).

Penalty: 10 penalty units or imprisonment for 3 months.

- (3) An offence constituted by a contravention of subsection (1) or (2) is punishable on summary conviction.

221 Protection of members etc.

- (1) The Chairperson or a member has, in the performance of his or her functions or the exercise of his or her powers as the Chairperson or a member in relation to a hearing, the same protection and immunity as a Justice of the High Court.
- (2) A barrister, solicitor or other person appearing on behalf of a person at a hearing has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.
- (3) Subject to this Act, a person summoned to attend or appearing as a witness at a hearing has the same protection as a witness in proceedings in the High Court.

222 Hearings taken to be judicial proceedings

A hearing is, for the purposes of Part III of the *Crimes Act 1914*, taken to be a judicial proceeding.

223 Costs

(1) Where:

- (a) the Disciplinary Board holds a hearing in relation to a person in accordance with subsection 1294(1) of the Corporations Act; and
- (b) the Disciplinary Board cancels or suspends the registration of the person as an auditor, as a liquidator or as a liquidator of a specified body corporate, or deals with the person:
 - (i) by admonishing or reprimanding the person; or
 - (ii) by requiring the person to give an undertaking to engage in, or to refrain from engaging in, specified conduct;

the Disciplinary Board may require the person to pay an amount specified by the Disciplinary Board, being all or part of:

- (c) the costs of and incidental to the hearing; or
- (d) the costs of ASIC in relation to the hearing; or
- (e) the costs mentioned in paragraph (c) and the costs mentioned in paragraph (d).

(2) Where:

- (a) the Disciplinary Board holds a hearing in relation to a person in accordance with subsection 1294(1) of the Corporations Act; and
- (b) the Disciplinary Board refuses to make an order cancelling or suspending the registration of the person as an auditor, as a liquidator or as a liquidator of a specified body corporate, as the case requires, and does not deal with the person in any of the ways mentioned in subparagraphs (1)(b)(i) and (ii);

the Disciplinary Board may require ASIC to pay an amount specified by the Disciplinary Board, being all or part of:

- (c) the costs of and incidental to the hearing; or
- (d) the costs of the person in relation to the hearing; or
- (e) the costs mentioned in paragraph (c) and the costs mentioned in paragraph (d).

(3) Where:

- (a) under subsection (1), the Disciplinary Board requires a person to pay all or part of the costs of and incidental to a

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hearing held by the Disciplinary Board in relation to the person (whether or not the Disciplinary Board also requires the person to pay all or part of ASIC's costs in relation to the hearing); or

- (b) under subsection (2), the Disciplinary Board requires ASIC to pay all or part of the costs of and incidental to a hearing held by the Disciplinary Board in relation to a person (whether or not the Disciplinary Board also requires ASIC to pay all or part of the costs of the person in relation to the hearing);

the amount of the costs of and incidental to the hearing so required to be paid by the first-mentioned person or by ASIC, as the case may be, may be recovered in a court of competent jurisdiction as a debt due to the Commonwealth.

- (4) Where, under subsection (1), the Disciplinary Board requires a person to pay all or part of ASIC's costs in relation to a hearing held by the Disciplinary Board in relation to the person (whether or not the Disciplinary Board also requires the person to pay all or part of the costs of and incidental to the hearing), the amount of ASIC's costs so required to be paid by the person may be recovered in a court of competent jurisdiction as a debt due to the Commonwealth.
- (5) Where, under subsection (2), the Disciplinary Board requires ASIC to pay all or part of the costs of a person in relation to a hearing held by the Disciplinary Board in relation to the person (whether or not the Disciplinary Board also requires ASIC to pay all or part of the costs of and incidental to the hearing), the amount of the costs of the person so required to be paid by ASIC may be recovered in a court of competent jurisdiction as a debt due to the person.

Part 12—Accounting standards

224 Main objects of this Part

The main objects of this Part are:

- (a) to facilitate the development of accounting standards that require the provision of financial information that:
 - (i) allows users to make and evaluate decisions about allocating scarce resources; and
 - (ii) assists directors to discharge their obligations in relation to financial reporting; and
 - (iii) is relevant to assessing performance, financial position, financing and investment; and
 - (iv) is relevant and reliable; and
 - (v) facilitates comparability; and
 - (vi) is readily understandable; and
- (b) to facilitate the Australian economy by:
 - (i) reducing the cost of capital; and
 - (ii) enabling Australian entities to compete effectively overseas; and
 - (iii) having accounting standards that are clearly stated and easy to understand; and
- (c) to maintain investor confidence in the Australian economy (including its capital markets).

Division 1—The Australian financial reporting system

225 Functions and powers of the Financial Reporting Council

Functions

- (2) The FRC functions are:
- (a) to provide broad oversight of the process for setting accounting standards in Australia and to give the Minister reports and advice on that process; and
 - (b) to appoint the members of the AASB (other than the Chair); and
 - (c) to approve and monitor the AASB's:
 - (i) priorities; and
 - (ii) business plan; and
 - (iii) budget; and
 - (iv) staffing arrangements (including level, structure and composition of staffing); and
 - (d) to determine the AASB's broad strategic direction; and
 - (e) to give the AASB directions, advice or feedback on matters of general policy and the AASB's procedures; and
 - (f) to monitor the development of international accounting standards and the accounting standards that apply in major international financial centres, and:
 - (i) to further the development of a single set of accounting standards for world-wide use with appropriate regard to international developments; and
 - (ii) to promote the adoption of international best practice accounting standards in the Australian accounting standard setting process if doing so would be in the best interests of both the private and public sectors in the Australian economy; and
 - (g) to monitor:
 - (i) the operation of accounting standards to assess their continued relevance and their effectiveness in achieving

- their objectives in respect of both the private and public sectors of the Australian economy; and
- (ii) the effectiveness of the AASB's consultative arrangements; and
 - (h) to seek contributions towards the costs of the Australian accounting standard setting process; and
 - (i) to monitor and periodically review the level of funding, and the funding arrangements, for the AASB; and
 - (j) to establish appropriate consultative mechanisms; and
 - (k) to advance and promote the main objects of this Part; and
 - (l) any other functions that the Minister confers on the FRC by written notice to the FRC Chair.

Note: The FRC was established by subsection 225(1) of the *Australian Securities and Investments Commission Act 1989* and is continued in existence by section 261 of this Act.

Powers

- (3) As well as any other powers conferred by this Act, the FRC has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (4) Without limiting subsection (3), the FRC may establish committees and advisory groups.

Restriction on powers

- (5) The FRC does not have power to direct the AASB in relation to the development, or making, of a particular standard.
- (6) The FRC does not have power to veto a standard formulated and recommended by the AASB.

226 The Australian Accounting Standards Board

- (2) The AASB:
 - (a) is a body corporate with perpetual succession; and
 - (b) must have a common seal; and
 - (c) may acquire, hold and dispose of real and personal property; and

Part 12 Accounting standards

Division 1 The Australian financial reporting system

Section 227

(d) may sue and be sued in its corporate name.

Note 1: The AASB was established by subsection 226(1) of the *Australian Securities and Investments Commission Act 1989* and is continued in existence by section 261 of this Act.

Note 2: The *Commonwealth Authorities and Companies Act 1997* applies to the AASB. This Act makes provision for reporting obligations (annual report, interim reports and estimates), accounting records, audit, banking, investment of funds and duties of officers.

(3) All courts, judges and persons acting judicially must:

(a) take judicial notice of the imprint of the common seal of the AASB appearing on a document; and

(b) presume that the document was duly sealed.

227 AASB's functions and powers

Functions

(1) The functions of the AASB are:

(a) to develop a conceptual framework, not having the force of an accounting standard, for the purpose of evaluating proposed accounting standards and international standards; and

(b) to make accounting standards under section 334 of the Corporations Act for the purposes of the corporations legislation (other than the excluded provisions); and

(c) to formulate accounting standards for other purposes; and

(d) to participate in and contribute to the development of a single set of accounting standards for world-wide use; and

(e) to advance and promote the main objects of this Part.

Note 1: The standards made under paragraph (b) are given legal effect by the Corporations Act. The standards formulated under paragraph (c) do not have legal effect under the Corporations Act itself but may be applied or adopted by some other authority.

Note 2: See section 224 and sections 228 to 233 for the framework within which the AASB is to formulate and make accounting standards.

(2) In carrying out its functions under paragraphs (1)(a) and (d), the AASB must have regard to the interests of Australian corporations

which raise or propose to raise capital in major international financial centres.

Powers

- (3) The AASB has power to:
- (a) engage staff and consultants; and
 - (b) establish committees, advisory panels and consultative groups; and
 - (c) receive money contributed towards its operating costs; and
 - (d) do anything else that is necessary for, or reasonably incidental to, the performance of its functions.

Manner of making and formulating standards

- (4) Without limiting paragraph (1)(b) or (c), the AASB may make or formulate an accounting standard by issuing the text of an international accounting standard. The text of the international accounting standard may be modified to the extent necessary to take account of the Australian legal or institutional environment and, in particular, to ensure that any disclosure and transparency provisions in the standard are appropriate to the Australian legal or institutional environment.

Manner of participating in the development of international standards

- (5) Without limiting paragraph (1)(d), the AASB may distribute the text of a draft international accounting standard (whether or not modified to take account of the Australian legal or institutional environment) for the purposes of consultation.
- (7) This Part confers functions and powers to the extent to which doing so promotes, encourages and facilitates the integration and efficiency of, and investment in, Australia's national economy.

Division 2—Accounting standards

228 Purposive interpretation of standards

Objects of this Part

- (1) In interpreting an accounting standard made or formulated by the AASB, a construction that would promote the objects of this Part is to be preferred to a construction that would not promote those objects.

Note: Section 224 states the main objects of this Part.

Purposes or objects of particular standard

- (2) In interpreting an accounting standard made or formulated by the AASB, a construction that would promote a purpose or object of the standard (to the extent to which it is not inconsistent with the objects of this Part) is to be preferred to a construction that would not promote that purpose or object. This is so even if the purpose or object is not expressly stated in the standard.

229 Generic and specific standards

- (1) Accounting standards made or formulated by the AASB may:
 - (a) be of general or limited application (including a limitation to specified bodies or undertakings); and
 - (b) differ according to differences in time, place or circumstance.
- (2) In making and formulating accounting standards, the AASB:
 - (a) must have regard to the suitability of a proposed standard for different types of entities; and
 - (b) may apply different accounting requirements to different types of entities; and
 - (c) must ensure that there are appropriate accounting standards for each type of entity that must comply with accounting standards.

230 Comparative amounts

The accounting standards for the preparation of financial reports for a period may require the inclusion in those reports of comparative amounts for earlier periods.

231 Cost/benefit analysis

- (1) The AASB must carry out a cost/benefit analysis of the impact of a proposed accounting standard before making or formulating the standard. This does not apply where the standard is being made or formulated by issuing the text of an international standard (whether or not modified to take account of the Australian legal or institutional environment).

Note: Subsection 227(3) allows the AASB to make or formulate a standard by issuing the text of an international standard. Under subsection (2) of this section, the AASB will have done a cost/benefit analysis of the international standard used in that way.

- (2) The AASB must carry out a cost/benefit analysis of the impact of a proposed international accounting standard before:
 - (a) providing comments on a draft of the standard; or
 - (b) proposing the standard for adoption as an international standard.
- (3) The AASB has to comply with subsections (1) and (2) only to the extent to which it is reasonably practicable to do so in the circumstances.
- (4) The Minister may direct the AASB to give the Minister details of a cost/benefit analysis carried out under this section. The AASB must comply with the direction.

232 FRC views

In performing its functions, the AASB must:

- (a) follow the broad strategic direction determined by the FRC under paragraph 225(2)(d); and
- (b) follow the general policy directions given by the FRC under paragraph 225(2)(e); and

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- (c) take into account the advice and feedback on matters of general policy given by the FRC under paragraph 225(2)(e).

233 International accounting standards

The Minister may give the AASB a direction about the role of international accounting standards in the Australian accounting standard setting system. Before giving a direction under this section, the Minister must receive and consider a report from the FRC about the desirability of giving the direction. The AASB must comply with the direction.

234 Validity of accounting standards

A failure to comply with this Division in relation to the making of an accounting standard does not affect the validity of the standard.

Division 3—Administrative provisions

Subdivision A—The Financial Reporting Council

235A Membership of FRC

- (1) The members of the FRC are appointed by the Minister in writing. The Minister may appoint a person by specifying an organisation or body that is to choose the person who is appointed.
- (2) The members hold office on the terms and conditions that are determined by the Minister.
- (3) The Minister must appoint one of the members to be Chair of the FRC. The appointment must be in writing. The FRC may appoint one of its members to be Deputy Chair of the FRC.

235B Annual report

- (1) As soon as practicable after 30 June in each year, and in any event before 31 October, the FRC must give the Minister a report on:
 - (a) the operations of:
 - (i) the FRC and its committees and advisory groups; and
 - (ii) the AASB and its committees, advisory panels and consultative groups; and
 - (b) the achievement of the objects set out in section 224; during the year that ended on 30 June in that year.
- (2) The report must include details of any change to the AASB's priorities or business plan that was made as a result of action taken by the FRC.
- (3) The Minister may grant an extension of time in special circumstances.
- (4) The Minister must table the report in each House of the Parliament as soon as practicable.

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- (5) If the FRC is established during the last 3 months of a year ending on 30 June:
 - (a) the FRC is not required to prepare an annual report for that year; and
 - (b) the period from the time of establishment to the end of that year must be dealt with in the next annual report.
- (6) If the FRC is established during the first 9 months of a year ending on 30 June, the annual report for that year must cover the period from the time of establishment to the end of that year.

235C Procedure

The FRC may determine its own procedural rules (including rules as to notice of meetings, quorum and voting).

Subdivision B—The Australian Accounting Standards Board

236A Procedure

- (1) Meetings of the AASB are to be chaired by:
 - (a) the Chair; or
 - (b) the Deputy Chair if the Chair is absent; or
 - (c) a member chosen by the members present if both the Chair and the Deputy Chair are absent.
- (2) If a meeting of the AASB, or a part of one of its meetings, concerns the contents of accounting standards or international accounting standards, the meeting or that part of it must be held in public.
- (3) The AASB must:
 - (a) comply with any directions about its procedure that the FRC gives under paragraph 225(2)(e); and
 - (b) take into account the advice and feedback about its procedure that the FRC gives under paragraph 225(2)(e).
- (4) Otherwise, the AASB may determine its own procedural rules (including rules as to notice of meetings, quorum and voting).

236B Appointment of members of the AASB

Appointment of Chair

- (1) The Minister appoints the Chair of the AASB.

Appointment of other members

- (2) The FRC appoints the other members of the AASB. The AASB may appoint one of its members to be Deputy Chair of the AASB.

Qualification for appointment

- (3) A person must not be appointed as a member of the AASB unless their knowledge of, or experience in, business, accounting, law or government qualifies them for the appointment.

Appointment document

- (4) An appointment under subsection (1) or (2) is to be made in writing.

Period of appointment

- (5) The appointment document must specify the period of the appointment (not exceeding 5 years). A member holds office for the period specified in the appointment document and is eligible for re-appointment.

Terms and conditions of appointment

- (6) The Chair holds office on the terms and conditions that are determined by the Minister. The other members hold office on the terms and conditions determined by the FRC.

236C Resignation and termination of appointment

Resignation

- (1) A member of the AASB may resign their appointment by giving a written resignation to:
 - (a) if the member is the Chair of the AASB—the Minister; or

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(b) in any other case—the Chair of the FRC.

Termination of Chair's appointment

- (2) The Chair is not to be removed from office except as provided by subsection (3) or (4).
- (3) The Minister may terminate the appointment of the Chair of the AASB for:
 - (a) misbehaviour or physical or mental incapacity; or
 - (b) breach of the terms and conditions of their appointment.
- (4) The Minister must terminate the appointment of the Chair of the AASB if the Chair:
 - (a) becomes bankrupt; or
 - (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (c) compounds with their creditors; or
 - (d) makes an assignment of their remuneration or property for the benefit of their creditors; or
 - (e) contravenes section 237.

Termination of ordinary member's appointment

- (5) A member of the AASB (other than the Chair) is not to be removed from office except as provided by subsection (6) or (7).
- (6) The FRC may terminate the appointment of a member of the AASB (other than the Chair) for:
 - (a) misbehaviour or physical or mental incapacity; or
 - (b) breach of the terms and conditions of the member's appointment.
- (7) The FRC must terminate the appointment of a member of the AASB (other than the Chair) if the member:
 - (a) becomes bankrupt; or
 - (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (c) compounds with their creditors; or

- (d) makes an assignment of their remuneration or property for the benefit of their creditors; or
- (e) contravenes section 237.

236D Acting appointments

- (1) The Minister may appoint a person to act as Chair of the AASB:
 - (a) during a vacancy in the office of Chair (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Chair is absent from duty or from Australia, or is for any reason unable to perform the duties of the office.
- (2) The AASB may appoint one of its members to act as Deputy Chair of the AASB:
 - (a) during a vacancy in the office of Deputy Chair (whether or not an appointment has previously been made to the office); or
 - or
 - (b) during any period, or during all periods, when the Deputy Chair is absent from duty or from Australia, or is for any reason unable to perform the duties of the office.
- (3) The FRC may appoint a person to act as a member of the AASB (other than the Chair):
 - (a) during a vacancy in the office of member (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the member is absent from duty or from Australia, or is for any reason unable to perform the duties of the office.
- (4) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

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Subdivision C—Confidentiality

237 Confidentiality

- (1) The FRC and the AASB must take all reasonable measures to protect from unauthorised use or disclosure information given to it in confidence.
- (2) For the purposes of subsection (1), the disclosure of information is taken to be authorised if the disclosure:
 - (a) is required or permitted by a law of the Commonwealth or a prescribed law of a State or Territory; or
 - (b) is made in order to enable an authority or person in a country outside Australia and the external Territories to perform or exercise a function or power that corresponds, or is analogous, to any of the FRC's or the AASB's functions or powers; or
 - (c) is made to a body that sets international accounting standards; or
 - (d) is made to ASIC for the purposes of its performance of its functions under the corporations legislation (other than the excluded provisions).

Subdivision D—Financial matters

238 Application of money

The money of the AASB must be applied only:

- (a) in payment or discharge of the costs, expenses and other obligations incurred by the AASB in the performance of its functions or the exercise of its powers under this Act; and
- (b) in meeting the administrative expenses of the FRC and the committees and advisory groups it establishes; and
- (c) in payment of any remuneration and allowances payable to any person appointed under this Part.

Part 14—The Parliamentary Joint Committee on Corporations and Securities

241 Membership

- (2) The Parliamentary Committee consists of 10 members, of whom:
- (a) 5 are to be senators appointed by the Senate; and
 - (b) 5 are to be members of the House of Representatives appointed by that House.

Note: The Parliamentary Committee was established by subsection 241(1) of the *Australian Securities and Investments Commission Act 1989* and is continued in existence by section 261 of this Act.

- (3) The appointment of members by a House must be in accordance with that House's practice relating to the appointment of members of that House to serve on joint select committees of both Houses.
- (4) A person is not eligible for appointment as a member if he or she is:
- (a) a Minister; or
 - (b) the President of the Senate; or
 - (c) the Speaker of the House of Representatives; or
 - (d) the Deputy-President and Chairman of Committees of the Senate; or
 - (e) the Chairman of Committees of the House of Representatives.
- (5) A member ceases to hold office:
- (a) when the House of Representatives expires or is dissolved; or
 - (b) if he or she becomes the holder of an office referred to in a paragraph of subsection (4); or
 - (c) if he or she ceases to be a member of the House by which he or she was appointed; or
 - (d) if he or she resigns his or her office as provided by subsection (6) or (7), as the case requires.

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- (6) A member appointed by the Senate may resign his or her office by writing signed and delivered to the President of the Senate.
- (7) A member appointed by the House of Representatives may resign his or her office by writing signed and delivered to the Speaker of that House.
- (8) A House may appoint one of its members to fill a vacancy among the members of the Parliamentary Committee appointed by that House.

242 Powers and proceedings

Subject to this Act, all matters relating to the Parliamentary Committee's powers and proceedings must be determined by resolution of both Houses.

243 Duties

The Parliamentary Committee's duties are:

- (a) to inquire into, and report to both Houses on:
 - (i) activities of ASIC or the Panel, or matters connected with such activities, to which, in the Parliamentary Committee's opinion, the Parliament's attention should be directed; or
 - (ii) the operation of the corporations legislation (other than the excluded provisions), or of any other law of the Commonwealth, of a State or Territory or of a foreign country that appears to the Parliamentary Committee to affect significantly the operation of the corporations legislation (other than the excluded provisions); and
- (b) to examine each annual report that is prepared by a body established by this Act and of which a copy has been laid before a House, and to report to both Houses on matters that appear in, or arise out of, that annual report and to which, in the Parliamentary Committee's opinion, the Parliament's attention should be directed; and
- (c) to inquire into any question in connection with its duties that is referred to it by a House, and to report to that House on that question.

Part 15—Miscellaneous

243B Offences committed partly in and partly out of the jurisdiction

Where:

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

the person is guilty of that offence.

243D Financial transaction reports

Neither subsection 16(5A) nor (5AA) of the *Financial Transactions Reports Act 1988* prohibits a cash dealer from communicating or disclosing a fact or information referred to in either of those subsections:

- (a) to the Australian Stock Exchange Limited; or
- (b) to ASIC; or
- (c) to a body corporate approved under section 769 of the Corporations Act as a stock exchange; or
- (d) to a body corporate approved under section 770 of the Corporations Act as an approved securities organisation; or
- (e) in accordance with conditions imposed by the Minister when approving under section 770A of the Corporations Act a stock market for electronic trading of interests in a registered scheme; or
- (f) in accordance with conditions imposed by the Minister when declaring a specified stock market to be an exempt stock market under section 771 of the Corporations Act; or
- (g) to a body corporate approved under section 779B of the Corporations Act as a securities clearing house; or
- (h) to a body corporate approved under section 1126 of the Corporations Act as a futures exchange; or

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- (i) in accordance with conditions imposed by the Minister when declaring a specified futures market to be an exempt futures market under section 1127 of the Corporations Act; or
- (j) to a body corporate approved under section 1131 of the Corporations Act as a clearing house for a futures exchange; or
- (k) to a body corporate approved under section 1132 of the Corporations Act as a futures association.

244 Review by Administrative Appeals Tribunal of certain decisions

- (1) In this section:

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

- (2) Applications may be made to the Administrative Appeals Tribunal for review of a decision by ASIC:
- (a) to make an order under section 72, 73 or 74; or
 - (b) to make an order under subsection 75(1) varying an order in force under Division 8 of Part 3; or
 - (c) to refuse to vary or revoke an order in force under Division 8 of Part 3.

244A Notice of reviewable decision and review rights

- (1) This section applies if ASIC makes a decision to which subsection 244(2) applies.
- (2) Subject to subsection (3), ASIC must take such steps as are reasonable in the circumstances to give to each person whose interests are affected by 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 Administrative Appeals Tribunal.
- (3) Subsection (2) does not require ASIC to give notice to a person affected by the decision, or to the persons in a class of persons

affected by the decision, if ASIC determines that giving notice to the person or persons is not warranted, having regard to:

- (a) the cost of giving notice to the person or persons; and
 - (b) the way in which the interests of the person or persons are affected by the decision.
- (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*.

245 Validity of certain actions

Nothing done by or in relation to a person who has been appointed to, or appointed to act in, an office under this Act is invalid on the ground that:

- (a) the occasion for the appointment had not arisen; or
- (b) there was a defect or irregularity in connection with the appointment; or
- (c) the appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

246 Liability for damages

None of the following:

- (aa) the Minister;
- (a) ASIC;
- (b) CASAC;
- (c) a member of ASIC;
- (d) a member of CASAC;
- (e) a member of the Panel;
- (f) a person appointed for the purposes of this Act or a prescribed law of the Commonwealth, a State or a Territory;

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(g) a staff member or a person who is, or is a member of, an ASIC delegate or is authorised to perform or exercise a function or power of, or on behalf of, ASIC;

(h) a member of the staff referred to in subsection 156(1), a person employed under subsection 156(3), a person engaged under subsection 157(1) or any of the officers, employees and persons who under section 158 are to assist CASAC;

is liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in performance or purported performance of any function, or in exercise or purported exercise of any power, conferred or expressed to be conferred by or under the corporations legislation, or a prescribed law of the Commonwealth, a State or a Territory.

247 Duplicate seals

- (1) As well as ASIC's common seal, there are to be such duplicates of that seal as ASIC directs.
- (2) A document to which a duplicate seal of ASIC is affixed is taken to have ASIC's common seal affixed to it.

248 Judicial notice of ASIC's seal and members' signatures

- (1) A court must take judicial notice of ASIC's common seal affixed to a document and, unless the contrary is established, must presume that it was duly affixed.
- (2) A court must take judicial notice of:
 - (a) the official signature of a person who holds or has held, or is acting or has acted in, the office of member, Chairperson or Deputy Chairperson; and
 - (b) the fact that the person holds or has held, or is acting or has acted in, that office;if a signature purporting to be the person's signature appears on an official document.
- (3) In this section:
 - (a) *court* includes a tribunal; and

- (b) a reference, in relation to a tribunal, to taking judicial notice is a reference to taking the same notice as would be taken by a court.

251 The regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Regulations providing for allowances and expenses for the purposes of section 89 or subsection 192(6) or 218(4) may provide for those allowances and expenses by reference to a scale of expenses for witnesses who attend before a court specified in the regulations, being a federal court, or the Supreme Court of a State or Territory.

Part 16—Transition from the old ASIC legislation

Division 1—Preliminary

253 Object of Part

- (1) The object of this Part is to provide for a smooth transition from the regime provided for in the old ASIC legislation of the States in this jurisdiction and the Northern Territory to the regime provided for in the new ASIC 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 ASIC legislation had, from time to time when it was in force, been valid Commonwealth legislation applying throughout the States in this jurisdiction and the Northern Territory; and
 - (b) the new ASIC legislation (to the extent it contains provisions that correspond to provisions of the old ASIC legislation as in force immediately before the commencement) were a continuation of that old ASIC legislation as so applying.

Note: The new ASIC legislation contains provisions that correspond to most of the provisions of the old ASIC legislation. Generally, the only exceptions to this are provisions of the old ASIC legislation that related to the fact that the ASIC Law operated separately in each of the States and Territories (rather than as a single national law).

- (2) The object of this Part is also to provide for a smooth transition from the regime provided for in the old ASIC legislation of the Commonwealth to the regime provided for in the new ASIC legislation as if the new ASIC legislation (to the extent it contains provisions that correspond to provisions of the old ASIC legislation as in force immediately before the commencement) were a continuation of that old ASIC legislation as so applying.
- (3) 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.

254 Definitions

(1) In this Part:

carried over provision of the old ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory means a provision of that legislation that:

- (a) was in force immediately before the commencement; and
- (b) corresponds to a provision of the new ASIC 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 ASIC legislation means:

- (a) this Act; and
- (b) the new ASIC 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 subparagraphs (a)(ii) and (b)(iii) of the definition of **old ASIC legislation**, being those laws as they apply after the commencement; and
- (d) the preserved instruments.

new ASIC Regulations means the regulations that, because of section 264, have effect as if they were made under section 251 of this Act.

old application Act for a State or the Northern Territory means:

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- (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 Northern Territory—the *Corporations (Northern Territory) Act 1990* of the Northern Territory as in force from time to time before the commencement.

old ASIC Act means the *Australian Securities and Investments Commission Act 1989* as in force from time to time before the commencement.

old ASIC Law of a State in this jurisdiction or the Northern Territory means the ASIC Law or ASC Law of the State or Territory (within the meaning of the application Act of the State or Territory as in force from time to time before the commencement).

old ASIC legislation means:

- (a) when used in relation to the Commonwealth—the following:
 - (i) the old ASIC Act and old ASIC Regulations, and any instruments made under that Act or those Regulations (including provisions as they had effect as the ASIC Law or ASIC Regulations of the Australian Capital Territory);

- (ii) the laws of the Commonwealth as applying of their own force in relation to the old ASIC Act and old ASIC Regulations of the Commonwealth from time to time before the commencement, and any instruments made under those laws as so applying; and
- (b) when used in relation to a State in this jurisdiction or the Northern Territory—the following:
 - (i) the old ASIC Law and old ASIC Regulations of the State or Territory, and any instruments made under that Law or those Regulations; and
 - (ii) the old application Act for the State or Territory, and any instruments made under that Act; and
 - (iii) the laws of the Commonwealth as they applied in relation to the old ASIC Law and the old ASIC 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.

old ASIC Regulations means:

- (a) when used in relation to the Commonwealth—the regulations made under section 251 or 252 of the old ASIC Act as in force from time to time before the commencement (including regulations as they had effect as the ASIC Regulations of the Australian Capital Territory); and
- (b) when used in relation to a State in this jurisdiction or the Northern Territory—the ASIC Regulations or ASC Regulations of that State or Territory (within the meaning of the old application Act for the State or Territory) as in force from time to time before the commencement.

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 276(1) or 277(1).

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preserved instrument means an instrument that, because of section 275, has effect after the commencement as if it were made under a provision of the new ASIC legislation.

right includes an interest or status.

substituted right or liability has the meaning given by subsection 276(2) or 277(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 ASIC legislation of the Commonwealth, a State or the Northern Territory **corresponds** to a provision or part (the **new provision or part**) of the new ASIC 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 ASIC legislation that may be corresponding provisions for the purposes of this Part is affected by sections 277 and 284, which take certain provisions of the old ASIC legislation to be included in the new ASIC legislation.

- (3) For the purposes of paragraph (2)(a), differences of all or any of the following kinds are not sufficient to mean that 2 provisions or parts are not substantially the same:
- (a) differences in the numbering of the provisions or parts;
 - (b) differences of a minor technical nature (for example, differences in punctuation, or differences that are attributable to the correction of incorrect cross references);
 - (c) the fact that one of the provisions refers to a corresponding previous law, or a relevant previous law, and the other does not;
 - (d) other differences that are attributable to the fact that the new ASIC legislation applies as a Commonwealth law throughout Australia;

- (e) 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 ASIC legislation of the Commonwealth, a State or the Northern Territory does, or does not, correspond to a specified provision of the new ASIC legislation.

255 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: 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 ASIC 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:

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- (c) a reference to a right or liability arising under the old ASIC 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, before the commencement by Commonwealth authorities and 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 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).

256 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 ASIC legislation (or a provision of that legislation) of the Commonwealth, a State in this jurisdiction or the Northern Territory; or
 - (ii) to give something an effect for the purposes of the old ASIC legislation (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.

257 Existence of several versions of the old ASIC legislation does not result in this Part operating to take the same thing to be done several times under the new ASIC legislation etc.

If, apart from this section, a provision of this Part (the *transitional provision*) would, because the Commonwealth, each State in this jurisdiction and the Northern Territory had its own old ASIC 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 the new ASIC legislation; or
- (b) a right or liability would be created 2 or more times in respect of a particular event, circumstance or thing that happened before the commencement; or
- (c) a particular result or effect would be produced 2 or more times for the purposes of the new ASIC 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 ASIC 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.

258 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 before the commencement, the amount of a penalty unit in respect of that offence is \$100.
- (2) This section has effect despite section 4AA of the *Crimes Act 1914*.

259 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 bodies established etc. or persons appointed under the old ASIC Act

260 Division has effect subject to Division 7 regulations

This Division has effect subject to regulations made for the purposes of Division 7.

261 Carrying over bodies established under the old ASIC Act

A body that was established under the old ASIC Act continues in existence as if it had been established under this Act.

262 Carrying over the Chairman and Deputy Chairman of the Financial Reporting Council

- (1) A member of the FRC who was Chairman of the FRC immediately before the commencement continues as if he or she had been appointed as Chair of the FRC under this Act.
- (2) A member of the FRC who was Deputy Chairman of the FRC immediately before the commencement continues as if he or she had been appointed as Deputy Chair of the FRC under this Act.

Division 3—Carrying over the old ASIC Regulations

263 Division has effect subject to Division 7 regulations

This Division has effect subject to regulations made for the purposes of Division 7.

264 Old ASIC Regulations continue to have effect

The old ASIC Regulations that were made for the purposes of provisions of the old ASIC Act 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 251 of this Act; and
- (b) they were made for the purposes of the corresponding provisions of this Act.

Division 4—Court proceedings and orders

265 Division has effect subject to Division 7 regulations

This Division has effect subject to regulations made for the purposes of Division 7.

266 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 ASIC 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 ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory;
- (b) a proceeding in respect of a matter arising under Division 2 of Part 2 of the old ASIC Act;
- (c) 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 ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory applied;
- (d) a proceeding in the court's accrued federal jurisdiction in relation to a matter to which a provision of the old ASIC

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legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory 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.

267 Treatment of court proceedings under or related to the old ASIC legislation—proceedings other than federal ASIC proceedings

- (1) This section applies to a proceeding, other than a federal ASIC 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 ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory; or
 - (ii) brought as, or connected with, a prosecution for an offence against a provision of the old ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory; 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 ASIC legislation referred to in whichever of subparagraphs (1)(b)(i) and (ii) applies is called the ***relevant old provision***.

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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 ASIC 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 ASIC 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 and liabilities.

Note 1: See sections 276 and 277 for the creation of the substituted rights and liabilities.

Note 2: In all cases, there will be a provision of the new ASIC legislation that corresponds to the relevant old provision, either because:

- (a) the new ASIC legislation actually contains a provision that corresponds to the relevant old provision; or
 - (b) the new ASIC legislation, because of section 277 or 284, 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 continued 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 ASIC legislation.

268 Treatment of court proceedings under or related to the old ASIC legislation—federal ASIC 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 ASIC proceeding that related to a matter to which a provision of the old ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory applied; and
 - (c) the proceeding had not been concluded or terminated before the commencement.
- (2) In this section:
- (a) the proceeding to which this section applies is called the *continued proceeding*; and

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(b) the provision of the old ASIC 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 ASIC 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 is taken always to have related, to the substituted rights and liabilities in relation to those pre-commencement rights and liabilities.

Note 1: See sections 276 and 277 for the creation of substituted rights and liabilities.

Note 2: In all cases, there will be a provision of the new ASIC legislation that corresponds to the relevant old provision, either because:

- (a) the new ASIC legislation actually contains a provision that corresponds to the relevant old provision; or
- (b) the new ASIC legislation, because of section 277 or 284, 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.

269 References to proceedings and orders in the new ASIC legislation

(1) Subject to subsection (5), a reference in the new ASIC 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 ASIC

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 ASIC legislation of the Commonwealth, a State or the Northern Territory; or
 - (b) after the commencement under or in relation to the corresponding part or provision of the old ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory, as that legislation continues to have effect after the commencement.
- (2) Subject to subsections (3), (4) and (5), a reference in the new ASIC legislation to an order made by a court under or in relation to a part or provision of the new ASIC 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 ASIC legislation of the Commonwealth, a State or the Northern Territory; or
 - (b) after the commencement under or in relation to the corresponding part or provision of the old ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory, 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 ASIC 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 ASIC 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 ASIC legislation.
- (4) If, after the commencement, an order referred to in paragraph (2)(a) or (b) is varied or set aside on appeal or review, subsection (2) applies, or is taken to have applied, from the time from which the variation or setting aside takes or took effect, as if:

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- (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 ASIC legislation.

Division 5—Functions and powers of ASIC

270 Division has effect subject to Division 7 regulations

This Division has effect subject to regulations made for the purposes of Division 7.

271 Non-federal proceedings etc.

- (1) ASIC has the functions and powers in relation to a non-federal proceeding that are expressed to be conferred on it by or under a law of the Commonwealth or the Northern Territory.
- (2) ASIC also has the functions and powers in relation to a non-federal proceeding that are expressed to be conferred on it by or under a law of a State in this jurisdiction. However, ASIC:
 - (a) is not subject to any directions in the performance of such functions or the exercise of such powers; and
 - (b) is not under a duty to perform such functions or exercise such powers.
- (3) If a Minister of a State or Territory appoints a person to bring or continue a non-federal proceeding in the State or Territory, ASIC may give the person any information and documents that ASIC has in relation to the proceeding.

- (4) In this section:

appeal or review proceeding has the same meaning as in section 266.

enforcement proceeding has the same meaning as in section 266.

non-federal proceeding means:

- (a) a proceeding in relation to which paragraphs 267(1)(a), (b) and (d) are satisfied but paragraph 267(1)(e) is not satisfied;
or

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- (b) an enforcement proceeding, or an appeal or review proceeding, in relation to an order of a court made before the commencement in relation to a proceeding that was:
 - (i) under a provision of the old ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory; or
 - (ii) brought as, or connected with, a prosecution for an offence against a provision of the old ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory; or
- (c) an enforcement proceeding, or an appeal or review proceeding, in relation to an order of a court made after the commencement in relation to a proceeding referred to in paragraph (a).

272 NCSC's functions and powers

- (1) ASIC has the functions and powers expressed to be conferred on the NCSC by or under any Act, as in force immediately before the commencement, that is a relevant Act for the purposes of the *Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980*.
- (2) ASIC also has the functions and powers expressed to be conferred on the NCSC by or under any law, as in force immediately before the commencement, of a State or the Northern Territory that corresponds to an Act that is a relevant Act for the purposes of the *Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980*. However, ASIC:
 - (a) is not subject to any directions in the performance of such functions or the exercise of such powers; and
 - (b) is not under a duty to perform such functions or exercise such powers.

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

273 Provisions in this Division have effect subject to the other Divisions

- (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; or
 - (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 266, in respect of such an order; or
 - (d) 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) Except as mentioned in subsections (1) and (2), 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.

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274 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 253. 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.

275 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 ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory; 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 ASIC legislation, as if it were done by, under, or for the purposes of, the corresponding provision of the new ASIC legislation.

Note: This section covers all kinds of things done, including things of a coercive nature or done for coercive purposes.

- (2) Examples of things done include:
- (a) the making of an instrument or order (but not including the making of an order by a court); and
 - (b) the making of an application or claim (but not including the making of an application or claim to a court); and
 - (c) the granting of an application or claim (but not including the granting of an application or claim by a court); and
 - (d) the making of an appointment or delegation; and

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- (e) the commencement of a procedure or the taking of a step in a procedure (including an investigation, but not including the commencement of a proceeding in a court); and
 - (f) the making of an agreement; 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 ASIC legislation of the Commonwealth, a State or the Northern 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 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 making of an agreement—the agreement was still in force immediately before the commencement; or
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- (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 ASIC legislation of the Commonwealth, the State or the Northern Territory.
- (5) The regulations may provide that a specified thing done by, under, or for the purposes of, a carried over provision of the old ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory did, or did not, have an ongoing significance immediately before the commencement for the purposes of that legislation.

276 Creation of equivalent rights and liabilities to those that existed before the commencement under carried over provisions of the old ASIC 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 carried over provision of the old ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory; 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 liability, under the corresponding provision of the new ASIC 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 ASIC legislation, that same time limit

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(calculated from the same starting point) will apply under the new ASIC legislation to the substituted right or liability—see subsection 278(3).

- (3) A procedure, proceeding or remedy in respect of the right or liability may be instituted after the commencement under the new ASIC 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 267 and 268.

277 Creation of equivalent rights and liabilities to those that existed before the commencement under repealed provisions of the old ASIC legislation

- (1) This section applies 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 ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory 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 ASIC legislation is taken to include:
- (a) the provision of the old ASIC legislation (with such modifications (if any) as are necessary) under which the right or liability was acquired, accrued or incurred; and
 - (b) the other provisions of the old ASIC legislation (with such modifications (if any) as are necessary) that applied in relation to the 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 ASIC legislation by paragraph (2)(a) (as

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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 ASIC legislation, that same time limit (calculated from the same starting point) will apply under the new ASIC legislation to the substituted right or liability—see subsection 278(3).

- (4) A procedure, proceeding or remedy in respect of the right or liability may be instituted after the commencement under the provisions taken to be included in the new ASIC 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 267 and 268.

278 Old ASIC legislation time limits continue to run

- (1) An old ASIC 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 ASIC legislation 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 ASIC legislation.
- (2) If:
- (a) under the old ASIC legislation, a process, a status of a person or body, or an instrument, commenced from a particular time before the commencement; and

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- (b) that process, status or instrument is continued after the commencement for the purposes of the new ASIC legislation by a provision of this Part;
that process, status or instrument as so continued is still taken to have commenced from the time referred to in paragraph (a).
- (3) If an old ASIC 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 ASIC legislation time limit includes:
 - (a) a period for the doing of a thing specified or determined under a provision of the old ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory; or
 - (b) a period specified or determined under a provision of the old ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory as the duration of a particular instrument or status.

279 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 ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory; 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 interpretative provision);
has that same significance after the commencement for the purposes of the provision of the new ASIC legislation that corresponds to that carried over provision.
- (2) Without limiting subsection (1), an event, circumstance or other thing has a particular significance for the purposes of a carried over provision of the old ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory if:

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- (a) the carried over provision creates an obligation in respect of the event, circumstance or thing (whenever it arose); or
- (b) the carried over provision provides for the event, circumstance or thing to be dealt with in a particular way; or
- (c) the carried over provision states that the event, circumstance or thing (whenever it arose) is to be disregarded for the purposes of that provision or not covered by that provision.

280 References in the new ASIC 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 ASIC 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 the contrary intention appears. 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.
- (2) Nothing in subsection (1) is taken to produce a result that a right or liability exists under a provision of the new ASIC 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 276 or 277.
- (3) The regulations may provide that subsection (1) does not apply in relation to a particular reference or class of references in the new ASIC legislation.

281 References in the new ASIC legislation to that legislation or the new corporations legislation generally include references to corresponding provisions of the old ASIC legislation or old corporations legislation

- (1) Subject to subsection (4), a reference in the new ASIC legislation to:

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- (a) an Act, or to regulations or another 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 ASIC 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, a State in this jurisdiction or the Northern Territory.
- (2) Subject to subsection (4), a reference in the new ASIC legislation to:
- (a) an Act, or to regulations or some other 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.
- (3) In subsection (2):
- (a) ***new corporations legislation*** and ***old corporations legislation*** have the same meanings as they have in Part 10.1 of the Corporations Act; and
 - (b) the question whether a provision or part of the old corporations legislation corresponds to a provision of part of the new corporations legislation is to be determined in the same way as it is determined for the purposes of Part 10.1 of the Corporations Act.
- (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 ASIC legislation.

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282 Carrying over references to corresponding previous laws or relevant previous laws

- (1) If a carried over provision of the old ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory 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 a thing done by, under, or for the purposes of, such a law; or
 - (b) a relevant previous law (as defined for the purposes of that provision or provisions including that provision), or a thing done by, under, or for the purposes of, such a law;the corresponding provision of the new ASIC 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 ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory 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 section 15 to a “previous law corresponding to”;
 - (b) any other references prescribed by the regulations for the purposes of this subsection.

283 References to ASIC 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 ASIC legislation (whether the reference is in general terms or in relation to the Commonwealth, or a particular State or Territory in this jurisdiction); or

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(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 ASIC legislation (unless there is no such corresponding part, provision or provisions).

Note: In this Part, *instrument* means an instrument of a legislative or administrative character (see the definition in section 254), or any other document.

- (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”.

284 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:
- (a) the transitional provisions (see subsections (6) and (7)) of the old ASIC Act, the old ASIC Law of the States in this jurisdiction and the old ASIC Law of the Northern Territory (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 that Act and those Laws.
- (2) Without limiting subsection (1) (but subject to subsection (3)), if a transitional provision of the old ASIC Act, the old ASIC Law of the States in this jurisdiction or the old ASIC Law of the Northern Territory 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

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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 or liabilities are created by sections 276 and 277.

- (3) The regulations may determine how a matter dealt with in a transitional provision of the old ASIC Act, the old ASIC Law of the States in this jurisdiction or the old ASIC Law of the Northern Territory is to be dealt with under or in relation to the new ASIC 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 258.

- (4) For the purpose of determining whether the new ASIC legislation includes a provision that corresponds to a provision of the old ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory, and for the purpose of any reference in this Part to a corresponding provision of the new ASIC legislation, this Act is taken to include the transitional provisions of the old ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory, as they have effect because of subsections (1) and (2).

- (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 276 or 277.

- (6) Subject to subsection (7), for the purposes of this section, a **transitional provision** is any of the following provisions of the old ASIC Act, the old ASIC Law of the States in this jurisdiction and the old ASIC Law of the Northern Territory:

- (a) section 12AB;
- (b) subsection 12GL(2);
- (c) section 12IA;

- (d) subsection 13(3);
 - (e) subsection 13(5);
 - (f) section 14A;
 - (g) subsection 51(2);
 - (h) subsection 68(4);
 - (i) subsection 68(5);
 - (j) section 122A;
 - (k) section 127A;
 - (l) subsection 246(2);
 - (m) Part 16;
 - (n) Part 17;
 - (o) Part 18.
- (7) The regulations may provide that certain provisions are to be taken to be included in, or omitted from, the list in subsection (6). The list then has effect as if the provisions were so included in it or omitted from it.

Division 7—Regulations dealing with transitional matters

285 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 ASIC legislation of the Commonwealth, a State in this jurisdiction and the Northern Territory to the application of provisions of the new ASIC legislation. The regulations have effect despite anything else in this Part, other than section 258.
- (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 ASIC legislation, as in force immediately before the commencement or at some earlier time; or
 - (ii) provisions of the new ASIC 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 ASIC legislation.
- (3) The regulations may provide that certain provisions of this Part are taken to be modified as set out in the regulations. The 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.

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

(14/01)