



ATTORNEY-
GENERAL'S
DEPARTMENT

Australian Securities and Investments Commission Act 1989

Act No. 90 of 1989 as amended

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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

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 which will administer such laws of:
 - (i) the Commonwealth; and
 - (ii) the Capital Territory; and
 - (iii) the States and the other Territories;as confer functions and powers under those laws on the Commission; and
 - (b) to provide for the functions, powers and business of the Commission; 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 those laws, 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, an Australian Accounting Standards Board and a Parliamentary Joint Committee on Corporations and Securities.
- (2) In performing its functions and exercising its powers, the Commission 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

Section 1

- (b) promote the confident and informed participation of investors and consumers in the financial system; and
 - (c) achieve uniformity throughout Australia in how the Commission and its delegates perform those functions and exercise those powers; 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 the Commission under the laws that confer functions and powers on it; and
 - (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 that confer functions and powers on it.
- (3) This Act has effect, and is to be interpreted, accordingly.
- (4) Despite subsection (1), this Act is taken not to be, for the purposes of subsection 22(3) of the *Acts Interpretation Act 1901*, an Act providing for the administration or government of a Territory.

Division 2—Citation

1A Short title [*see* Note 1]

This Act may be cited as the *Australian Securities and Investments Commission Act 1989*.

1B Alternative citations of this Act and regulations under section 251

- (1) This Act (except section 12A and Division 2 of Part 2) may also be referred to as the ASC Law of the Australian Capital Territory or, subject to section 1D, simply as the ASC Law.
- (2) Regulations under section 251 may be referred to as the ASC Regulations of the Australian Capital Territory or, subject to section 1D, simply as the ASC Regulations.

1C Citation of provisions of this Act, and regulations under section 251, applying as law of another jurisdiction

- (1) This section has effect for the purposes of an Act, a law of the Australian Capital Territory, or an instrument made under an Act or under such a law.
- (2) Where a law of a jurisdiction other than the Capital Territory contains provisions corresponding to sections 5 and 6 of the *Corporations Act 1989* and also provides for provisions of this Act to apply as law of that jurisdiction, those provisions of this Act, as so applying, are the ASC Law of that jurisdiction.
- (3) Where a law of a jurisdiction other than the Capital Territory provides for the regulations in force for the time being under section 251 of this Act to apply for the purposes of the ASC Law of that jurisdiction, those regulations as so applying are the ASC Regulations of that jurisdiction.

Section 1D

1D References to ASC Law and ASC Regulations

- (1) The object of this section is to help ensure that, so far as possible:
 - (a) the bodies established by the ASC Law of the Capital Territory, and the staff of those bodies, can perform functions and exercise powers; and
 - (b) persons can have dealings with those bodies;as if the ASC Law of the Capital Territory, together with the ASC Law of each jurisdiction other than the Capital Territory, constituted a single national ASC Law applying of its own force throughout Australia.
- (2) Subject to this section, a reference in an instrument to the ASC Law, or to the ASC Regulations, is to be taken, for the purposes of the laws of the Commonwealth and of the laws of the Capital Territory:
 - (a) to be a reference to the ASC Law, or to the ASC Regulations, of the Capital Territory; and
 - (b) to include a separate reference to the ASC Law, or to the ASC Regulations, of each jurisdiction other than the Capital Territory.
- (3) Subsection (2) has effect except so far as the contrary intention appears in the instrument, or the context of the reference otherwise requires.
- (4) Without limiting subsection (3), subsection (2) does not apply in relation to a reference expressed as a reference to the ASC Law, or to the ASC Regulations, of a jurisdiction.
- (5) In this section:

instrument means:

 - (a) an Act or an instrument made under an Act; or
 - (b) a law of the Capital Territory or an instrument made under such a law; or
 - (c) an award or other industrial determination or order, or an industrial agreement; or
 - (d) any other order (whether executive, judicial or otherwise); or
 - (e) a notice, certificate or licence; or
 - (f) an agreement; or

- (g) an application made, information laid, affidavit sworn, or warrant issued, for any purpose; or
- (h) an indictment, presentment, summons or writ; or
- (j) any other pleading in, or process issued in connection with, a legal or other proceeding; or
- (k) any other document whatever.

1E Saving of citation provisions of other jurisdictions

Subject to section 1D, section 1B is not intended to prevent a law of a jurisdiction other than the Capital Territory from:

- (a) providing that the ASC Law, or the ASC Regulations, of that jurisdiction may be referred to simply as the ASC Law, or the ASC Regulations; or
- (b) providing for how a reference to the ASC Law, or to the ASC Regulations, is to be interpreted for the purposes of the laws of that jurisdiction.

Part 1 Preliminary

Division 3 Commencement and application

Section 2

Division 3—Commencement and application

2 Commencement *[see Note 1]*

- (1) Part 1 shall commence on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act shall commence on a day, or respective days, to be fixed by Proclamation.

4 Extension to external Territories

This Act extends to such external Territories (if any) as are prescribed.

Division 4—Interpretation

5 Interpretation

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

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.

Advisory Committee means the Companies and Securities Advisory Committee established by section 145.

affairs, in relation to a body corporate, has the same meaning as in section 246AA of the Corporations Law.

APRA means the Australian Prudential Regulation Authority.

assist, in relation to a Commission delegate, means:

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

Australia includes any external Territory to which this Act extends.

books includes:

- (a) a register;
- (b) financial reports or financial records, however compiled, recorded or stored;
- (c) a document;
- (d) banker's books; and
- (e) any other record of information.

Section 5

Chairperson means:

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

Commission means the Australian Securities and Investments Commission.

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

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

Convenor means the Convenor of the Advisory Committee.

Corporations Law and **Corporations Regulations** have the meaning provided for by Parts 2 and 3 of the *Corporations Act 1989*.

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 the Commission.

Director means the Director of the Standards Board.

Disciplinary Board means the Companies Auditors and Liquidators Disciplinary Board established by section 202.

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 a national scheme law or a corresponding previous law; or
- (b) in any case:
 - (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:

- (a) in this section, and Part 3 (other than subsection 27(2) and Division 9)—an examination of a person pursuant to a requirement made under section 19; or
(b) in subsection 27(2) and Division 9 of Part 3—an examination of a person pursuant to a requirement made under section 19 or a corresponding provision of the ASC Law of another jurisdiction.

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 extend; or
(b) a country outside Australia and the external Territories; or
(c) a part of such a country.

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 the Commission 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.

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

Section 5

meeting means:

- (a) in Part 4—a meeting of the Commission;
- (b) in Part 9—a meeting of the Advisory Committee;
- (c) in Part 11—a meeting of the Disciplinary Board; and
- (d) in Part 12—a meeting of the Standards 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, the Advisory Committee, the Panel, the Disciplinary Board, the Standards Board or the Parliamentary Committee—a member of the Commission;
- (b) in Part 9 or in relation to the Advisory Committee—a member of the Advisory Committee;
- (c) in Part 10 or in relation to the Panel—a member of the Panel;
- (d) in Part 11 or in relation to the Disciplinary Board—the Chairperson or any other member of the Disciplinary Board;
- (e) in Part 12 or in relation to the Standards Board—the Director or any other member of the Standards Board; and
- (f) in Part 14 or in relation to the Parliamentary Committee—a member of the Parliamentary Committee.

national scheme law means:

- (a) the following:
 - (i) the *Corporations Act 1989*;
 - (ii) the Corporations Law of the Capital Territory;
 - (iii) this Act (other than section 12A and Division 2 of Part 2); or
- (b) a law of another jurisdiction that corresponds to an Act or Law referred to in paragraph (a).

national scheme law of this jurisdiction means an Act or Law referred to in paragraph (a) of the definition of **national scheme law** in this subsection.

non-applied provisions means the following provisions of this Act:

- Part 1 (other than section 6A)
- Part 2
- Section 88
- Divisions 1 and 4 of Part 4

Part 5
Part 6
Division 1 of Part 7
Part 8
Part 9
Division 1 of Part 10
Division 1 of Part 11
Part 12
Part 14
Sections 251 and 252.

officer, in relation to a body corporate, includes:

- (a) a director, secretary, executive officer or employee of the body;
- (b) a receiver, or a receiver and manager, of property of the body;
- (ba) an administrator of the body;
- (bb) an administrator of a deed of company arrangement executed by the body;
- (c) an official manager, or a deputy official manager, of the body;
- (d) a liquidator, or a provisional liquidator, of the body; and
- (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 established by section 171.

Parliamentary Committee means the Parliamentary Joint Committee on Corporations and Securities referred to in section 241.

penalty unit means \$100.

power includes an authority.

prescribed means prescribed by this Act or the regulations.

President means the President of the Panel.

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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 the ASC Regulations of this jurisdiction.

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);
- (b) a person engaged under subsection 121(1); or
- (c) any of the officers, employees and persons who under section 122 are to assist the Commission.

Standards Board means the Australian Accounting Standards Board established by section 224.

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) an external Territory to which this Act extends.

this Act includes the regulations.

this Law 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 the Commission receives or holds on trust.

witness:

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

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 Law of the Capital Territory.
- (3) Except so far as the contrary intention appears in this Act, Parts 1.2 and 1.3 (except section 8) of the Corporations Law apply for the purposes of this Act as if the provisions of this Act were provisions of that Law.
- (4) This Part, and Parts 1.2 and 1.3 of the Corporations Law as applying because of subsection (3) of this section, have effect to the exclusion of the *Acts Interpretation Act 1901*.

Section 6

- (5) Subject to subsection (4), the *Acts Interpretation Act 1901* as amended and in force at the commencement of this subsection applies, and that Act as amended and in force at any later time does not apply, in relation to this Act (other than the non-applied provisions).

6 Giving information

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

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

6A Acting appointments

Where a provision of the ASC Law of this jurisdiction (other than subsection 109ZB(8) of the Corporations Law as it applies because of subsection 5(3) of the ASC Law) confers on a person or body (in this section called the *appointer*) a power to appoint a person (in this section called the *appointee*) to act in a particular office, then, except so far as the ASC Law otherwise provides, the following paragraphs apply in relation to an appointment made under the provision:

- (a) the appointment may be expressed to have effect only in the circumstances specified in the instrument of appointment;
- (b) the appointer may:
 - (i) determine the terms and conditions of the appointment, including remuneration and allowances; and
 - (ii) terminate the appointment at any time;
- (ba) in the case of an appointment to act in a vacant office—the appointee must not continue to act in the office for more than 12 months;
- (c) where the appointee is acting in an office other than a vacant office and the office becomes vacant while the appointee is acting, then, subject to paragraph (a), the appointee may continue so to act until:
 - (i) the appointer otherwise directs; or

- (ii) the vacancy is filled; or
- (iii) a period of 12 months from the day of the vacancy ends; whichever happens first;
- (d) the appointment ceases to have effect if the appointee resigns in writing delivered to the appointer;
- (e) while the appointee is acting in the office:
 - (i) the appointee has and may exercise all the powers, and shall perform all the functions and duties, of the holder of the office; and
 - (ii) any law of this jurisdiction applies in relation to the appointee as if the appointee were the holder of the office.

6B Alterations of names and constitutions

(1) Where:

- (a) the name of a body established by this Act is changed by law (whether or not the body is incorporated); or
- (b) the name of an office established by this Act is changed by law;

then, unless the contrary intention appears:

- (c) the body or office continues in existence under the new name so that its identity is not affected; and
- (d) a reference, in:
 - (i) any Act of this jurisdiction; or
 - (ii) any instrument under such an Act; or
 - (iii) any award or other industrial determination or order or any industrial agreement; or
 - (iv) any other order (whether executive, judicial or otherwise); or
 - (v) any contract; or
 - (vi) any pleading in, or process issued in connection with, any legal or other proceeding; or
 - (vii) any other instrument;

to the body or the office under the former name, except in relation to matters that occurred before the change took place, is taken as a reference to the body or the office under the new name.

Section 6C

- (2) Where the constitution of a body established by this Act is changed by law (whether or not the body is incorporated), then, unless the contrary intention appears:
- (a) the body continues in existence as newly constituted so that its identity is not affected; and
 - (b) the alteration does not affect any functions, powers, property, rights, liabilities or obligations of the body; and
 - (c) the change does not affect any legal or other proceedings instituted or to be instituted by or against the body, and any legal or other proceedings that might have been continued or commenced by or against the body as previously constituted may be continued or commenced by or against the body as newly constituted; and
 - (d) the change does not affect any investigation or inquiry being or proposed to be undertaken by any tribunal, authority or person into any action taken or practice engaged in by the body before the change took place, and any investigation or inquiry that might have been continued or commenced into any such action or practice may be continued or commenced as if the action had been taken or the practice had been engaged in by the body as newly constituted.

6C Presentation of papers to the Parliament

- (1) Where, by this Act, provision is made requiring or permitting the presentation (however expressed) of a paper to the Parliament or to both Houses, or to each or either House, of the Parliament, it is sufficient compliance with the provision, in relation to a House, if:
- (a) the paper is presented in that House in accordance with the rules or orders of the House or, if, under the rules or orders of the House, papers are taken to be presented to the House if they are delivered to the Clerk of the House and recorded in the records of the proceedings of the House, the paper is so delivered and recorded; and
 - (b) where the provision provides for a specified person to present the paper or to cause the paper to be presented—that person, or any other person who could by virtue of this or any other Act, or of a law of a Territory, act in the place of that person, makes or causes to be made, as the case may be, the

presentation or the delivery of the paper referred to in paragraph (a); and

- (c) where the provision specifies a period within which the paper is to be presented—the presentation, or the delivery and recording, of the paper referred to in paragraph (a) takes place within that period.

- (2) For the purposes of a provision of this Act that refers to papers presented (however the presentation is described) to the Parliament or to both Houses, or to each or either House, of the Parliament:

- (a) presentation of a paper in a House of the Parliament in accordance with the rules or orders of the House; or
- (b) if, under the rules or orders of a House of the Parliament, papers are to be deemed to be presented to the House if they are delivered to the Clerk of the House and recorded in the records of the proceedings of the House—such a delivery and recording of a paper;

is taken to have been presentation of the paper to that House, as described in this Act, effected or caused by the person who so presented or delivered the paper or caused the paper to be so presented or delivered.

- (3) In this section, *paper* includes:
 - (a) an ordinance, rule, regulation or by-law; and
 - (b) a report; and
 - (c) any other document or instrument whatever.

6D Periodic reports

- (1) In this section:

periodic report means a regular report relating to the activities, operations, business or affairs of a body established by this Act.

- (2) Where this or any other Act:
 - (a) requires a body to furnish a periodic report to the Minister; but
 - (b) does not specify a period within which the report is to be so furnished;

that body must furnish the report to the Minister as soon as practicable after the end of the particular period to which the report

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relates and, in any event, within 6 months after the end of that particular period.

(3) Where this or any other Act:

- (a) requires a body to furnish a periodic report to the Minister for presentation to the Parliament; but
- (b) does not specify a period within which the report is to be so presented;

the Minister must cause a copy of the periodic report to be laid before each House of the Parliament within 15 sitting days of that House after receiving the report.

(4) Where:

- (a) this or any other Act requires a body to furnish a periodic report to the Minister within a specified period; and
- (b) the body is of the opinion that it will not be reasonably possible to comply with the requirement;

the body may, within the specified period, apply to the Minister for an extension of the period, and, where the body does so apply, it must give the Minister a statement in writing explaining why, in the body's opinion, it will not be reasonably possible to comply with the requirement.

(5) The Minister may, on application under subsection (4), grant such extension as he or she considers reasonable in the circumstances.

(6) Despite subsection (2) and any other provisions of this Act, where the Minister grants an extension pursuant to an application under subsection (4):

- (a) the Minister must cause to be laid before each House of the Parliament, within 3 sitting days of that House after granting the extension, a copy of the statement given under subsection (4) in respect of the application together with a statement specifying the extension granted and the reasons for granting the extension; and
- (b) the body that made the application must furnish the periodic report to the Minister within the period as so extended; and
- (c) the Minister must cause a copy of the periodic report to be laid before each House of the Parliament within 15 sitting days of that House after receiving the report.

- (7) Where this or any other Act requires a body to furnish a periodic report to the Minister within a specified period or an extension of that period under this section and the body fails to do so:
- (a) the body must, not later than 14 days after the end of that specified period or extension, as the case may be, give the Minister a statement in writing explaining why the report was not furnished as required; and
 - (b) the Minister must cause a copy of the statement to be laid before each House of the Parliament within 3 sitting days of that House after receiving the statement.

6E Liabilities etc. imposed on Commonwealth by other ASC Laws

- (1) Where Part 16 of the ASC Law of another jurisdiction is expressed to transfer liabilities of the NCSC to the Commonwealth, those liabilities become liabilities of the Commonwealth by force of this subsection.
- (2) Where Part 16 of the ASC Law of another jurisdiction is expressed to make the Commonwealth a party to pending proceedings, the Commonwealth becomes a party to those proceedings by force of this subsection.
- (3) Where Part 16 of the ASC Law of another jurisdiction is expressed to create a right of action against the Commonwealth, that right against the Commonwealth is created by this subsection.

Part 2—The Commission and consumer protection in relation to financial services

Division 1—Establishing the Commission

7 Establishment

- (1) An Australian Securities Commission is established.
- (2) From the commencement of this subsection, the Commission is to be known as the Australian Securities and Investments Commission.

8 Commission is a body corporate

The Commission:

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

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

9 Membership

- (1) The Commission shall consist of not fewer than 3 nor more than 8 members.
- (2) The Governor-General shall appoint the members on the nomination of the Minister.
- (3) At least 3 of the members shall 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 shall 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.

- (5) The performance of the functions or the exercise of the powers of the Commission 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 shall be deemed to be a member.

10 Chairperson and Deputy Chairperson

- (1) The Governor-General shall appoint as Chairperson of the Commission a person who is, or is to be, a full-time member and may appoint as Deputy Chairperson of the Commission 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 Functions and powers—national scheme laws

- (1) The Commission has such functions and powers as are conferred on it by or under the following:
 - (a) the *Corporations Act 1989*;
 - (b) the Corporations Law of the Capital Territory;
 - (c) this Act (other than section 12A and Division 2 of Part 2).
- (1A) The Commission also has the functions and powers expressed to be conferred upon the NCSC by or under:
 - (a) any Act that is a relevant Act for the purposes of the *Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980*; or
 - (b) any law of a State that corresponds to such an Act.

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- (1B) In the performance of a function, or the exercise of a power, referred to in paragraph (1A)(a), the Commission is not subject to any directions other than directions given under section 12.
- (2) The Commission 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 a national scheme law that, in the Commission's opinion, are needed to overcome, or would assist in overcoming, any problems that the Commission has encountered in the course of performing or exercising any of its functions and powers.
- (3) The Commission 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) The Commission 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, the Commission has the general administration of this Act.
- (7) The Commission has any functions and powers that are expressed to be conferred on it by a national scheme law of another jurisdiction.
- (8) The Commission 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 the Commission as an agent of the State or Territory.
- (9) The Commission has such functions and powers as are referred to in such an agreement or arrangement.
- (10) The Commission has power to do acts in the Capital Territory in the performance or exercise of any function or power:

- (a) expressed to be conferred on the Commission by a national scheme law of another jurisdiction; or
- (b) referred to in an agreement or arrangement of the kind referred to in subsection (8).

12 Directions by Minister

- (1) The Minister may give the Commission a written direction about policies it should pursue, or priorities it should follow, in performing or exercising any of its functions or powers under a national scheme law of this jurisdiction.
- (2) The Minister shall not give a direction under subsection (1) unless he or she has:
 - (a) notified the Commission 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 shall not give a direction under subsection (1) about a particular case.
- (4) The Commission shall comply with a direction under subsection (1).
- (5) The Minister shall 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 Functions and powers—non-national scheme laws

- (1) The Commission 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:
 - (a) the *Insurance Act 1973*;
 - (b) the *Insurance (Agents and Brokers) Act 1984*;

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- (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) The Commission has the function of monitoring and promoting market integrity and consumer protection in relation to the Australian financial system.
- (3) The Commission 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) The Commission may:
- (a) advise the Minister about any changes to a law listed in subsection (1) that the Commission thinks are needed to help overcome any problems that the Commission 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) The Commission has power to do whatever is necessary for or in connection with, or reasonably incidental to, the performance of its functions.

Section 12AA

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 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

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- (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 to 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.

12AB Subdivision E (sections 12EA to 12ED) does not apply to contracts entered into before 1 October 1974

Subdivision E (sections 12EA to 12ED) does not apply to a contract entered into before 1 October 1974.

12AC Division extends to some conduct outside Australia

- (1) This Division extends to the engaging in conduct outside Australia by:

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- (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 the Commission 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:
- (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.

Section 12AE

- (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 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;

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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
- (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.

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business includes a business not carried on for profit.

consumer has the meaning given by section 12BC.

conduct has the meaning given by subsection (2).

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:

- (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

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- (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.

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

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(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:

- (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

Section 12BB

- (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 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

Section 12BC

- (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
 - (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

Section 12BD

- (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
 - (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:

- (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.

Section 12CB

- (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
 - (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.
- (2) Nothing in sections 12DB to 12DN limits by implication the generality of subsection (1).

12DB False or misleading representations

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.

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

- 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;

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.

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:

- (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.

Section 12DH

- (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 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:

Section 12DK

- (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 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

Section 12DL

- (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 shall be 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 a servant or agent of the promoter or of one of the promoters or in any other capacity; and
 - (b) a scheme includes any arrangements made in connection with the carrying on of a business, whether those arrangements are made or recorded wholly or partly in writing or not; and
 - (c) 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 credit and 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
 - (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

Section 12DM

- (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.

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:

Section 12DN

- (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) (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:

- (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

Section 12EC

- (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
 - (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:
 - (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 Commission

- (1) The Commission 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.

Section 12FA

Without limiting paragraph (b), the Commission 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) The Commission must not approve an industry code under subsection (1) unless the Commission 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:
 - (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 the Commission;
 - (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 the Commission;
 - (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 the Commission;
 - (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;
 - (o) they provide for the provision to the Commission 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) The Commission may revoke an approval given under subsection (1) if the Commission 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.

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12GB Offences against Subdivision D or E

- (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 or E (sections 12DA to 12ED) 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
 - (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 or E (sections 12DA to 12ED); 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 or E (sections 12DA to 12ED); 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

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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 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 or E (sections 12DA to 12ED), 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

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- (b) make an order, on the application of the Minister or the Commission, 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 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

finer to serve periods of imprisonment in respect of those
finer 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;

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
finer.

- (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, the Commission 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

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- (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.
- (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.

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- (7) If the Minister or the Commission makes an application to the Court for the grant of an injunction under this section, the Court must not require the applicant or any other person, as a condition of granting an interim injunction, to give 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 the Commission, the Court is satisfied that a person has engaged in conduct constituting a contravention of a provision of Subdivision D or E (sections 12DA to 12ED), 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 or E (sections 12DA to 12ED) may recover the amount of the loss or damage by action

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against that other person or against any person involved in the contravention.

- (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, servants 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, servant or agent of the body corporate, being a director, servant 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, servant 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, servant 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, servant or agent;
- is taken, for the purposes of this Division, to have been engaged in also by the body corporate.
- (3) If, in a proceeding under this Subdivision in respect of conduct engaged in by a person other than a body corporate, being conduct

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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 a servant or agent of the person, being a servant or agent by whom the conduct was engaged in within the scope of the servant'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 a servant or agent of the person within the scope of the actual or apparent authority of the servant or agent; or
 - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a servant 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 servant 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 or E (sections 12DA to 12ED), 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:
 - (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

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- (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) a servant or agent of the defendant; or
 - (b) in the case of a defendant being a body corporate, a director, servant 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 or E (sections 12DA to 12ED) 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 or E.

12GJ Jurisdiction of courts

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

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- (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).
- (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) Subject to subsection (2), 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.
- (2) A proceeding that is pending in the Federal Court at the commencement of this section must not be transferred to the Family Court unless the parties to the proceeding consent to the transfer.
- (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; 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,

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- 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.

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

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conduct of another person that was engaged in 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 in contravention of a provision of this Division; or
- (b) the Commission 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 the Commission or the Minister under section 12GD, a person is found to have engaged in conduct in contravention of a provision of this Division, the Commission may make an application under subsection (2) on behalf of one or more persons identified in the application who have suffered, or are likely to suffer, loss or damage by the conduct. The Commission 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.

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- (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 or E (sections 12DA to 12ED)—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 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;

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- (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 moneys 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

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- (c) an action has been commenced under subsection 12GF(1) against a person in relation to a contravention of a provision of Subdivision D or E (sections 12DA to 12ED); 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 the Commission, 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 moneys 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 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;

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- (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.
- (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.

Section 12GO

12GO Enforcement of undertakings—Secretary to the Department

- (1) The Secretary to 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 to the Department.
- (3) If the Secretary to 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.

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 the Commission has under Part 3 when investigating a contravention, or suspected contravention, of a provision of this Division. The powers may be used only when the Commission 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 the Commission

- (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;
- the Commission must, at the request of the corporation or other person and upon payment of the prescribed fee (if any), furnish to the corporation or other person:
- (c) a copy of every document that has been furnished to, or obtained by, the Commission 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 the possession of the Commission that comes to the attention of the Commission 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 the Commission.
- (2) If the Commission does not comply with a request under subsection (1), the Court must, subject to subsection (3), upon application by the corporation which, or other person who, made the request, make an order directing the Commission 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.

Section 12HC

- (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) the Commission; or
 - (b) a person authorised in writing by the Commission; or
 - (c) a person authorised in writing by the Secretary to 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.

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.

Subdivision I—Transitional

12IA Conduct engaged in in relation to financial services before commencement

- (1) If:
 - (a) conduct was, or may have been, engaged in in relation to financial services before the commencement of this Division; and
 - (b) the conduct contravened, or may have contravened, Part IVA or V of the *Trade Practices Act 1974*; and
 - (c) if the conduct had been engaged in after the commencement of this Division it would have, or may have, contravened this Division;the Commission has, by virtue of this section, the same powers under the *Trade Practices Act 1974* in relation to the conduct as the Australian Competition and Consumer Commission.
- (2) The Commission's power of delegation under section 102 extends to the powers it has under subsection (1).

Part 3—Investigations and information-gathering

Division 1A—Application of Part 3

12B Application of Part 3

- (1) If this Part is being applied as a law of a State, it has no effect in relation to an investigation of a contravention of Division 2 of Part 2.
- (2) If this Part is being applied in relation to an investigation of a contravention of Division 2 of Part 2:
 - (a) subsection 35(1) has effect as if the words “within this jurisdiction” were omitted; and
 - (b) subsection 37(10) has effect as if the words “a State or the Capital Territory” were substituted for the words “another jurisdiction”; and
 - (c) section 81 has effect as if paragraph (a) were omitted; and
 - (d) section 86 has effect as if the words “of this jurisdiction” were omitted; and
 - (e) subsection 93(2) has effect as if the words “or of this or any other jurisdiction” were omitted.
- (3) If this Part is being applied in relation to an investigation of a contravention of Division 2 of Part 2, ignore any references in this Part to:
 - (a) a corresponding law; and
 - (b) a corresponding law of another jurisdiction.

Division 1—Investigations

13 General powers of investigation

- (1) The Commission may make such investigation as it thinks expedient for the due administration of a national scheme law of this jurisdiction where it has reason to suspect that there may have been committed:
 - (a) a contravention of a national scheme law; or
 - (b) a contravention of a law of the Commonwealth or of a State or Territory, 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 the Commission has reason to suspect that unacceptable circumstances within the meaning of Part 6.9 of the Corporations Law of this jurisdiction have, or may have, occurred, the Commission may make such investigation as it thinks expedient:
 - (a) for the purposes of determining whether or not to make an application under subsection 733(1) or 734(2) of that Law; or
 - (b) otherwise for the due administration of a national scheme law.
- (3) Where the Commission has reason to suspect that a contravention of a relevant previous law of this jurisdiction may have been committed, the Commission may make such investigation as it thinks appropriate.
- (4) Neither of subsections (1) and (3) limits the generality of the other.
- (5) Where:
 - (a) immediately before the commencement of this subsection, the NCSC was investigating a matter under a relevant previous law of this jurisdiction; and
 - (b) either or both of subsections (1) and (3) empower the Commission to investigate that matter;

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then:

- (c) the Commission may continue the NCSC's investigation of that matter; and
 - (d) the investigation, as continued by the Commission, is taken to be an investigation under that subsection, or each of those subsections, as the case may be.
- (6) If the Commission has reason to suspect that a contravention of a provision of Division 2 of Part 2 may have been committed, the Commission may make such investigation as it thinks appropriate.

Note: See section 12B on the application of this subsection as a law of a State.

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 subsection (2) applies to be investigated, he or she may by writing direct the Commission to investigate that matter.
- (2) This subsection applies to a matter relating to any of the following, whether occurring, or alleged to have occurred, within this jurisdiction or elsewhere:
 - (a) an alleged or suspected contravention of a national scheme law or of a relevant previous law of a jurisdiction;
 - (b) an alleged or suspected contravention of a law of the Commonwealth or of a State or Territory, 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) The Commission shall comply with a direction under subsection (1).
- (4) A direction under subsection (1) does not prevent the Commission from delegating a function or power.

14A Directions under relevant previous laws

- (1) This section applies where, immediately before the commencement of this section:
 - (a) a direction was in force under:
 - (i) subsection 290(4) or 291(1), (2) or (3) of the relevant previous law of this jurisdiction relating to the formation of companies; or
 - (ii) subsection 16(1), (2) or (3) of the relevant previous law of this jurisdiction relating to the securities industry; or
 - (iii) subsection 22(1), (2) or (3) of the relevant previous law of this jurisdiction relating to the futures industry; and
 - (b) no investigation pursuant to the direction had yet begun, or such an investigation had begun but had not yet been completed or terminated.
- (2) The direction has effect:
 - (a) with such modifications (if any) as are specified, in relation to the direction, in an application order; and
 - (b) with such other modifications (if any) as the circumstances require;as if it were a direction to the Commission under subsection 14(1).
- (3) If, immediately before that commencement, an investigation was being carried out pursuant to the direction:
 - (a) the Commission must comply with the direction, as it has effect because of subsection (2), by continuing the investigation in accordance with the direction as it so has effect; and
 - (b) the investigation, as continued by the Commission, is taken to be an investigation under section 14.

15 Investigation after report of receiver or liquidator

Where a report has been lodged under section 422 or 533 of the Corporations Law or under a previous law corresponding to section 422 or 533 of that Law, the Commission 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 a national scheme law of this jurisdiction.

16 Interim report on investigation

- (1) Where, in the course of an investigation under this Division, the Commission forms the opinion that:
- (a) a serious contravention of a law of the Commonwealth or a State or Territory has been committed;
 - (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 a national scheme law to be amended;

it shall 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;
 - (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 law, and its reasons for that opinion;
- and such other matters relating to, or arising out of, the investigation as it thinks fit.
- (2) The Commission may prepare an interim report about an investigation under this Division and shall do so if the Minister so directs.
- (3) A report under subsection (2) shall set out such matters relating to, or arising out of, the investigation as the Commission thinks fit or the Minister directs.

17 Final report on investigation

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

18 Distribution of report

- (1) As soon as practicable after preparing a report under this Division, the Commission shall 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, the Commission may give a copy of the whole or a part of the report to:
 - (a) the Australian Federal Police;
 - (b) the National Crime Authority;
 - (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, the Commission 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 the Commission, 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) The Commission may, by written notice in the prescribed form given to the person, require the person:
 - (a) to give to the Commission 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) shall:
 - (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.
- (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 the Commission is investigating, or is to investigate, under Division 1.

22 Examination to take place in private

- (1) The examination shall 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 shall not be present at the examination unless he or she:
 - (a) is the inspector, the examinee or a member;
 - (b) is a staff member approved by the Commission; 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 shall if the examinee so requests, cause a record to be made of statements made at the examination.

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- (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 shall, 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) The Commission 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 the Commission 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 the Commission 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, shall 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) The Commission 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 possession, custody or control of the copy or a copy of it, shall 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 shall accompany the report.
- (2) If:
 - (a) in the Commission's opinion, a statement made at an examination is relevant to any other investigation under Division 1;
 - (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 shall 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 the Commission's functions and powers under a national scheme law of this jurisdiction; or
- (b) for the purposes of ensuring compliance with a national scheme law of this jurisdiction; or
- (c) in relation to:
 - (i) an alleged or suspected contravention of a national scheme law of this jurisdiction; or
 - (ii) an alleged or suspected contravention of a law of 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 Commission may inspect books without charge

- (1) A book that a national scheme law of this jurisdiction requires a person to keep shall be open for inspection (without charge) by a person authorised in writing by the Commission.
- (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.

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

- (1) The Commission 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) The Commission 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) The Commission may give to:
- (a) a securities exchange;
 - (b) a member of the board of a securities exchange;
 - (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;
 - (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;
 - (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 the Commission'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;
 - (h) a dealing in securities;
 - (j) advice given, or an analysis or report issued or published, about securities;
 - (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.

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- (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) The Commission may give to:
- (a) a futures exchange;
 - (b) a clearing house for a futures market;
 - (c) a futures association;
 - (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;
 - (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;
 - (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;
 - (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 the Commission'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;
- (k) a dealing in a futures contract;
- (m) advice given, or an analysis or report issued or published, about futures contracts;
- (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

The Commission 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

The Commission 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 Commission may authorise persons to require production of books

- (1) The Commission may by writing authorise a member or staff member to make a requirement of a kind that this Division empowers the Commission 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.

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- (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 the Commission were a reference to the person;
 - (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 within this jurisdiction, books:
- (a) whose production has been required under this Division or a corresponding law of another jurisdiction; 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.

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 or a corresponding law of another jurisdiction; 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;
 - (b) to search the premises;
 - (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 shall 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 shall:
 - (a) specify the premises and books referred to in subsection (1);
 - (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;
 - (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.

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- (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));
 - (b) for any of the purposes referred to in paragraphs 28(a), (b) and (d);
 - (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) shall 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.
- (8) Unless subparagraph (1)(b)(ii) applies, the person may deliver any of the books into the possession of the Commission 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 proceeding under a law of another 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 Commission may give copy of book relating to registered scheme to another person

- (1) The Commission 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.

Part 3 Investigations and information-gathering

Division 3 Inspection of books

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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 the Commission's functions and powers under a national scheme law of this jurisdiction; or
- (b) for the purposes of ensuring compliance with a national scheme law of this jurisdiction; or
- (c) in relation to:
 - (i) an alleged or suspected contravention of a national scheme law of this jurisdiction; or
 - (ii) an alleged or suspected contravention of a law of 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) The Commission 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) The Commission 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

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- (b) the nature of any instructions given to the first-mentioned person in relation to the acquisition or disposal.
- (3) The Commission may require a person who conducts a stock market to disclose to the Commission, 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 the Commission in relation to securities

- (1) This section applies where the Commission 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 Law of this jurisdiction;
 - (b) a contravention of section 845, or Division 2 of Part 7.11, of the Corporations Law of this jurisdiction may have been committed in relation to securities of a body corporate;
 - (c) a contravention of Part 6.7 or 6.8 of the Corporations Law of this jurisdiction may have been committed in relation to shares in a body corporate;
 - (d) a contravention of a law of this jurisdiction may have been committed, being a contravention that involves fraud or dishonesty and relates to securities of a body corporate;
 - (e) unacceptable circumstances within the meaning of Part 6.9 of the Corporations Law of this jurisdiction 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 subsection 734(5) of the Corporations Law of this jurisdiction.
- (2) The Commission may require a director, secretary or executive officer of the body to disclose to the Commission information of which he or she is aware and that:
 - (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 the Commission 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;
- the Commission may require the person to disclose to it the information that the person has about those particular matters.
- (4) The Commission shall 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;
 - (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 subsection 733(1) or 734(2), or section 736, as the case may be, of the Corporations Law.

44 Dealings in futures contracts

- (1) The Commission may require a futures broker to disclose to it, in relation to a dealing by the futures broker in a futures contract,

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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) The Commission 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) The Commission 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) The Commission may require a clearing house for a futures market to disclose to the Commission, 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 Commission in relation to futures contracts

- (1) The Commission shall 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 Law of this jurisdiction—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 Law of this jurisdiction; or

- (ii) a contravention of a law of this jurisdiction, being a contravention that involves fraud or dishonesty and relates to futures contracts;

for the purpose of investigating the possible contravention.

- (2) Where the Commission 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;

the Commission 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 the Commission pursuant to a requirement made under this Division shall take place in private and the Commission may give directions about who may be present during it, or during a part of it.
- (2) A person shall not be present during a disclosure unless he or she:
 - (a) is a member;
 - (b) is a staff member approved by the Commission; 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.

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48 Lawyer of person making disclosure may attend

- (1) The lawyer of a person making a disclosure to the Commission 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 the Commission presiding at the meeting during which the disclosure is made determines, address the representatives of the Commission 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 the Commission.

Division 5—Proceedings after an investigation

49 Commission 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 or a corresponding law, it appears to the Commission that a person:
 - (c) may have committed an offence against a national scheme law, or a relevant previous law, of this jurisdiction, or Division 2 of Part 2; and
 - (d) ought to be prosecuted for the offence.
- (2) The Commission may cause a prosecution of the person for the offence to be begun and carried on.
- (3) If:
 - (a) the Commission, 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;the Commission 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* or that Act as it applies as a law of this jurisdiction.

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50 Commission 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 or a corresponding law), it appears to the Commission 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;

the Commission:

- (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

- (1) The Commission may hold hearings for the purposes of the performance or exercise of any of its functions and powers under a national scheme law of this jurisdiction, other than a function or power conferred on it by Division 1 of this Part or by section 733, 734 or 736 of the Corporations Law.
- (2) Where:
 - (a) immediately before the commencement of this section, the NCSC was holding a hearing, under a relevant previous law of this jurisdiction, in relation to a matter; and
 - (b) subsection (1) empowers the Commission to hold a hearing in relation to that matter;then:
 - (c) the Commission may continue the NCSC's hearing, so far as it relates to that matter; and
 - (d) the hearing, as continued by the Commission, is taken to be a hearing under subsection (1).

52 General discretion to hold hearing in public or private

- (1) Subject to sections 53 and 54, the Commission may direct that a hearing take place in public or take place in private.
- (2) In exercising its discretion under subsection (1), the Commission shall 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;
 - (b) any unfair prejudice to a person's reputation that would be likely to be caused if the hearing took place in public;
 - (c) whether it is in the public interest that the hearing take place in public; and
 - (d) any other relevant matter.

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

- (1) Subject to section 54, where:
 - (a) a national scheme law of this jurisdiction requires the Commission 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 shall take place in public.
- (2) Despite subsection (1), where the Commission 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 a national scheme law of this jurisdiction (other than this section) requires a hearing to take place in private, the hearing shall take place in private.

55 Commission may restrict publication of certain material

- (1) Where, at a hearing that is taking place in public or in private, the Commission is satisfied that it is desirable to do so, the Commission may give directions preventing or restricting the publication of evidence given before, or of matters contained in documents lodged with, the Commission.
- (2) In determining whether or not to give a direction under subsection (1), the Commission shall 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;
 - (b) any unfair prejudice to a person's reputation that would be likely to be caused unless the Commission exercises its powers under this section;

- (c) whether it is in the public interest that the Commission exercises its powers under this section; and
- (d) any other relevant matter.

56 Who may be present when hearing takes place in private

- (1) The Commission 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:
 - (a) a person whom a national scheme law of this jurisdiction 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 the Commission directs that a hearing take place in private, a person shall not be present at the hearing unless he or she:
 - (a) is a member;
 - (b) is a staff member approved by the Commission; 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 a national scheme law of this jurisdiction requires the Commission to give a person an opportunity to appear at a hearing and to make submissions and give evidence to it.
- (2) The Commission shall appoint a place and time for the hearing and cause written notice of that place and time to be given to the person.

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- (3) If the person does not wish to appear at the hearing, the person may, before the day of the hearing, lodge with the Commission any written submissions that the person wishes the Commission 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 the Commission 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, the Commission 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) The Commission may permit a witness at a hearing to give evidence by tendering, and if the Commission so requires, verifying by oath, a written statement.

59 Proceedings at hearings

- (1) A hearing shall be conducted with as little formality and technicality, and with as much expedition, as the requirements of

national scheme laws of this jurisdiction and a proper consideration of the matters before the Commission permit.

- (2) At a hearing, the Commission:
 - (a) is not bound by the rules of evidence;
 - (b) may, on such conditions as it thinks fit, permit a person to intervene; and
 - (c) shall observe the rules of natural justice.
- (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 the Commission.
- (4) At a hearing before a Division of the Commission, 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 the Commission.
- (6) A body corporate may be represented at a hearing by an officer of the body corporate approved by the Commission.
- (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 the Commission.
- (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 Commission to take account of evidence and submissions

The Commission shall 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.

Section 61

61 Reference to Court of question of law arising at hearing

- (1) The Commission 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), the Commission shall 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) the Commission shall send to the Court all documents that were before the Commission in connection with the hearing; and
 - (b) at the end of the proceeding in the Court in relation to the reference, the Court shall cause the documents to be returned to the Commission.

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 Law, 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 shall 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 shall 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 shall 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 shall comply with a requirement made under subsection 23(2) or 48(2).

Penalty: 5 penalty units.

64 False information

- (1) A person shall 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 shall 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.

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- (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 shall 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 shall 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 Commission

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

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

- (2) A person shall 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.

67 Concealing books relevant to investigation

- (1) Where the Commission is investigating, or is about to investigate, a matter, a person shall 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 a national scheme law of this jurisdiction or of Division 2 of Part 2, nor to delay or obstruct an investigation, or a proposed investigation, by the Commission.

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;
 - (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, or under a corresponding law of another jurisdiction, a person (other than a body corporate) claims that the statement, or signing the record, as

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- 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.
- (4) Subsections (2) and (3), as in force after the commencement of section 4 of the *Corporations Legislation (Evidence) Amendment Act 1992*, apply in relation to a requirement made, as mentioned in paragraph (2)(a) of this section as so in force, at or after that commencement.
- (5) Subsections (2) and (3), as in force before that commencement, continue to apply in relation to a requirement made, as mentioned in paragraph (2)(a) as so in force, before that commencement.

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.
- (3) If the lawyer so refuses, he or she shall, 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;
 - (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 the Commission is satisfied that a person has, without reasonable excuse, failed to comply with a requirement made under this Part (other than Division 8).
- (2) The Commission may by writing certify the failure to the Court.
- (3) If the Commission 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—Commission's powers where non-compliance with Part

71 Orders by Commission

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

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

needs to be found out for the purposes of the exercise of any of the Commission'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, the Commission 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;
- (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, the Commission 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, the Commission 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;

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- (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;
 - (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;
 - (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) The Commission may make an order varying or revoking an order in force under this Division.
- (2) An order under this Division shall be made by notice published in the *Gazette*.
- (3) Where an order is made under this Division (other than subsection (1)), the Commission shall 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.
- (4) Where an order under this Division relates to securities, the Commission shall 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 shall 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;
 - (b) the statement is not relevant to the proceeding and the person objects to the admission of evidence of the statement;
 - (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 (in this section called 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 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;
 - (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 shall be had to:
 - (a) how long after the matters to which it related the statement was made;
 - (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.

Section 79

- (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 (in this section called 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) shall 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 shall 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).
- (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 or a corresponding law of another jurisdiction purports to be certified by the Commission 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:

Section 82

- (a) the Commission's report of its opinion for the purposes of paragraph 461(1)(h) or subparagraph 583(c)(iii) of the Corporations Law of this jurisdiction; and
- (b) any facts or matters that the report states the Commission 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 the Commission 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 shall grant an application made under subsection (3) unless it considers that, in all the circumstances, it is not appropriate to do so.
- (5) If:
 - (a) the court or tribunal grants an application or applications made under subsection (3);
 - (b) a person to whom the application or any of the applications relates, 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 shall refuse so to admit the copy, or shall 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

83A Exercise of powers etc. for purposes of investigation under corresponding law

Where an investigation is being conducted under the provisions of a law of another jurisdiction that correspond to this Part, actions may be taken, and powers may be exercised, within this jurisdiction, for the purposes of that investigation as if the investigation were being conducted under this Part.

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 (in this section called the *inspector*), other than the Commission, who is about to make, or has made, a requirement of another person under this Part (other than Division 6) shall, 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 the Commission and incorporates a photograph of the inspector;
- (b) if the requirement will be, or was, made under an authorisation by the Commission—a document that was issued by the Commission 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 the Commission determines.

86 Giving documents to natural persons

Section 109X of the Corporations Law of this jurisdiction has effect for the purposes of this Part as if a reference in subsection (2) or paragraph (3)(b) 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.

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 shall be 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.
- (1A) For the purposes of a national scheme law of this jurisdiction:
 - (a) an offence under Part III of the *Crimes Act 1914* as it applies in relation to an examination or hearing is taken to be an offence against this section; and
 - (b) an offence under Part III of the *Crimes Act 1914* as it applies, in relation to an examination or hearing held under the ASC Law of another jurisdiction, as a law of that jurisdiction is taken to be an offence against Part 3 of the ASC Law of that jurisdiction.
- (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.

Section 89

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 the Commission;the prescribed allowances and expenses (if any).
- (3) The Commission 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, the Commission shall pay the expenses of an investigation.

91 Recovery of expenses of investigation

- (1) Subject to subsection (1A), where:
 - (a) a person is convicted of an offence against a law of 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 or a corresponding law of another jurisdiction, the Commission 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 the Commission to the extent of a specified amount of such of the expenses of the investigation as the Commission has paid;
 - (e) an order that the person pay, or reimburse the Commission in respect of, the whole, or a specified part, of the cost to the Commission of making the investigation, including the remuneration of a member or staff member concerned in the investigation.
- (1A) The Commission may not make an order under subsection (1) in respect of expenses or costs that have already been paid, or recovered by the Commission, pursuant to an order made under a provision of a law of another jurisdiction that corresponds to that subsection.
- (2) An order under this section shall be in writing and shall specify when and how the payment or reimbursement is to be made.
- (3) A person shall comply with an order under this section that is applicable to the person.
- Penalty: 50 penalty units or imprisonment for 1 year, or both.
- (4) The Commission may recover in a court of competent jurisdiction as a debt due to the Commission so much of the amount payable under an order made under this section or a corresponding law of another jurisdiction 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.

Section 93AA

- (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 or of this or any other jurisdiction.

93AA Enforcement of undertakings

- (1) The Commission may accept a written undertaking given by a person in connection with a matter in relation to which the Commission has a function or power under this Act.
- (2) The person may withdraw or vary the undertaking at any time, but only with the consent of the Commission.
- (3) If the Commission considers that the person who gave the undertaking has breached any of its terms, the Commission 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.

Part 3A—Enforceable undertakings in relation to registered schemes

93A Undertakings by responsible entity

- (1) The Commission 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 the Commission has a power or function under a national scheme law of this jurisdiction.
- (2) The responsible entity may withdraw or vary the undertaking at any time, but only with the consent of the Commission.
- (3) If the Commission considers that the responsible entity has breached any of the terms of the undertaking, the Commission 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) The Commission must keep a record of the full text of the undertaking.
- (6) The Commission must make available to a person who asks for it a copy of the text of the undertaking, but the Commission must delete from the copy information:

Section 93A

- (a) that the responsible entity has asked it not to release; and
 - (b) that the Commission 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 the Commission makes available a copy that has information deleted from it, the copy must include a note stating that information has been deleted.

Part 4—The Commission's business

Division 1—General

94 Arrangement of Commission's business

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

95 Commission to establish offices

- (1) For the purpose of performing its functions and exercising its powers under national scheme laws, the Commission must establish a regional office in each jurisdiction, and may establish such other offices as it thinks fit.
- (2) In deciding on the number and location of its offices, the Commission shall seek to ensure that it serves adequately the needs of business communities throughout Australia.

96 Regional Commissioners

- (1) There is to be a different Regional Commissioner, employed by the Commission under subsection 120(3), for each jurisdiction.
- (2) A Regional Commissioner for a jurisdiction is to manage the regional office established under section 95 in that jurisdiction.

Division 2—Divisions of the Commission

97 Commission may establish Division

- (1) The Commission may direct in writing that a Division of the Commission consisting of at least 2 specified members shall, either generally or as otherwise provided by the direction, perform or exercise specified functions or powers of the Commission.
- (2) A direction under this section that is in force and does not specify the Chairperson as a member of the Division shall 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 the Commission.
- (2) The Commission shall be deemed 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 shall be deemed to be the Chairperson.
- (4) A meeting of the Division shall be deemed to be a meeting of the Commission, but 2 members of the Division form a quorum at a meeting of the Division.

99 Commission may reconstitute Division

Where a direction under section 97 is in force, the Commission 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 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 the Commission may perform functions, or exercise powers, of the Commission even though another such Division is performing such functions, or exercising such powers, at the same time.

Division 3—Delegation by the Commission

102 Delegation

- (1) The Commission may, by writing under its common seal, delegate to a person all or any of its functions and powers.
- (2) The Commission shall 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) The Commission 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) The Commission must not delegate a function or power to:
 - (i) a person referred to in paragraph (2)(e); or
 - (ii) 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), the Commission shall seek to ensure that:
 - (a) the persons who make decisions affecting a particular business community are located as close to that community as practicable; and

- (b) members of business communities throughout Australia have prompt and convenient access to decision-making and to the Commission's facilities.
- (5) In the performance of a function, or the exercise of a power, delegated under this section, the delegate is subject to the Commission's directions.
- (6) Where a function or power conferred on the Commission by or under a law (including this Law) and delegated under this section is performed or exercised by the delegate, it shall, for the purposes of that law and this Law, be deemed to have been performed or exercised by the Commission.
- (7) Where a body to which a function or power is delegated under this section is not a person, section 109ZF of the Corporations Law applies as if it were.
- (8) If this section is being applied as a law of a State, it applies only in relation to functions and powers conferred by a national scheme law.

Division 4—Meetings of the Commission

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 shall convene such meetings as he or she thinks necessary for the efficient performance of the Commission's functions.
- (3) If so requested in writing by 2 of the members, the Chairperson shall 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 the Commission 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 the Commission consists of 3 or 4 members—2 members;
or
 - (b) in any other case—3 members;
- form a quorum.

106 Who is to preside at meetings

- (1) The Chairperson shall 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 shall preside.
- (3) If neither the Chairperson nor the Deputy Chairperson is present at a meeting, the members present shall elect one of their number to preside.

107 Procedure at meetings

- (1) Questions arising at a meeting shall 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—The Commission'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 shall not be appointed as a full-time member.
- (3) A person shall 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;
 - (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.

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;
 - (b) is a full-time member and engages without the Minister's consent in paid employment outside the duties of the member's office;
 - (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;
 - (d) is a part-time member and is absent, except on leave granted in accordance with subsection 113(2), from 3 consecutive meetings of the Commission;
 - (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 shall 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 shall be paid such remuneration as the Minister determines in writing.
- (2) A member shall 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) The Commission 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 Tribunals Act 1973*.

113 Leave of absence

- (1) Subject to section 87E of the *Public Service Act 1922*, a full-time member has such recreation leave entitlements as are determined by the Remuneration Tribunal.
- (2) The Minister may:

- (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 the Commission.

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);
 - (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 the Commission 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.

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 shall 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—The Commission's staff

120 Staff

- (1) Subject to this Part, the Commission's staff shall be persons appointed or employed under the *Public Service Act 1922*.
- (2) The Commission has all the powers of, or exercisable by, a Secretary under the *Public Service Act 1922*, so far as those powers relate to the branch of the Australian Public Service comprising the staff referred to in subsection (1), as if that branch were a separate Department of the Australian Public Service.
- (3) In addition to the staff referred to in subsection (1), the Commission may, on the Commonwealth's behalf, employ under written agreements such persons as the Commission 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 Commission determines from time to time with the Minister's written approval.

121 Consultants etc.

- (1) The Commission may, on the Commonwealth's behalf, engage, under written agreements, as consultants to, or to perform services for, the Commission 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 Commission determines from time to time.

122 Staff seconded to the Commission

In addition to the other staff members:

- (a) officers and employees of Departments of the Australian Public Service, and of authorities of the Commonwealth,

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whose services are made available to the Commission 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;

shall assist the Commission.

122A Transfer of staff to Australian Public Service

Section 81B of the *Public Service Act 1922* has effect in relation to any person who, immediately before the commencement of this Part:

- (a) was employed by the NCSC; and
- (b) was an unattached officer for the purposes of the *Public Service Act 1922*;

as if the person had ceased to be an officer of the Australian Public Service immediately before the commencement of this Part.

Part 7—Preventing conflicts of interest and misuse of information

Division 1—Disclosure of interests

123 Chairperson to disclose certain interests to Minister

The Chairperson must give written notice to the Minister of all direct or indirect pecuniary interests that the Chairperson has or acquires in:

- (a) a business carried on in Australia or a body corporate carrying on such a business; or
- (b) a pooled superannuation trust (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) or a body corporate that is a trustee of such a trust; or
- (c) a superannuation fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) or an approved deposit fund (within the meaning of that Act) or a body corporate that is a trustee of such a fund; or
- (d) an RSA or an RSA provider (within the meaning of the *Retirement Savings Accounts Act 1997*).

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 the Commission; and
 - (b) has or acquires a direct or indirect pecuniary or other interest 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 shall 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 shall:
 - (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

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- (b) in any other case—cause the member's interest to be disclosed to the persons concerned in the matter.
- (4) The member shall comply with a direction under paragraph (3)(a).
- (5) If the member is the Chairperson, he or she shall cause his or her interest to be disclosed to the persons concerned in the matter.
- (6) Subject to subsection (4), the member shall not take part, or continue to take part, as the case requires, in determining the matter unless everyone concerned in it consents to the member so taking part.
- (7) Section 21 of the *Commonwealth Authorities and Companies Act 1997* does not apply to members.

125 Notification of interests to Commission

- (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 employed under the *Public Service Act 1922*);
 - (b) performing a function, or exercising a power, as a Commission delegate; or
 - (c) performing functions or services by way of assisting a Commission 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 shall forthwith give to the Commission 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 shall 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) The Commission shall 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 a national scheme law of this jurisdiction; 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:

- (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
- (c) particulars of names of beneficiaries and amounts set out in a statement of unclaimed money given to the Commission under section 225 of the SIS Act; 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 the Commission 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;

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- (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 this or any other jurisdiction shall be 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 to 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 Commission 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, the Commission; or
 - (b) the performance of functions or services by the person by way of assisting a Commission delegate;shall be 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 the Advisory Committee, 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
- (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 1 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 shall be 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 Law of a State or internal Territory; 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 the Commission 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 Law of a State or internal Territory; 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.

(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

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- (b) what may otherwise constitute, for the purposes of subsection (1), authorised use or disclosure of information.
- (7) This section does not apply in relation to information in relation to which section 127A applies.
- (8) If this section is being applied as a law of a State, it applies only in relation to the performance of the Commission's functions and the exercise of the Commission's powers under a national scheme law.
- (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 the Commission; 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 Law) to a body regulated by the Commission; or
- (c) a person who has been, is, or proposes to be, a customer of a body or person regulated by the Commission;

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*.

127A Secrecy

- (1) Subject to this section, a person who was at any time:
 - (a) appointed for the purposes of a law specified in an application order; or
 - (b) engaged as a member of the staff of the NCSC; or

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(c) authorised to perform or exercise any function or power of the NCSC or any function or power on behalf of the NCSC; must not, except to the extent necessary to perform his or her official duties, or to perform or exercise such a function or power, either directly or indirectly, make a record of, or disclose to any person, any information that is or was acquired by him or her because of having been so appointed, engaged or authorised, or make use of any such information, for any purpose other than the performance of his or her official duties or the performance or exercise of that function or power.

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

- (2) Nothing in subsection (1) precludes a person from:
- (a) producing a document to a court in the course of criminal proceedings or in the course of any proceedings under the *National Companies and Securities Commission Act 1979* or under a prescribed law or national scheme law of this or any other jurisdiction; or
 - (b) disclosing to a court in the course of any proceedings referred to in paragraph (a) any matter or thing that came under his or her notice in the performance of official duties or in the performance of a function or the exercise of a power referred to in that subsection; or
 - (c) producing a document or disclosing information to a person to whom, in the opinion of the Commission, it is in the public interest that the document be produced or the information be disclosed; or
 - (d) producing a document or disclosing information that is required or permitted by any Act of this or any other jurisdiction to be produced or disclosed, as the case may be; or
 - (e) producing a document or disclosing information to the Commission.
- (3) The following table sets out prescribed laws of this and the other jurisdictions for the purposes of paragraph (2)(a):

Acts of the Commonwealth	<i>Companies Act 1981</i> <i>Companies (Acquisition of Shares) Act</i>
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	<p>1980 <i>Futures Industry Act 1986</i> <i>Securities Industry Act 1980</i></p>
Acts of New South Wales	<p><i>Companies Act 1961</i> <i>Companies (Application of Laws) Act 1981</i> <i>Companies (Acquisition of Shares) (Application of Laws) Act 1981</i> <i>Futures Industry (Application of Laws) Act 1986</i> <i>National Companies and Securities Commission (State Provisions) Act 1981</i> <i>Securities Industry Act 1975</i> <i>Securities Industry (Application of Laws) Act 1981</i></p>
Acts of the Northern Territory	<p><i>Companies Act 1963</i> <i>Companies (Acquisition of Shares) (Application of Laws) Act 1986</i> <i>Companies (Application of Laws) Act 1986</i> <i>Futures Industry (Application of Laws) Act 1986</i> <i>National Companies and Securities Commission (Northern Territory Provisions) Act 1986</i> <i>Securities Industry (Application of Laws) Act 1986</i></p>
Acts of Queensland	<p><i>Companies Act 1961</i> <i>Companies (Application of Laws) Act 1981</i> <i>Companies (Acquisition of Shares) (Application of Laws) Act 1981</i> <i>Company Takeovers Act 1979</i> <i>Futures Industry (Application of Laws) Act 1986</i> <i>National Companies and Securities Commission (State Provisions) Act 1981</i></p>

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	<i>Securities Industry Act 1975</i> <i>Securities Industry (Application of Laws) Act 1981</i>
Acts of South Australia	<i>Companies Act 1962-1982</i> <i>Companies (Application of Laws) Act 1982</i> <i>Companies (Acquisition of Shares) (Application of Laws) Act 1981</i> <i>Company Take-overs Act 1980</i> <i>Futures Industry (Application of Laws) Act 1986</i> <i>National Companies and Securities Commission (State Provisions) Act 1981</i> <i>Securities Industry Act 1979-1980</i> <i>Securities Industry (Application of Laws) Act 1981</i>
Acts of Tasmania	<i>Companies Act 1962</i> <i>Companies (Application of Laws) Act 1982</i> <i>Companies (Acquisition of Shares) (Application of Laws) Act 1981</i> <i>Futures Industry (Application of Laws) Act 1987</i> <i>National Companies and Securities Commission (State Provisions) Act 1981</i> <i>Securities Industry (Application of Laws) Act 1981</i>
Acts of Victoria	<i>Companies Act 1961</i> <i>Companies (Application of Laws) Act 1981</i> <i>Companies (Acquisition of Shares) (Application of Laws) Act 1981</i> <i>Futures Industry (Application of Laws) Act 1986</i> <i>National Companies and Securities</i>

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	<p><i>Commission (State Provisions) Act 1981</i> <i>Securities Industry Act 1975</i> <i>Securities Industry (Application of Laws) Act 1981</i></p>
Acts of Western Australia	<p><i>Companies Act 1961</i> <i>Companies (Application of Laws) Act 1981</i> <i>Companies (Acquisition of Shares) (Application of Laws) Act 1981</i> <i>Company Take-overs Act 1979</i> <i>Futures Industry (Application of Laws) Act 1986</i> <i>Securities Industry Act 1975</i> <i>Securities Industry (Application of Laws) Act 1981</i> <i>Securities Industry (Release of Sureties) Act 1977</i></p>
Acts and Ordinances of the Capital Territory	<p><i>Companies Ordinance 1962</i></p>

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, a Commission delegate; or
- (c) in the course of assisting, or because of assisting, or having at any time assisted, a Commission 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:

- (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 Commission may sue

The Commission 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 Commission by Commonwealth

- (1) There shall be paid to the Commission such money as is appropriated by the Parliament for the purposes of the Commission.
- (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 the Commission.

134 The Commission's money

The Commission's money shall consist of:

- (a) money paid to the Commission under subsection 133(1); and
- (b) any other money paid to the Commission (including money paid by a State or Territory, but not including money received by the Commission 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 Commission's money to be applied

- (1) The Commission's money may be applied only:
 - (a) in paying or discharging expenses, charges, obligations or liabilities that:
 - (i) the Commission;
 - (ii) the Panel;
 - (iii) the Disciplinary Board; or
 - (iv) the Standards Board;incurs or undertakes in connection with performing or exercising any of its functions and powers;

- (b) in paying remuneration or allowances payable under this Act (other than remuneration or allowances payable to members of the Advisory Committee);
 - (c) in connection with the provision, in accordance with subsection 112(2), of benefits to members;
 - (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 the Commission 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) a provision that a national scheme law of this or any other jurisdiction makes about money or property that vests in the Commission under such a law; and
 - (b) Part 22 of the *Superannuation Industry (Supervision) Act 1993*.
- (5) The Minister may by writing require the Commission to pay to the Commonwealth so much of the Commission's money as:
- (a) is not immediately required for the purposes of the Commission; and
 - (b) does not exceed a specified amount.
- (6) The Commission shall comply with a requirement under subsection (5) and shall 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 the Commission to the Commonwealth under subsection (5) shall form part of the Consolidated Revenue Fund.

137 Limitation on contracts and leases

- (1) Except as otherwise provided by the regulations, the Commission shall not, without the approval of the Minister:
 - (a) enter into a contract under which the Commission 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

A report on the Commission under section 9 of the *Commonwealth Authorities and Companies Act 1997* must:

- (a) describe the specific goals the Commission has pursued, and the priorities it has followed, during the year, in performing its functions and pursuing the objectives referred to in subsection 1(2); and
- (b) describe what progress the Commission has made during that year towards achieving those goals; and
- (c) describe any matters that, during that year, have adversely affected the Commission's effectiveness or have hindered the Commission in pursuing any of those goals and objectives.

139 Liability to taxation

- (1) Subject to subsection (2), the Commission 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 Commission may accept property on trust

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

141 Trust money to be paid into bank account

The Commission shall ensure that trust money is paid into an account or accounts:

- (a) maintained by the Commission 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 the Commission holds on trust shall be applied or dealt with in accordance with the Commission's powers and duties as trustee, and not otherwise.
- (2) Money that the Commission holds on trust may be invested in any manner in which:
 - (a) the terms of the trust authorise the Commission 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 Advisory Committee

Division 1—General

145 Establishment

A Companies and Securities Advisory Committee is established.

146 Advisory Committee is a body corporate

The Advisory Committee:

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

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

147 Membership

- (1) The Advisory Committee shall consist of the following members, namely, the Chairperson of the Commission and such other members as hold office in accordance with this Part.
- (2) The members (other than the Chairperson of the Commission) shall be appointed by the Minister on a part-time basis.
- (3) The Minister shall, by writing, appoint a member (other than the Chairperson of the Commission) as the Convenor of the Advisory Committee.
- (4) The Minister shall 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 throughout Australia 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 the Advisory Committee from each State 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

- (1) The Advisory Committee'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 a national scheme law, or to make amendments of a national scheme law;
 - (b) the operation or administration of a national scheme law;
 - (c) law reform in relation to a national scheme law;
 - (d) companies, securities or the futures industry; or
 - (e) a proposal for improving the efficiency of the securities markets or futures markets.
- (2) In performing its functions, the Advisory Committee must have regard to the implications of any recommendations made by it for the laws of the jurisdictions other than the Capital Territory.
- (3) In this section:

national scheme law means a national scheme law of the Capital Territory.

148A Minister to ask Advisory Committee to advise on operation of continuous disclosure provisions etc.

- (1) Subject to this section, the Minister must, under section 148, request the Advisory Committee to advise the Minister about how effectively the following provisions are operating:

Section 149

- (a) sections 1001A and 1001B of the Corporations Law of the Capital Territory;
 - (b) sections 776, 777 and 779 of the Corporations Law of the Capital Territory;
 - (c) section 127 of this Act.
- (2) The Minister must make the request at, or as soon as practicable after, the end of 18 months after the day on which item 92 of Schedule 1 to the *Corporate Law Reform Act 1994* commences.
- (3) The Advisory Committee must provide its advice within 6 months of the request being made.

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.

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 shall 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 shall be paid such remuneration as the Minister determines in writing.

- (2) A member shall be paid such allowances as the Minister determines in writing.
- (3) This section has effect subject to the *Remuneration Tribunals Act 1973*.
- (4) In this section:

member does not include the Chairperson of the Commission.

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 shall be determined by the members present.

154 Advisory Committee to inform itself in any manner

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

155 Publication of advice or recommendations

- (1) The Minister may, after consulting the Advisory Committee, publish any advice or recommendations given to him or her by the Advisory Committee.
- (2) Nothing in subsection (1) affects the power of the Advisory Committee 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, the Advisory Committee's staff shall be persons appointed or employed under the *Public Service Act 1922*.
- (2) The Convenor has all the powers of, or exercisable by, a Secretary under the *Public Service Act 1922*, so far as those powers relate to the branch of the Australian Public Service comprising the staff referred to in subsection (1), as if that branch were a separate Department of the Australian Public Service.
- (3) In addition to the staff referred to in subsection (1), the Advisory Committee may, on the Commonwealth's behalf, employ under written agreements such persons as the Advisory Committee 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 Advisory Committee determines from time to time with the Minister's written approval.

157 Consultants etc.

- (1) The Advisory Committee may, on the Commonwealth's behalf, engage, under written agreements, as consultants to, or to perform services for, the Advisory Committee, 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 Advisory Committee determines from time to time.

158 Staff seconded to Advisory Committee

In addition to the other staff of the Advisory Committee:

- (a) officers and employees of Departments of the Australian Public Service, and of authorities of the Commonwealth, whose services are made available to the Advisory

Committee 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;

shall assist the Advisory Committee.

159 Payments to Advisory Committee by Commonwealth

- (1) There shall be paid to the Advisory Committee such money as is appropriated by the Parliament for the purposes of the Advisory Committee.
- (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 the Advisory Committee.

160 The Advisory Committee's money

The Advisory Committee's money shall consist of:

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

161 How Advisory Committee's money to be applied

- (1) The Advisory Committee's money may be applied only:
 - (a) in paying or discharging expenses, charges, obligations, or liabilities, that the Advisory Committee 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 the Advisory Committee.
- (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 the Advisory Committee under section 18 of the *Commonwealth Authorities and Companies Act 1997*.

Section 163

- (4) This section has effect subject to a provision that a law of the Commonwealth makes about money or property that vests in the Advisory Committee under such a law.
- (5) The Minister may by writing require the Advisory Committee to pay to the Commonwealth so much of the Advisory Committee's money as:
 - (a) is not immediately required for the purposes of the Advisory Committee; and
 - (b) does not exceed a specified amount.
- (6) The Advisory Committee shall comply with a requirement under subsection (5) and shall 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 the Advisory Committee to the Commonwealth under subsection (5) shall form part of the Consolidated Revenue Fund.

163 Limitation on contracts and leases

- (1) Except as otherwise provided by the regulations, the Advisory Committee shall not, without the approval of the Minister:
 - (a) enter into a contract under which the Advisory Committee 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), the Advisory Committee 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.

166 Advisory Committee may accept property on trust

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

167 Trust money to be paid into bank account

The Advisory Committee shall ensure that trust money is paid into an account or accounts:

- (a) maintained by the Advisory Committee under section 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 the Advisory Committee holds on trust shall be applied or dealt with in accordance with the Advisory Committee's powers and duties as trustee, and not otherwise.
- (2) Money that the Advisory Committee holds on trust may be invested in any manner in which:
 - (a) the terms of the trust authorise the Advisory Committee 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

171 Establishment of Panel

A Corporations and Securities Panel is established.

172 Membership

- (1) The Panel shall consist of such members, not fewer than 5, as hold office in accordance with this Part.
- (2) The Governor-General shall 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 shall 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 jurisdiction other than this jurisdiction 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 shall appoint as President of the Panel a person who is, or is to be, a member.

174 Functions and powers of Panel

- (1) The Panel has the functions and powers conferred on it by or under a national scheme law of this or any other jurisdiction.
- (2) The Panel has power to do acts in the Capital Territory in the performance or exercise of any function or power expressed to be conferred on the Panel by a national scheme law of another jurisdiction.

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 shall not be appointed as a full-time member.
- (3) A person shall 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.

Section 177

- (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;
 - (b) is a full-time member and engages without the Minister's consent in paid employment outside the duties of the member's office;
 - (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;
 - (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 shall 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 shall be paid such remuneration as the Minister determines in writing.
- (2) A member shall be paid such allowances as the Minister determines in writing.

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

180 Leave of absence

- (1) Subject to section 87E of the *Public Service Act 1922*, 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 shall not continue for more than 12 months to act during the vacancy.

183 Annual report

- (1) The Panel shall, 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 shall cause a copy of the report to be laid before each

Section 183

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 shall, 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 (in this section called 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) shall:
 - (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 an inquiry 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 an inquiry in relation to the matter, during the inquiry or after the completion of the inquiry but before the matter to which the inquiry relates 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.
- (5) In this section:

functions or powers means functions or powers of the Panel under a national scheme law of this jurisdiction.

Section 185

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 a national scheme law of this jurisdiction.

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

Division 3—Inquiries by Panel

187 Interpretation

- (1) In this Division:

inquiry means an inquiry held by the Panel and, in section 190, includes a part of such an inquiry.

- (2) 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;
- (b) a reference to a member were a reference to a member of the Panel as so constituted;
- (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 hold inquiries

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

189 Who may be present at inquiry

- (1) An inquiry is to take place in private, unless the Panel directs that the inquiry, or a part of it, is to take place in public.
- (2) A person must not be present at an inquiry, or a part of an inquiry, that takes place in private unless the person is:

- (a) a member; or
- (b) a member of the Commission, or a staff member, approved by the Panel; or
- (c) entitled to be present under a direction given by the Panel.

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

190 Panel may restrict publication of certain material

- (1) Where, during an inquiry, 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 shall 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 inquiry is of a confidential nature or relates to the commission, or to the alleged or suspected commission, of an offence against an Australian law;
 - (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;
 - (c) whether it is in the public interest that the Panel exercises its powers under this section; and
 - (d) any other relevant matter.

191 How information or evidence is given to Panel

- (1) Generally, information or evidence is to be given to the Panel for the purposes of an inquiry by lodging with the Panel, in accordance with the requirements (if any) of the regulations, a written submission containing the information or evidence.
- (2) A person may, however, appear before the Panel and give evidence at the inquiry if:
 - (a) the person is required by summons under section 192 to do so; or
 - (b) the Panel decides, in its discretion, to allow the person to do so.

Section 192

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 an inquiry 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 an inquiry, the Panel may take evidence on oath or affirmation, and for that purpose a member may:
 - (a) require a witness at the inquiry to either take an oath or make an affirmation; and
 - (b) administer an oath or affirmation to a witness at the inquiry.
- (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 an inquiry:
 - (a) may require a witness at the inquiry to answer a question put to the witness; and
 - (b) may require a person appearing at the inquiry pursuant to a summons issued under this section to produce a document specified in the summons.
- (6) A person who, pursuant to a summons issued under this section, appears at an inquiry is entitled to be paid:
 - (a) if the summons was issued at another person's request—by that other person; or
 - (b) otherwise—by the Commission;the prescribed allowances and expenses (if any).
- (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 Who presides at inquiry

- (1) The President is to preside at all inquiries at which he or she is present.
- (2) If the President is not present at an inquiry, the Deputy President is to preside.

193A Quorum and determination of questions at inquiry

- (1) At an inquiry, 2 members form a quorum.
- (2) Questions arising at an inquiry are to be determined by a majority of the votes of the members present at the inquiry.
- (3) The member presiding at an inquiry has a deliberative vote but not a casting vote.

194 Representation at hearings

- (1) At an inquiry, a natural person may appear in person or be represented by an employee of the person approved by the Panel.
- (2) A body corporate may be represented at an inquiry by an officer of the body corporate approved by the Panel.
- (3) An unincorporated association, or a person in the person's capacity as a member of an unincorporated association, may be represented at an inquiry by a member or officer of the association approved by the Panel.
- (4) A person who appears at an inquiry is entitled to have another person present to assist the person and a person who so assists is entitled to address the Panel.

195 Procedure at inquiry

- (1) An inquiry is to be conducted in accordance with (in order of priority):
 - (a) the requirements of this Division; and
 - (b) the requirements of the regulations; and
 - (c) the requirements of the Panel.

Section 196

- (2) Without limiting the generality of paragraph (1)(b), the regulations may deal with:
 - (a) the making of submissions or the giving of evidence to or at an inquiry; and
 - (b) the right (if any) to appear, or be represented, at an inquiry; and
 - (c) the matters to be taken into account by the Panel when making a decision in the course of an inquiry.
- (3) The rules of procedural fairness, to the extent that they are not inconsistent with the provisions of this Act and the Regulations made under it, apply to an inquiry.

196 Reference to Court of question of law arising at hearing

- (1) The Panel may, of its own motion, refer to the Court for decision a question of law arising at an inquiry.
- (3) Where a question has been referred under subsection (1), the Panel shall not, in relation to a matter to which the inquiry 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) the Panel shall send to the Court all documents that were before the Panel in connection with the inquiry; and
 - (b) at the end of the proceeding in the Court in relation to the reference, the Court shall cause the documents to be returned to the Panel.

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 an inquiry, the same protection and immunity as a Justice of the High Court.
- (3) Subject to this Law, a person who is required by a summons under section 192 to appear at an inquiry, or a witness at an inquiry, 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 shall 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 an inquiry; or
 - (b) while appearing before the Panel at an inquiry;
- 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.

200 Contempt of Panel

- (1) A person shall 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 an inquiry.

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

- (2) A person shall 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.

Section 201

201 Powers of Court where non-compliance with section 192

- (1) This section applies where the Panel, as constituted for the purposes of a particular inquiry, is satisfied that a person has, without reasonable excuse, failed to comply with a requirement made under section 192 at, or in relation to, that inquiry.
- (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) During an inquiry, the Panel may accept a written undertaking from a person affected, or likely to be affected, by the inquiry about a matter relevant to the inquiry.
- (2) The person may withdraw or vary the undertaking at any time, but only with the consent of the Panel.
- (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

202 Establishment of Disciplinary Board

A Companies Auditors and Liquidators Disciplinary Board is established.

203 Membership of Disciplinary Board

- (1) The Disciplinary Board shall consist of:
 - (a) a Chairperson;
 - (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.
- (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 shall be appointed by the Minister on a part-time basis.

204 Functions and powers of Disciplinary Board

- (1) The Disciplinary Board has the functions and powers conferred on it by or under a national scheme law of this or any other jurisdiction.

Section 205

- (2) The Disciplinary Board has power to do acts in the Capital Territory in the performance or exercise of any function or power expressed to be conferred on the Disciplinary Board by a national scheme law of another jurisdiction.

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);
 - (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;
 - (c) is convicted in Australia of an offence punishable by imprisonment for 12 months or longer;
 - (d) becomes of unsound mind; or
 - (e) fails, without reasonable excuse, to comply with section 211;
- the Minister shall 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:

- (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, shall be deemed to be a member of the Disciplinary Board.

210 Meetings

- (1) The Chairperson shall convene such meetings of the Disciplinary Board as he or she considers necessary for the performance of its functions.
- (2) The Chairperson shall 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 shall 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.

Section 211

- (6) Subject to this section, the procedures for convening meetings of the Disciplinary Board and for the conduct of business by the Disciplinary Board shall 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 shall, 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) shall be recorded in the minutes of the meeting of the Disciplinary Board and the member shall 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 shall 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 shall 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 shall be paid such remuneration as the Minister determines in writing.
- (3) A member shall be paid such allowances as the Minister determines in writing.
- (4) This section has effect subject to the *Remuneration Tribunals Act 1973*.

213 Confidentiality

- (1) The Disciplinary Board shall 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 a national scheme law of this jurisdiction.
- (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 this or any other jurisdiction; 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 the Commission's functions and powers;shall be taken to be authorised disclosure of the information.

214 Annual report

- (1) The Disciplinary Board shall, 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 shall cause a copy of the report to be laid before each

Part 11 Companies Auditors and Liquidators Disciplinary Board

Division 1 Constitution of Disciplinary Board

Section 214

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 Interpretation

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 shall take place in private.
- (3) If a person (other than the Commission) who is entitled to be given an opportunity to appear at a hearing requests that the hearing take place in public, the hearing shall, 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 the Commission pursuant to subsection 218(3);
 - (b) a person who is entitled to be given an opportunity to appear at the hearing;
 - (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) shall 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 shall 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 shall 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 shall be conducted with as little formality and technicality, and with as much expedition, as the requirements of national scheme laws and a proper consideration of the matters before the Disciplinary Board permit;
 - (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 shall observe the rules of natural justice at and in connection with a hearing.
- (3) At a hearing:
 - (a) the Commission may be represented by:
 - (i) a staff member, or a member or acting member, of the Commission; or
 - (ii) a person authorised by the Commission for the purpose;
 - (b) a natural person may appear in person or may be represented by an employee of the person approved by the Disciplinary Board;
 - (c) a body corporate (other than the Commission) may be represented by an employee, or by a director or other officer, of the body corporate approved by the Disciplinary Board;
 - (d) an unincorporated association of persons or a member of an unincorporated association of persons may be represented by

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- 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 shall 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 shall 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;
- (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 shall not, at a hearing, give evidence that is false or misleading.

- (4) A person shall 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;

(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

(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).

Section 220

220 Contempt of Disciplinary Board

- (1) A person shall 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 shall 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 Law, 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 deemed to be judicial proceedings

A hearing shall, for the purposes of Part III of the *Crimes Act 1914*, be deemed 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 1989*; 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;
 - (d) the costs of the Commission 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 1989*; 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 the Commission to pay an amount specified by the Disciplinary Board, being all or part of:
- (c) the costs of and incidental to the hearing;
 - (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 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 the Commission in relation to the hearing); or

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- (b) under subsection (2), the Disciplinary Board requires the Commission 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 the Commission 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 the Commission, 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 the costs of the Commission 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 the costs of the Commission 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 the Commission 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 the Commission 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 the Commission may be recovered in a court of competent jurisdiction as a debt due to the person.

Part 12—Australian Accounting Standards Board

224 Establishment of Standards Board

An Australian Accounting Standards Board is established.

225 Membership of the Standards Board

- (1) The Standards Board shall consist of the Director and such other members as hold office in accordance with this Part.
- (2) The Director and each of the other members shall be appointed by the Minister on a part-time basis.
- (3) The Minister shall appoint a person as the Director or 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, accounting, law or business.

226 Functions and powers

- (1) The Standards Board has such functions as are conferred on it by or under a national scheme law, and also the following functions:
 - (a) to develop a conceptual framework, not having the force of an accounting standard, for the purpose of evaluating proposed accounting standards;
 - (b) to review proposed accounting standards;
 - (c) to sponsor or undertake the development of possible accounting standards;
 - (d) to engage in such public consultation as may be necessary to decide whether or not it should make a proposed accounting standard;
 - (e) to make such changes to the form and content of a proposed accounting standard as it considers necessary.
- (2) The Standards Board has power to do whatever is necessary for or in connection with, or reasonably incidental to, the performance of its functions.

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- (3) Without limiting the generality of subsection (2), the Standards Board also has such powers as are conferred on it by or under a national scheme law.
- (4) In performing its functions, the Standards Board must have regard to the implications of any recommendations made by it for the operation of the laws of the jurisdictions other than the Capital Territory.
- (4A) The Standards Board must, so far as it is reasonably practicable to do so, ensure that the New Zealand authority is consulted in the course of:
 - (a) the development of possible accounting standards; and
 - (b) the review of proposed accounting standards.
- (5) In this section:

New Zealand authority means the person or authority that in New Zealand has functions that are analogous to the functions of the Standards Board.

227 Term of office

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

228 Resignation from office

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

229 Termination of appointment

The Minister may terminate the appointment of the Director or a member:

- (a) because of physical or mental incapacity; or
- (b) if he or she 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.

230 Acting Director

The Minister may appoint a member to act as Director:

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

231 Meetings

- (1) The Director shall convene such meetings of the Standards Board as he or she considers necessary for the performance of its functions.
- (2) The Director shall preside at all meetings of the Standards Board.
- (3) At a meeting of the Standards Board, the Director and one member constitute a quorum.
- (4) A question arising at a meeting of the Standards Board shall be determined by a majority of votes of the members present and voting.
- (5) At a meeting, the Director 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 Standards Board and for the conduct of business by the Standards Board shall be as the Standards Board determines.

232 Remuneration and allowances

- (1) A member shall 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 shall be paid such remuneration as the Minister determines in writing.
- (2) A member shall be paid such allowances as the Minister determines in writing.

Section 233

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

233 Confidentiality

- (1) The Standards Board shall 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:
- (a) as required or permitted by a law of the Commonwealth or a prescribed law of this or any other jurisdiction; 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 Standards Board's functions or powers;
- shall be taken to be authorised disclosure of the information.

234 Annual Report

- (1) The Standards Board shall, 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 Standards Board during the year that ended on 30 June in that year; and
 - (b) furnish to the Minister a copy of the report.
- (2) Where a copy of a report is furnished to the Minister under subsection (1), the Minister shall cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the first-mentioned copy is received by him or her.

Part 14—The Parliamentary Committee

241 Establishment and membership

- (1) As soon as practicable after the commencement of this Part and after the commencement of the first session of each Parliament, a joint committee of members of the Parliament, to be known as the Parliamentary Joint Committee on Corporations and Securities, shall be appointed.
- (2) The Parliamentary Committee shall consist of 10 members, of whom:
 - (a) 5 shall be senators appointed by the Senate; and
 - (b) 5 shall be members of the House of Representatives appointed by that House.
- (3) The appointment of members by a House shall 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;
 - (b) the President of the Senate;
 - (c) the Speaker of the House of Representatives;
 - (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;
 - (b) if he or she becomes the holder of an office referred to in a paragraph of subsection (4);
 - (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 shall 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 the Commission 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 any national scheme law, 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 a national scheme law;
- (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**243A Offences under 2 or more ASC Laws**

Where:

- (a) an act or omission constitutes an offence under the ASC Law of this jurisdiction and the ASC Law of another jurisdiction; and
- (b) the offender has been punished for that offence under the law of the other jurisdiction;

the offender is not liable to be punished for the offence under the law of this jurisdiction.

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

Where:

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

the person is guilty of that offence.

243C Reciprocity in relation to offences

Where:

- (a) a person does or omits to do an act within this jurisdiction; and
- (b) if that person had done or omitted to do that act in another jurisdiction, the person would have been guilty of an offence against a provision of a law of another jurisdiction that corresponds to a provision of this Law;

the person is guilty of an offence against that provision of this Law.

Section 243D

243D Financial transaction reports

- (1) If:
- (a) a cash dealer within the meaning of the *Financial Transaction Reports Act 1988* is a party to a transaction; and
 - (b) the cash dealer has reasonable grounds to suspect that information that the cash dealer has concerning the transaction may be relevant to investigation of, or prosecution of a person for, an offence against this Law or the Corporations Law;
- the cash dealer must, as soon as practicable after forming that suspicion:
- (c) prepare a report of the transaction; and
 - (d) communicate the information contained in the report to the Director of the Australian Transaction Reports and Analysis Centre.
- (2) The report must:
- (a) be prepared in the approved form; and
 - (b) contain the reportable details of the transaction; and
 - (c) contain a statement of the grounds on which the cash dealer holds the suspicion referred to in subsection (1); and
 - (d) be signed by the cash dealer.
- (3) The communication must be made to the Director:
- (a) by giving the Director a copy of the report; or
 - (b) in such other manner and form as is approved by the Director, in writing, in relation to the cash dealer or to a class of cash dealers that includes the cash dealer.
- (4) Where a cash dealer communicates information to the Director under subsection (1), the cash dealer must, if requested to do so by:
- (a) the Director; or
 - (b) a relevant authority; or
 - (c) an investigating officer who is carrying out an investigation arising from, or relating to the matters referred to in, the information contained in the report;
- give such further information as is specified in the request to the extent to which the cash dealer has that information.

- (5) An action, suit or proceeding does not lie against:
- (a) a cash dealer; or
 - (b) an officer, employee or agent of the cash dealer acting in the course of that person's employment or agency;
- in relation to any action taken by the cash dealer or person pursuant to this section.
- (6) Where a cash dealer, or a person who is an officer, employee or agent of a cash dealer, communicates or gives information under this section, the cash dealer or person is taken, for the purposes of sections 81 and 82 of the *Proceeds of Crime Act 1987*, not to have been in possession of that information at any time.
- (7) The *Financial Transaction Reports Act 1988* (other than sections 16 and 17) applies as a law of this jurisdiction, to the extent that it makes provision in connection with, or for the purposes of, the operation of sections 16 and 17 of that Act, as if, in that Act:
- (a) references to section 16 were references to this section (other than subsection (6) and this subsection); and
 - (b) references to section 17 were references to subsection (6) of this section; and
 - (c) references to Part II included references to sections 16 and 17.
- (8) In this section:
- approved*** means approved by the Director, in writing, for the purposes of this section.
- investigating officer, relevant authority*** and ***reportable details*** have the same meanings as in section 16 of the *Financial Transaction Reports Act 1988*.

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 the Commission:

Section 244A

- (a) to make an order under section 72, 73 or 74;
- (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 the Commission makes a decision to which subsection 244(2) applies.
- (2) Subject to subsection (3), the Commission 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 the Commission to give notice to a person affected by the decision, or to the persons in a class of persons affected by the decision, if the Commission 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 the *Australian Securities*

and Investments Commission Act 1989 is invalid on the ground that:

- (a) the occasion for the appointment had not arisen;
- (b) there was a defect or irregularity in connection with the appointment;
- (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 [*see* Note 2]

- (1) None of the following:
 - (aa) the Minister;
 - (a) the Commission;
 - (b) the Advisory Committee;
 - (c) a member of the Commission;
 - (d) a member of the Advisory Committee;
 - (e) a member of the Panel;
 - (f) a person appointed for the purposes of the *Australian Securities and Investments Commission Act 1989* or a prescribed law of the Commonwealth or of this or any other jurisdiction;
 - (g) a staff member or a person who is, or is a member of, a Commission delegate or is authorised to perform or exercise a function or power of, or on behalf of, the Commission;
 - (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 the Advisory Committee;

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 a national scheme law or a prescribed law of the Commonwealth or of this or any other jurisdiction.

- (2) The protection from liability given by subsection (1) to the Minister applies only in respect of acts done, and omissions

Section 247

occurring, after the commencement of section 181 of the *Corporate Law Reform Act 1992*.

247 Duplicate seals

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

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

- (1) A court shall take judicial notice of the Commission's common seal affixed to a document and, unless the contrary is established, shall presume that it was duly affixed.
- (2) A court shall 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 ASC Regulations

- (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:
 - (a) required or permitted by this Act (other than the non-applied provisions) to be prescribed; or

- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act (other than the non-applied provisions).
- (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.
- (3) Regulations made under this section may provide that the ASC Law of this jurisdiction has effect, with prescribed modifications, in relation to the following:
 - (a) investigations that subsection 13(5) empowers the Commission to continue;
 - (b) investigations that the Commission must make or continue because of section 14A;
 - (c) hearings that subsection 51(2) empowers the Commission to continue;
 - (d) contraventions of relevant previous laws of this jurisdiction;
 - (e) authorisations by the Commission under such laws;
 - (f) requirements to produce books, or to give information, that are made of persons under such laws;
 - (g) informations laid under such laws in order to obtain warrants;
 - (h) warrants obtained under such laws.
- (4) Regulations in force because of subsection (3) have effect accordingly.
- (5) Regulations made under this section may require or permit matters to be specified, for the purposes of the regulations, by or in application orders.

252 Regulations for the purposes of non-applied provisions

The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by the non-applied provisions to be prescribed; or

Section 252

- (b) necessary or convenient to be prescribed for carrying out or giving effect to the non-applied provisions.

Part 16—Transitional

253 Interpretation

In this Part, unless the contrary intention appears:

assets means property of every kind, and includes, but is not limited to:

- (a) choses in action; and
- (b) rights, interests and claims of every kind in or to property, whether arising under or by virtue of an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing.

authorised officer means:

- (a) the Minister; or
- (b) the Chairperson; or
- (c) a member of the staff of the Commission authorised by the Minister in writing for the purposes of this Part.

commencement, when used in a provision of this Part, means the commencement of that provision.

liabilities means liabilities of every kind, and includes, but is not limited to, obligations of every kind, whether arising under or by virtue of an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing.

NCSC Act means the *National Companies and Securities Commission Act 1979*.

NCSC instrument means an instrument:

- (a) to which the NCSC was a party; or
- (b) that was given to or in favour of the NCSC; or
- (c) in which a reference is made to the NCSC; or
- (d) under which money is or may become payable, or any other property is to be, or may become liable to be, transferred, to or by the NCSC;

being an instrument subsisting immediately before the commencement of the provision in which the expression is used.

Section 254

section 462 assets means assets held by the NCSC in relation to which section 462 of the *Companies Act 1981* or a corresponding law of this or another jurisdiction applies, whether with modifications or not.

trust assets of the NCSC means:

- (a) assets received or held by the NCSC as mentioned in section 43 of the NCSC Act; and
- (b) section 462 assets.

254 Trust assets of NCSC

At the commencement:

- (a) the trust assets of the NCSC become assets of the Commission; and
- (b) subject to any written declaration to the contrary made by the Minister, any liabilities that are associated with those assets become liabilities of the Commission.

255 Money of NCSC

At the commencement, money held by the NCSC that:

- (a) was paid to the NCSC under section 26 of the NCSC Act; or
- (b) was received by the NCSC in accordance with section 27 of the NCSC Act;

becomes money of the Commonwealth and is to be paid into the Consolidated Revenue Fund.

256 Other assets and liabilities of NCSC

- (1) At the commencement, the remaining assets and liabilities of the NCSC become assets and liabilities of the Commonwealth.
- (2) The Minister may declare in writing that a specified asset or liability covered by subsection (1) does not become an asset or liability of the Commonwealth.
- (3) Where the Minister makes a declaration under subsection (2), the asset or liability concerned becomes an asset or liability of the Commission.

- (4) Where the Minister makes a declaration under subsection (2) in relation to an asset, any liabilities that are associated with the asset and are specified in the direction become liabilities of the Commission.

257 Effect of transfer of assets and liabilities to Commission

The following provisions apply to assets or liabilities that become assets or liabilities of the Commission because of section 254 or 256:

- (a) an asset that was, immediately before the commencement of the section concerned, held by the NCSC on trust is, after that commencement, to be held by the Commission on trust and subject to the terms of the trust on which the asset was so held by the NCSC;
- (b) liabilities of the NCSC to make payments are, after the commencement of the section concerned, taken to be liabilities incurred by the Commission in the performance of its functions and the exercise of its powers.

258 NCSC instruments

- (1) An NCSC instrument continues to have effect after the commencement but, in its operation in relation to acts, transactions, matters or things done, entered into or occurring after that commencement, has effect as if a reference in the instrument to the NCSC were a reference to the appropriate new body.
- (2) For the purposes of the application of subsection (1) in relation to an NCSC instrument, the appropriate new body is:
 - (a) in so far as the instrument relates to an asset or liability that has, because of section 254 or 256, become an asset or liability of the Commission—the Commission; and
 - (b) otherwise—the Commonwealth.

259 Pending proceedings

- (1) Subject to this Law, where, immediately before the commencement, proceedings to which the NCSC was a party (not being co-operative scheme proceedings) were pending in any court or tribunal of this jurisdiction, the Commonwealth is, after the commencement, substituted for the NCSC as a party to the proceedings and has the same rights in the proceedings as the NCSC had.
- (2) A right of action in favour of or against the NCSC existing immediately before the commencement (not being a right of action arising under a co-operative scheme law) is, after the commencement, taken to be a right of action in favour of or against the Commonwealth.
- (3) In this section:

co-operative scheme law means a relevant previous law of this or any other jurisdiction.

co-operative scheme proceedings means proceedings arising under a co-operative scheme law, including proceedings relating to trust assets of the NCSC.

260 Certificates relating to assets, liabilities and instruments

- (1) An authorised officer may certify, in writing, that:
 - (a) an asset or liability specified or described in the certificate became, because of section 254 or 256 or a corresponding law, an asset or liability of the Commission; or
 - (b) an asset or liability specified or described in the certificate became, because of section 256 or a corresponding law, an asset or liability of the Commonwealth; or
 - (c) an instrument specified or described in the certificate is an NCSC instrument.
- (2) A certificate under subsection (1) or a corresponding law is, in all courts and for all purposes, evidence of the matter stated in the certificate.

- (3) Where a document purports to be a certificate under subsection (1) or a corresponding law signed by a person purporting to be an authorised officer, judicial notice is to be taken of the signature of the person and of the fact that the person is or was an authorised officer.

261 Exemption from taxation

An instrument is not subject to stamp duty or any other tax under an Act, or any other law, of this jurisdiction if an authorised officer certifies, in writing, that the instrument was made or given because of, or for a purpose connected with or arising out of, the operation of this Part or a corresponding law.

262 Pending proceedings etc. by or against the NCSC

- (1) Where, immediately before the commencement, co-operative scheme proceedings to which the NCSC was a party were pending in any court or tribunal, the Commission is, after the commencement, substituted for the NCSC as a party to the proceedings and has the same rights in the proceedings as the NCSC had.
- (2) A right of action in favour of or against the NCSC existing immediately before the commencement (being a right of action arising under a relevant previous law of this jurisdiction) is, after the commencement, taken to be a right of action in favour of or against the Commission.
- (3) In this section:

co-operative scheme proceedings means proceedings arising under a relevant previous law of this jurisdiction, including proceedings relating to trust assets of the NCSC.

Part 17—Commencement and application of certain amendments of the ASC Law

Division 1—Preliminary

263 Meaning of *ASC Law*

In this Part:

ASC Law means the provisions of the *Australian Securities Commission Act 1989* as they have effect as the ASC Law of this jurisdiction.

264 Meaning of *amendment of the ASC Law*

In this Part, a reference to an amendment of the ASC Law, or of a provision of the ASC Law, is a reference to a change to the ASC Law, or to that provision, that results from an amendment of the *Australian Securities Commission Act 1989*.

Division 2—Amendments made by the Corporations Legislation Amendment Act 1994

265 Meaning of *Amending Act*

In this Division:

Amending Act means the *Corporations Legislation Amendment Act 1994*.

266 Schedule 4—application of amendments made by Part 1 of the Schedule

The amendments of the ASC Law made by Part 1 of Schedule 4 to the Amending Act apply to inquiries begun after the commencement of those amendments.

267 Schedule 5—application of amendments made by Part 2 of the Schedule

The amendments of the ASC Law made by Part 2 of Schedule 5 to the Amending Act apply to decisions made after the commencement of those amendments.

Part 18—Transitional: from the ASC to ASIC

268 Changes to name of ASC and the *Australian Securities Commission Act 1989*

- (1) After the commencement of this section, a reference in:
 - (a) an Act of this jurisdiction; or
 - (b) an instrument under such an Act; or
 - (c) an award or other industrial determination, order or agreement; or
 - (d) any other order (whether executive, judicial or otherwise); or
 - (e) any contract; or
 - (f) any pleading in, or process issued in connection with, any legal or other proceeding; or
 - (g) any other instrument;

to the *Australian Securities Commission Act 1989* is taken to be a reference to the *Australian Securities and Investments Commission Act 1989*, except in relation to matters that occurred before the commencement of this section.

- (2) After the commencement of this section, a reference in:
 - (a) an Act of the Commonwealth; or
 - (b) an instrument under such an Act;

to the ASC (or the Australian Securities Commission) is taken to be a reference to ASIC, except in relation to matters that occurred before the commencement of this section.

Note: Subsection (2) is enacted in case the effect of subsections 5(3) to (5) is to exclude the application of section 25B of the *Acts Interpretation Act 1901*.

NOTES

Note 1

The *Australian Securities and Investments Commission Act 1989* as shown in this reprint comprises Act No. 90, 1989 amended as indicated in the Tables below.

All relevant information pertaining to application, saving or transitional provisions prior to 29 June 1998 is not included in this reprint. For subsequent information see Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Australian Securities Commission Act 1989</i>	90, 1989	27 June 1989	Part 1 (ss. 1-6): Royal Assent Parts 2-9 (ss. 7-170), Part 13 (ss. 235-240) and Part 15(ss. 244-251): 1 July 1989 (see <i>Gazette</i> 1989, No. S217) Remainder: 1 Jan 1991 (see <i>Gazette</i> 1991, No. S335)	
<i>Australian Securities Commission Amendment Act 1990</i>	41, 1990	16 June 1990	1 July 1990 (see <i>Gazette</i> 1990, No. S175)	—
<i>Corporations Legislation Amendment Act 1990</i>	110, 1990	18 Dec 1990	Ss. 8, 9(1), Parts 4-6 (ss. 10-20): 1 Jan 1991 (see <i>Gazette</i> 1990, No. S335) S. 9(2): 8 Apr 1991 (see <i>Gazette</i> 1991, No. S79) Remainder: Royal Assent	S. 11
<i>Corporations Legislation Amendment Act 1991</i>	110, 1991	27 June 1991	(a)	—

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Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Industrial Relations Legislation Amendment Act 1991</i>	122, 1991	27 June 1991	Ss. 4(1), 10(b) and 15-20: 1 Dec 1988 Ss. 28(b)-(e), 30 and 31: 10 Dec 1991 (see <i>Gazette</i> 1991, No. S332) Remainder: Royal Assent	S. 31(2)
<i>Cash Transaction Reports Amendment Act 1991</i>	188, 1991	6 Dec 1991	Ss. 1-3 and 7: Royal Assent Remainder: 6 Dec 1992 (see <i>Gazette</i> 1992, No. GN25)	—
<i>Corporations Legislation (Evidence) Amendment Act 1992</i>	27, 1992	14 May 1992	14 May 1992	S. 10
<i>Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 1992</i>	94, 1992	30 June 1992	S. 3: 1 July 1990 Remainder: Royal Assent	—
<i>Corporate Law Reform Act 1992</i>	210, 1992	24 Dec 1992	Part 1 (ss. 1-3): Royal Assent Ss. 4-26(1), 27, 28(2), 174-176 and 178-185: 1 Feb 1993 (see <i>Gazette</i> 1993, No. S25) Ss. 26(2) and 28(1): 1 Feb 1994 Remainder: 23 June 1993 (see <i>Gazette</i> 1993, No. S186)	—

NOTES Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Corporate Law Reform Act 1994</i>	31, 1994	4 Mar 1994	Schedule 1 (items 1-86, 95-105, 113(a), 114-116): 1 July 1994 (see <i>Gazette</i> 1994, No. S220) Schedule 1 (items 87-94, 106-112, 113(b)), Schedules 2 and 6: 4 Sept 1994 Schedules 3 and 4: 15 Apr 1994 (see <i>Gazette</i> 1994, No. GN13) Remainder: 4 Mar 1994	S. 9
<i>Corporations Legislation Amendment Act 1994</i>	104, 1994	5 July 1994	Schedule 4 (items 1-30): 1 Jan 1995 (see <i>Gazette</i> 1994, No. S463) (b) Schedule 5 (item 2) and Schedule 9 (item 1): Royal Assent (b) Schedule 6 (items 1, 2): (b)	—
<i>Evidence (Transitional Provisions and Consequential Amendments) Act 1995</i>	3, 1995	23 Feb 1995	S. 14: Royal Assent (c) S. 16(1): 16 Oct 1995 (see <i>Gazette</i> 1995, No. GN40) (c) S. 16(2): 18 Apr 1995 (c)	S. 14 S. 16(2)
<i>First Corporate Law Simplification Act 1995</i>	115, 1995	17 Oct 1995	Ss. 1 and 2: Royal Assent Remainder: 9 Dec 1995 (see <i>Gazette</i> 1995, No. GN47)	—
<i>Audit (Transitional and Miscellaneous) Amendment Act 1997</i>	152, 1997	24 Oct 1997	Schedule 2 (items 475-495): 1 Jan 1998 (see <i>Gazette</i> 1997, No. GN49) (d)	—
<i>Financial Sector Reform (Consequential Amendments) Act 1998</i>	48, 1998	29 June 1998	Schedule 2 (items 2-5, 7-17, 19, 22, 23): (e) Schedule 2 (items 1, 6, 18, 20, 21): (e)	—

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Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Financial Sector Reform (Amendments and Transitional Provisions) Act 1998</i>	54, 1998	29 June 1998	Schedule 1: (f) Schedule 19 (item 46): Royal Assent (f)	Sch. 19 (item 46) [see Table A]
<i>Company Law Review Act 1998</i>	61, 1998	29 June 1998	Schedule 4 (items 1-5): (g)	—
<i>Managed Investments Act 1998</i>	62, 1998	29 June 1998	Schedule 2 (Part 2): (h)	—

- (a) The *Australian Securities and Investments Commission Act 1989* was amended by sections 10, 11 and 19-23 only of the *Corporations Legislation Amendment Act 1991*, subsections 2(6), (7), (8) and (12) of which provide as follows:

- “(6) Subject to subsections (7) and (8), the amendments of the *Australian Securities Commission Act 1989* that are made by section 11 of this Act are taken to have commenced on 1 January 1991.
- “(7) The following amendments of the *Australian Securities Commission Act 1989* that are made by section 11 of this Act commence on the day on which this Act receives the Royal Assent:
- (a) the insertion of new paragraph 6A(ba);
 - (b) the amendments of sections 43, 46, 49 and 102.
- “(8) The following amendments of the *Australian Securities Commission Act 1989* that are made by section 11 of this Act commence on the day on which section 8 of this Act commences:
- (a) the amendment of the heading to Division 3 of Part 7;
 - (b) the repeal and substitution of section 128;
 - (c) the amendment of section 129.
- “(12) The provisions of Part 16 of the *Australian Securities Commission Act 1989* (which is added by section 23 of this Act) commence on a day or days to be fixed by Proclamation for the purposes of this subsection.”

The date fixed in pursuance of subsection 2(8) on the commencement of section 8 was 1 August 1991 (see *Gazette* 1991, No. S208).

The date fixed in pursuance of subsection 2(12) was 31 July 1992 (see *Gazette* 1992, No. GN30).

- (b) The *Australian Securities and Investments Commission Act 1989* was amended by the *Corporations Legislation Amendment Act 1994*, subsections 2(1), (2), (4) and (5) of which provide as follows:
- “(1) Parts 1, 2 and 3 and Schedules 5 and 9 commence on the day on which this Act receives the Royal Assent.
- “(2) Schedule 6 commences immediately after all the other provisions of this Act, and all the provisions of the *Corporate Law Reform Act 1994*, have commenced.
- All other provisions of this Act had commenced by 16 October 1995 and all provisions of the *Corporate Law Reform Act 1994* had commenced by 4 September 1994.
- “(4) Subject to subsection (5), the items, and paragraphs of items, of Schedules 2, 4, 7 and 8 commence on a day or days to be fixed by Proclamation.
- “(5) If an item, or a paragraph of an item, referred to in subsection (4) does not commence under that subsection within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.”
- (c) The *Australian Securities and Investments Commission Act 1989* was amended by the *Evidence (Transitional Provisions and Consequential Amendments) Act 1995*, subsections 2(1) and (3)-(5) of which provide as follows:

- “(1) This Part and Parts 2 and 3 commence on the day on which this Act receives the Royal Assent.
- “(3) Subject to subsection (4) of this section, subsection 16(1) commences on a day to be fixed by Proclamation.
- “(4) A Proclamation is not to be made under subsection (3) of this section until the law of each State and the law of the Northern Territory have been amended to the effect that the provisions of the *Evidence Act 1995* referred to in subsection 16(1) of this

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Act Notes

Act apply, for the purposes of the ASC Law, as a law of that State or the Northern Territory (as the case requires).

- (5) Subsection 16(2) commences on the day on which the provisions of Part IIIA of the *Evidence Act 1905* are repealed under subsection 3(1) of this Act.”
- (d) The *Australian Securities and Investments Commission Act 1989* was amended by Schedule 2 (items 475-495) only of the *Audit (Transitional and Miscellaneous) Amendment Act 1997*, subsection 2(2) of which provides as follows:
- “(2) Schedules 1, 2 and 4 commence on the same day as the *Financial Management and Accountability Act 1997*.”
- (e) The *Australian Securities and Investments Commission Act 1989* was amended by Schedule 2 only of the *Financial Sector Reform (Consequential Amendments) Act 1998*, subsections 2(2) and (13) of which provide as follows:
- “(2) Subject to subsections (3) to (14), Schedules 1, 2 and 3 commence on the commencement of the *Australian Prudential Regulation Authority Act 1998*.”
- The *Australian Prudential Regulation Authority Act 1998* came into operation on 1 July 1998 (see *Gazette* 1998, No. S316).
- “(13) Items 1, 6, 18, 20 and 21 of Schedule 2 commence immediately after the commencement of Schedule 1 to the *Financial Sector Reform (Amendments and Transitional Provisions) Act 1998*.”
- Schedule 1 to the *Financial Sector Reform (Amendments and Transitional Provisions) Act 1998* commenced on 1 July 1998.
- (f) The *Australian Securities and Investments Commission Act 1989* was amended by Schedule 1 only of the *Financial Sector Reform (Amendments and Transitional Provisions) Act 1998*, subsection 2(2)(a) of which provides as follows:
- “(2) The following provisions of this Act commence on the commencement of the *Australian Prudential Regulation Authority Act 1998*:
- (a) Schedule 1;”.
- The *Australian Prudential Regulation Authority Act 1998* came into operation on 1 July 1998 (see *Gazette* 1998, No. S316).
- (g) The *Australian Securities and Investments Commission Act 1989* was amended by Schedule 4 (items 1-5) only of the *Company Law Review Act 1998*, subsections 2(2) and (4) of which provide as follows:
- “(2) Subject to subsection (3), section 3 and Schedules 1, 2, 3 and 4 commence on a day to be fixed by Proclamation.”
- The date fixed in pursuance of subsection 2(2) was 1 July 1998 (see *Gazette* 1998, No. S316).
- “(4) The amendments in Schedules 1, 2, 3 and 4 commence on the day determined under subsections (2) and (3) in this order:
- (a) first, items 29, 30 and 199 of Schedule 3;
- (b) then, the items in Schedules 1, 2 and 4 and the remaining items in Schedule 3 (other than items 32, 85, 158 and 198);
- (c) then, items 32, 85, 158 and 198 of Schedule 3.”
- (h) The *Australian Securities and Investments Commission Act 1989* was amended by Schedule 2 (Part 2) only of the *Managed Investments Act 1998*, section 2 of which provides as follows:
- “2 This Act commences immediately after all the items in Schedules 1, 2, 3 and 4 of the *Company Law Review Act 1998* have commenced.”
- The date fixed in pursuance of section 2 was 1 July 1998 (see *Gazette* 1998, No. S316).

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Title	am. No. 54, 1998
Div. 1 of Part 1 (s. 1)	ad. No. 110, 1990
S. 1	rep. No. 110, 1990 ad. No. 110, 1990 am. No. 110, 1991; No. 54, 1998
Div. 2 of Part 1 (ss. 1A-1E)	ad. No. 110, 1990
S. 1A	ad. No. 110, 1990 am. No. 54, 1998
S. 1B	ad. No. 110, 1990 am. Nos. 48 and 54, 1998
S. 1C	ad. No. 110, 1990
S. 1D	ad. No. 110, 1990
S. 1E	ad. No. 110, 1990
Heading to Div. 3 of Part 1	ad. No. 110, 1990
S. 3	rep. No. 110, 1990
Heading to Div. 4 of Part 1	ad. No. 110, 1990
S. 5	am. No. 110, 1990; No. 110, 1991; Nos. 94 and 210, 1992; No. 104, 1994; Nos. 48, 54 and 61, 1998
S. 6A	ad. No. 110, 1990 am. No. 110, 1991
Ss. 6B-6D	ad. No. 110, 1990
S. 6E	ad. No. 110, 1991
Heading to Part 2	rs. No. 48, 1998
Heading to Div. 1 of Part 2	ad. No. 48, 1998
S. 7	am. No. 54, 1998
Note to s. 8	ad. No. 152, 1997
S. 9	am. No. 41, 1990; No. 54, 1998
S. 10	am. No. 152, 1997
Note to s. 10	ad. No. 152, 1997
Heading to s. 11	am. No. 54, 1998
S. 11	am. No. 110, 1990; No. 48, 1998
S. 12	am. No. 110, 1990
Div. 2 of Part 2 (ss. 12AA-12AE, 12BA-12BE, 12CA, 12CB, 12DA-12DN, 12EA-12ED, 12FA, 12GA-12GO, 12HA-12HD, 12IA)	ad. No. 48, 1998
Ss. 12AA-12AE	ad. No. 48, 1998
Ss. 12BA-12EE	ad. No. 48, 1998
S. 12CA	ad. No. 48, 1998

NOTES

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 12CB	ad. No. 48, 1998
Ss. 12DA-12DN.....	ad. No. 48, 1998
Ss. 12EA-12ED	ad. No. 48, 1998
S. 12FA	ad. No. 48, 1998
Ss. 12GA-12GO	ad. No. 48, 1998
Ss. 12HA-12HD.....	ad. No. 48, 1998
S. 12IA	ad. No. 48, 1998
S. 12A	ad. No. No. 54, 1998 am. No. 48, 1998
Div. 1A of Part 3	ad. No. 48, 1998
(s. 12B)	
S. 12B	ad. No. 48, 1998
S. 13.....	am. No. 110, 1990; Nos. 48 and 62, 1998
S. 14.....	am. No. 110, 1990
S. 14A	ad. No. 110, 1990
S. 15.....	am. No. 110, 1990
S. 22.....	am. No. 104, 1994
Ss. 25, 26	am. No. 104, 1994
S. 27.....	am. No. 110, 1990
S. 28.....	am. No. 110, 1990; No. 62, 1998
S. 29.....	am. No. 110, 1990
Heading to s. 30	am. No. 62, 1998
S. 30.....	am. No. 62, 1998
S. 32A	ad. No. 48, 1998
S. 33.....	am. Nos. 48 and 62, 1998
S. 34.....	am. No. 48, 1998
Ss. 35-37.....	am. No. 110, 1990
S. 39A	ad. No. 62, 1998
S. 40.....	rs. No. 110, 1990
S. 42.....	rep. No. 110, 1990
S. 43.....	am. No. 110, 1990; No. 110, 1991
S. 45.....	rep. No. 110, 1990
S. 46.....	am. No. 110, 1990; No. 110, 1991
S. 47.....	am. No. 104, 1994
S. 49.....	am. No. 110, 1990; No. 110, 1991; No. 48, 1998
Ss. 50, 51	am. No. 110, 1990
Ss. 53, 54	am. No. 110, 1990
S. 56.....	am. No. 110, 1990; No. 104, 1994
S. 57.....	am. No. 110, 1990
S. 59.....	am. No. 110, 1990
Ss. 61, 62	am. No. 110, 1990
S. 63.....	am. No. 48, 1998
Ss. 64-66.....	am. No. 104, 1994

NOTES
Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 67.....	am. No. 110, 1990; No. 104, 1994; No. 48, 1998
S. 68.....	am. No. 110, 1990; No. 27, 1992
S. 69.....	am. No. 104, 1994
S. 75.....	am. No. 104, 1994
S. 76.....	am. No. 110, 1990; No. 27, 1992
S. 77.....	am. No. 110, 1990
S. 79.....	am. No. 110, 1990
S. 80.....	am. No. 110, 1990; No. 48, 1998
S. 81.....	am. No. 110, 1990; No. 61, 1998
S. 83A.....	ad. No. 110, 1990
S. 86.....	am. No. 110, 1990; No. 115, 1995; No. 61, 1998
S. 88.....	am. No. 110, 1990; No. 110, 1991; No. 3, 1995
S. 91.....	am. No. 110, 1990; No. 210, 1992; No. 104, 1994; No. 48, 1998
S. 93.....	am. No. 110, 1990
S. 93AA.....	ad. No. 54, 1998
Part 3A (s. 93A).....	ad. No. 62, 1998
S. 93A.....	ad. No. 62, 1998
S. 95.....	am. No. 110, 1990
S. 96.....	rs. No. 110, 1990
S. 102.....	am. No. 110, 1990; No. 110, 1991; Nos. 48 and 54, 1998
S. 111.....	am. No. 122, 1991; No. 94, 1992
S. 113.....	rs. No. 122, 1991
S. 114.....	am. No. 94, 1992
Div. 3 to Part 5 (s. 119A).....	ad. No. 110, 1990
S. 119A.....	ad. No. 110, 1990
S. 122A.....	ad. No. 110, 1990
S. 123.....	rs. No. 54, 1998
S. 124.....	am. No. 152, 1997
S. 125.....	am. No. 104, 1994
S. 127.....	am. No. 110, 1990; No. 110, 1991; No. 31, 1994; No. 104, 1994; Nos. 48 and 54, 1998
S. 127A.....	ad. No. 110, 1991 am. No. 104, 1994
Heading to Div. 3 of Part 7.....	am. No. 110, 1991
S. 128.....	rs. No. 110, 1991 am. No. 104, 1994
S. 129.....	am. No. 110, 1991
S. 134.....	am. No. 110, 1990
S. 135.....	am. No. 110, 1990; No. 110, 1991; No. 152, 1997; No. 54, 1998
S. 136.....	rep. No. 152, 1997
S. 137.....	am. No. 152, 1997
S. 138.....	am. Nos. 48 and 54, 1998 rs. No. 152, 1997

NOTES
Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 141.....	am. No. 152, 1997
Ss. 143, 144.....	rep. No. 152, 1997
Note to s. 146.....	ad. No. 152, 1997
Ss. 147, 148.....	am. No. 110, 1990
S. 148A.....	ad. No. 31, 1994
S. 161.....	am. No. 152, 1997
S. 162.....	rep. No. 152, 1997
S. 164.....	rep. No. 152, 1997
S. 167.....	am. No. 152, 1997
Ss. 169, 170.....	rep. No. 152, 1997
Ss. 172, 173.....	am. No. 110, 1990
S. 174.....	rs. No. 110, 1990 am. No. 110, 1991
S. 180.....	rs. No. 122, 1991
Ss. 184, 185.....	am. No. 110, 1990; No. 104, 1994
Heading to Div. 3 of Part 10.....	am. No. 104, 1994
S. 187.....	am. No. 104, 1994
S. 188.....	rs. No. 104, 1994
S. 189.....	rs. No. 104, 1994 am. No. 104, 1994
S. 190.....	am. No. 104, 1994
S. 191.....	rs. No. 104, 1994
S. 192.....	am. No. 104, 1994
S. 193.....	rs. No. 104, 1994
S. 193A.....	ad. No. 104, 1994
S. 194.....	am. No. 104, 1994
S. 195.....	rs. No. 104, 1994
Ss. 196, 197.....	am. No. 110, 1990; No. 104, 1994
Ss. 198-201.....	am. No. 104, 1994
S. 201A.....	ad. No. 104, 1994
S. 203.....	am. No. 110, 1991
S. 204.....	rs. No. 110, 1990 am. No. 110, 1991
S. 213.....	am. No. 110, 1990
S. 216.....	am. No. 104, 1994
Ss. 219, 220.....	am. No. 104, 1994
S. 221.....	am. No. 110, 1990
Heading to Part 12.....	rs. No. 110, 1990
S. 224.....	rs. No. 110, 1990
S. 225.....	am. No. 110, 1990
S. 226.....	am. No. 110, 1990; No. 210, 1992; No. 61, 1998
S. 231.....	am. No. 110, 1990
Ss. 233, 234.....	am. No. 110, 1990

NOTES
Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 13 (ss. 235-240)	rep. No. 110, 1990
Ss. 235-240.....	rep. No. 110, 1990
Ss. 243A-243C.....	ad. No. 110, 1990
S. 243D.....	ad. No. 110, 1990 am. No. 188, 1991
S. 244A.....	ad. No. 104, 1994
S. 245.....	am. No. 110, 1990; No. 54, 1998
S. 246.....	am. No. 110, 1990; No. 210, 1992; No. 54, 1998
S. 248.....	am. No. 110, 1990
Ss. 249, 250.....	rep. No. 110, 1990
S. 251.....	am. No. 110, 1990
S. 252.....	ad. No. 110, 1990
Part 16 (ss. 253-262)	ad. No. 110, 1991
Ss. 253-262.....	ad. No. 110, 1991
Part 17 (ss. 263-267)	ad. No. 104, 1994
Ss. 263-267.....	ad. No. 104, 1994
Part 18 (s. 268).....	ad. No. 54, 1998
S. 268.....	ad. No. 54, 1998

NOTES

Note 2

Section 246(1)—Schedule 2 (item 23) of the *Financial Sector Reform (Consequential Amendments) Act 1998* provides as follows:

23 Subsection 246(1)

After “national scheme laws”, insert “, section 12A or Division 2 of Part 2,”.

The proposed amendment was misdescribed and is not incorporated in this reprint.

Table A

Application, Saving or Transitional Provisions

*Financial Sector Reform (Amendments and
Transitional Provisions) Act 1998 (No. 54, 1998)*

Schedule 19

46 Regulations may deal with other transitional matters

The regulations may deal with other transitional matters relating to the amendments and repeals made by the Schedules to this Act, or relating to the establishment of the Australian Prudential Regulation Authority.

