



Corporations Act 1989

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This compilation is in 5 volumes

- Volume 1: sections 1-82, Corporations Law sections 1-111J, Part 1.5—Small Business Guide
- Volume 2: section 82, Corporations Law sections 112-451D
- Volume 3: section 82, Corporations Law sections 459A-864**
- Volume 4: section 82, Corporations Law sections 865-1273
- Volume 5: section 82, Corporations Law sections 1274-1465, Schedules 2 and 3, Endnotes

Each volume has its own contents

Section 82 of the *Corporations Act 1989* includes the Corporations Law. The Corporations Law appears in this compilation as part of the Act.

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This is a compilation of the *Corporations Act 1989* that shows the text of the law as amended and in force on 1 July 1998 (the *compilation date*).

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

Uncommenced amendments

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

Application, saving and transitional provisions for provisions and amendments

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

Editorial changes

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

Presentational changes

The *Legislation Act 2003* provides for First Parliamentary Counsel to make presentational changes to a compilation. Presentational changes are applied to give a more consistent look and feel to legislation published on the Register, and enable the user to more easily navigate those documents.

Modifications

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

Self-repealing provisions

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

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NOTE: Section 82 of the Corporations Act 1989 contains the Corporations Law. The material in this volume is a continuation of section 82 of the Corporations Act 1989 and the Corporations Law from the previous volume.

Chapter 5—External administration

Part 5.4—Winding up in insolvency

Division 1—When company to be wound up in insolvency

459A Order that insolvent company be wound up in insolvency

On an application under section 459P, the Court may order that an insolvent company be wound up in insolvency.

459B Order made on application under section 246AA, 462 or 464

Where, on an application under section 246AA, 462 or 464, the Court is satisfied that the company is insolvent, the Court may order that the company be wound up in insolvency.

459C Presumptions to be made in certain proceedings

- (1) This section has effect for the purposes of:
 - (a) an application under section 246AA, 459P, 462 or 464; or
 - (b) an application for leave to make an application under section 459P.
- (2) The Court must presume that the company is insolvent if, during or after the 3 months ending on the day when the application was made:
 - (a) the company failed (as defined by section 459F) to comply with a statutory demand; or

The Corporations Law—Section 459D

- (b) execution or other process issued on a judgment, decree or order of an Australian court in favour of a creditor of the company was returned wholly or partly unsatisfied; or
 - (c) a receiver, or receiver and manager, of property of the company was appointed under a power contained in an instrument relating to a floating charge on such property; or
 - (d) an order was made for the appointment of such a receiver, or receiver and manager, for the purpose of enforcing such a charge; or
 - (e) a person entered into possession, or assumed control, of such property for such a purpose; or
 - (f) a person was appointed so to enter into possession or assume control (whether as agent for the chargee or for the company).
- (3) A presumption for which this section provides operates except so far as the contrary is proved for the purposes of the application.

459D Contingent or prospective liability relevant to whether company solvent

- (1) In determining, for the purposes of an application of a kind referred to in subsection 459C(1), whether or not the company is solvent, the Court may take into account a contingent or prospective liability of the company.
- (2) Subsection (1) does not limit the matters that may be taken into account in determining, for a particular purpose, whether or not a company is solvent.

Division 2—Statutory demand

459E Creditor may serve statutory demand on company

- (1) A person may serve on a company a demand relating to:
 - (a) a single debt that the company owes to the person, that is due and payable and whose amount is at least the statutory minimum; or
 - (b) 2 or more debts that the company owes to the person, that are due and payable and whose amounts total at least the statutory minimum.
- (2) The demand:
 - (a) if it relates to a single debt—must specify the debt and its amount; and
 - (b) if it relates to 2 or more debts—must specify the total of the amounts of the debts; and
 - (c) must require the company to pay the amount of the debt, or the total of the amounts of the debts, or to secure or compound for that amount or total to the creditor's reasonable satisfaction, within 21 days after the demand is served on the company; and
 - (d) must be in writing; and
 - (e) must be in the prescribed form (if any); and
 - (f) must be signed by or on behalf of the creditor.
- (3) Unless the debt, or each of the debts, is a judgment debt, the demand must be accompanied by an affidavit that:
 - (a) verifies that the debt, or the total of the amounts of the debts, is due and payable by the company; and
 - (b) complies with the rules.
- (4) A person may make a demand under this section relating to a debt even if the debt is owed to the person as assignee.

The Corporations Law—Section 459F

- (5) A demand under this section may relate to a liability under any of the following provisions of the *Income Tax Assessment Act 1936*:
- (a) section 221F (except subsection 221F(12)), section 221G (except subsection 221G(4A)) or section 221P;
 - (b) subsection 221YHDC(2);
 - (c) subsection 221YHZD(1) or (1A);
 - (d) subsection 221YN(1);
 - (e) section 222AHA;
- even if the liability arose before the commencement of this section.
- (6) Subsection (5) is to avoid doubt and is not intended to limit the generality of a reference in this Law to a debt.

459F When company taken to fail to comply with statutory demand

- (1) If, as at the end of the period for compliance with a statutory demand, the demand is still in effect and the company has not complied with it, the company is taken to fail to comply with the demand at the end of that period.
- (2) The period for compliance with a statutory demand is:
- (a) if the company applies in accordance with section 459G for an order setting aside the demand:
 - (i) if, on hearing the application under section 459G, or on an application by the company under this paragraph, the Court makes an order that extends the period for compliance with the demand—the period specified in the order, or in the last such order, as the case requires, as the period for such compliance; or
 - (ii) otherwise—the period beginning on the day when the demand is served and ending 7 days after the application under section 459G is finally determined or otherwise disposed of; or
 - (b) otherwise—21 days after the demand is served.

Division 3—Application to set aside statutory demand

459G Company may apply

- (1) A company may apply to the Court for an order setting aside a statutory demand served on the company.
- (2) An application may only be made within 21 days after the demand is so served.
- (3) An application is made in accordance with this section only if, within those 21 days:
 - (a) an affidavit supporting the application is filed with the Court; and
 - (b) a copy of the application, and a copy of the supporting affidavit, are served on the person who served the demand on the company.

459H Determination of application where there is a dispute or offsetting claim

- (1) This section applies where, on an application under section 459G, the Court is satisfied of either or both of the following:
 - (a) that there is a genuine dispute between the company and the respondent about the existence or amount of a debt to which the demand relates;
 - (b) that the company has an offsetting claim.
- (2) The Court must calculate the substantiated amount of the demand in accordance with the formula:
Admitted total – Offsetting total
where:
Admitted total means:
 - (a) the admitted amount of the debt; or
 - (b) the total of the respective admitted amounts of the debts;

The Corporations Law—Section 459H

as the case requires, to which the demand relates;

Offsetting total means:

- (a) if the Court is satisfied that the company has only one offsetting claim—the amount of that claim; or
 - (b) if the Court is satisfied that the company has 2 or more offsetting claims—the total of the amounts of those claims; or
 - (c) otherwise—a nil amount.
- (3) If the substantiated amount is less than the statutory minimum, the Court must, by order, set aside the demand.
 - (4) If the substantiated amount is at least as great as the statutory minimum, the Court may make an order:
 - (a) varying the demand as specified in the order; and
 - (b) declaring the demand to have had effect, as so varied, as from when the demand was served on the company.
 - (5) In this section:

admitted amount, in relation to a debt, means:

- (a) if the Court is satisfied that there is a genuine dispute between the company and the respondent about the existence of the debt—a nil amount; or
- (b) if the Court is satisfied that there is a genuine dispute between the company and the respondent about the amount of the debt—so much of that amount as the Court is satisfied is not the subject of such a dispute; or
- (c) otherwise—the amount of the debt;

offsetting claim means a genuine claim that the company has against the respondent by way of counterclaim, set-off or cross-demand (even if it does not arise out of the same transaction or circumstances as a debt to which the demand relates);

respondent means the person who served the demand on the company.

The Corporations Law—Section 459J

(6) This section has effect subject to section 459J.

459J Setting aside demand on other grounds

- (1) On an application under section 459G, the Court may by order set aside the demand if it is satisfied that:
 - (a) because of a defect in the demand, substantial injustice will be caused unless the demand is set aside; or
 - (b) there is some other reason why the demand should be set aside.
- (2) Except as provided in subsection (1), the Court must not set aside a statutory demand merely because of a defect.

459K Effect of order setting aside demand

A statutory demand has no effect while there is in force under section 459H or 459J an order setting aside the demand.

459L Dismissal of application

Unless the Court makes, on an application under section 459J, an order under section 459H or 459J, the Court is to dismiss the application.

459M Order subject to conditions

An order under section 459H or 459J may be made subject to conditions.

459N Costs where company successful

Where, on an application under section 459G, the Court sets aside the demand, it may order the person who served the demand to pay the company's costs in relation to the application.

Division 4—Application for order to wind up company in insolvency

459P Who may apply for order under section 459A

- (1) Any one or more of the following may apply to the Court for a company to be wound up in insolvency:
 - (a) the company;
 - (b) a creditor (even if the creditor is a secured creditor or is only a contingent or prospective creditor);
 - (c) a contributory;
 - (d) a director;
 - (e) a liquidator or provisional liquidator of the company;
 - (f) the Commission;
 - (g) a prescribed agency.
- (2) An application by any of the following, or by persons including any of the following, may only be made with the leave of the Court:
 - (a) a person who is a creditor only because of a contingent or prospective debt;
 - (b) a contributory;
 - (c) a director;
 - (d) the Commission.
- (3) The Court may give leave if satisfied that there is a *prima facie* case that the company is insolvent, but not otherwise.
- (4) The Court may give leave subject to conditions.
- (5) Except as permitted by this section, a person cannot apply for a company to be wound up in insolvency.

459Q Application relying on failure to comply with statutory demand

If an application for a company to be wound up in insolvency relies on a failure by the company to comply with a statutory demand, the application:

- (a) must set out particulars of service of the demand on the company and of the failure to comply with the demand; and
- (b) must have attached to it:
 - (i) a copy of the demand; and
 - (ii) if the demand has been varied by an order under subsection 459H(4)—a copy of the order; and
- (c) unless the debt, or each of the debts, to which the demand relates is a judgment debt—must be accompanied by an affidavit that:
 - (i) verifies that the debt, or the total of the amounts of the debts, is due and payable by the company; and
 - (ii) complies with the rules.

459R Period within which application must be determined

- (1) An application for a company to be wound up in insolvency is to be determined within 6 months after it is made.
- (2) The Court may by order extend the period within which an application must be determined, but only if:
 - (a) the Court is satisfied that special circumstances justify the extension; and
 - (b) the order is made within that period as prescribed by subsection (1), or as last extended under this subsection, as the case requires.
- (3) An application is, because of this subsection, dismissed if it is not determined as required by this section.
- (4) An order under subsection (2) may be made subject to conditions.

The Corporations Law—Section 459S

459S Company may not oppose application on certain grounds

- (1) In so far as an application for a company to be wound up in insolvency relies on a failure by the company to comply with a statutory demand, the company may not, without the leave of the Court, oppose the application on a ground:
 - (a) that the company relied on for the purposes of an application by it for the demand to be set aside; or
 - (b) that the company could have so relied on, but did not so rely on (whether it made such an application or not).
- (2) The Court is not to grant leave under subsection (1) unless it is satisfied that the ground is material to proving that the company is solvent.

459T Application to wind up joint debtors in insolvency

- (1) A single application may be made for 2 or more companies to be wound up in insolvency if they are joint debtors, whether partners or not.
- (2) On such an application, the Court may order that one or more of the companies be wound up in insolvency, even if it dismisses the application in so far as it relates to another or others.

Part 5.4A—Winding up by the Court on other grounds

461 General grounds on which company may be wound up by Court

- (1) The Court may order the winding up of a company if:
- (a) the company has by special resolution resolved that it be wound up by the Court;
 - (c) the company does not commence business within one year from its incorporation or suspends its business for a whole year;
 - (d) the company has no members;
 - (e) directors have acted in affairs of the company in their own interests rather than in the interests of the members as a whole, or in any other manner whatsoever that appears to be unfair or unjust to other members;
 - (f) affairs of the company are being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members or in a manner that is contrary to the interests of the members as a whole;
 - (g) an act or omission, or a proposed act or omission, by or on behalf of the company, or a resolution, or a proposed resolution, of a class of members of the company, was or would be oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members or was or would be contrary to the interests of the members as a whole;
 - (h) the Commission has stated in a report prepared under Division 1 of Part 3 of the ASC Law that, in its opinion:
 - (i) the company cannot pay its debts and should be wound up; or
 - (ii) it is in the interests of the public, of the members, or of the creditors, that the company should be wound up;
 - (j) if the application was made by the Australian Prudential Regulation Authority—the Court is of opinion that it is in the

The Corporations Law—Section 462

- interests of the public, of the members or of the creditors that the company should be wound up; or
- (k) the Court is of opinion that it is just and equitable that the company be wound up.
- (2) A company must lodge a copy of a special resolution referred to in paragraph (1)(a) with ASIC within 14 days after the resolution is passed.

462 Standing to apply for winding up

- (1) A reference in this section to an order to wind up a company is a reference to an order to wind up the company on a ground provided for by section 461.
- (2) Subject to this section, any one or more of the following may apply for an order to wind up a company:
- (a) the company; or
 - (b) a creditor (including a contingent or prospective creditor) of the company; or
 - (c) a contributory; or
 - (d) the liquidator of the company; or
 - (e) the Commission pursuant to section 464; or
 - (f) the Commission (in the circumstances set out in subsection (2A)); or
 - (h) the Australian Prudential Regulation Authority.
- (2A) The Commission may apply for an order to wind up a company under paragraph (2)(f) only if:
- (a) the company has no members; and
 - (b) the Commission has given the company at least 1 month's written notice of its intention to apply for the order.
- (3) A person being, or persons including, the Australian Prudential Regulation Authority may only apply for an order to wind up a company if:

The Corporations Law—Section 464

- (a) an inspector has been appointed to make an investigation in respect of the company under section 52 of the *Insurance Act 1973*; and
 - (b) the company's liabilities within the meaning of Part III of that Act exceed the company's assets within the meaning of that Part.
- (4) The Court shall not hear an application by a person being, or persons including, a contingent or prospective creditor of a company for an order to wind up the company unless and until:
- (a) such security for costs has been given as the Court thinks reasonable; and
 - (b) a *prima facie* case for winding up the company has been established to the Court's satisfaction.
- (5) Except as permitted by this section, a person is not entitled to apply for an order to wind up a company.

464 Application for winding up in connection with investigation under ASC Law

- (1) Where the Commission is investigating, or has investigated, under Division 1 of Part 3 of the ASC Law:
- (a) matters being, or connected with, affairs of a company; or
 - (b) matters including such matters;
- the Commission may apply to the Court for the winding up of the company.
- (2) For the purposes of an application under subsection (1), this Law applies, with such modifications as the circumstances require, as if a winding up application had been made by the company.
- (3) The Commission shall give a copy of an application made under subsection (1) to the company.

Part 5.4B—Winding up in insolvency or by the Court

Division 1—General

465A Notice of application

A person who applies under section 459P, 462 or 464 for a company to be wound up must:

- (a) lodge notice in the prescribed form that the application has been made; and
- (b) within 14 days after the application is made, serve a copy of it on the company; and
- (c) advertise the application as prescribed by the rules.

465B Substitution of applicants

- (1) The Court may by order substitute, as applicant or applicants in an application under section 459P, 462 or 464 for a company to be wound up, a person or persons who might otherwise have so applied for the company to be wound up.
- (2) The Court may only make an order if the Court thinks it appropriate to do so:
 - (a) because the application is not being proceeded with diligently enough; or
 - (b) for some other reason.
- (3) The substituted applicant may be, or the substituted applicants may be or include, the person who was the applicant, or any of the persons who were the applicants, before the substitution.
- (4) After an order is made, the application may proceed as if the substituted applicant or applicants had been the original applicant or applicants.

465C Applicant to be given notice of grounds for opposing application

On the hearing of an application under section 459P, 462 or 464, a person may not, without the leave of the Court, oppose the application unless, within the period prescribed by the rules, the person has filed, and served on the applicant:

- (a) notice of the grounds on which the person opposes the application; and
- (b) an affidavit verifying the matters stated in the notice.

466 Payment of preliminary costs etc.

- (1) The persons, other than the company itself or the liquidator of the company, on whose application any winding up order is made shall, at their own cost, prosecute all proceedings in the winding up until a liquidator has been appointed under this Part.
- (2) The liquidator shall, unless the Court orders otherwise, reimburse the applicant out of the property of the company the taxed costs incurred by the applicant in any such proceedings.
- (3) Where the company has no property or does not have sufficient property and, in the opinion of the Commission, a fraud has been committed by any person in the promotion or formation of the company or by any officer of the company in relation to the company since its formation, the taxed costs or so much of them as is not reimbursed under subsection (2) may be reimbursed by the Commission to an amount not exceeding \$1,000.
- (4) Where any winding up order is made upon the application of the company or a liquidator of the company, the costs incurred shall, subject to any order of the Court, be paid out of the property of the company in like manner as if they were the costs of any other applicant.

The Corporations Law—Section 467

467 Court's powers on hearing application

- (1) Subject to subsection (2) and section 467A, on hearing a winding up application the Court may:
 - (a) dismiss the application with or without costs, even if a ground has been proved on which the Court may order the company to be wound up on the application; or
 - (b) adjourn the hearing conditionally or unconditionally; or
 - (c) make any interim or other order that it thinks fit.
- (2) The Court shall not refuse to make a winding up order merely because:
 - (a) the property of the company has been mortgaged to an amount equal to or greater than the value or amount of that property; or
 - (b) the company has no property.
- (3) The Court may, on the application coming on for hearing or at any time at the request of the applicant, the company or any person who has given notice of intention to appear on the hearing of the application:
 - (a) direct that any notices be given or any steps be taken before or after the hearing of the application;
 - (b) dispense with any notices being given or steps being taken that are required by this Law, or by the rules, or by any prior order of the Court;
 - (c) direct that oral evidence be taken on the application or any matter relating to the application;
 - (d) direct a speedy hearing or trial of the application or of any issue or matter;
 - (e) allow the application to be amended or withdrawn; and
 - (f) give such directions as to the proceedings as the Court thinks fit.
- (4) Where the application is made by members as contributories on the ground that it is just and equitable that the company should be wound up or that the directors have acted in a manner that appears

The Corporations Law—Section 467A

to be unfair or unjust to other members, the Court, if it is of the opinion that:

- (a) the applicants are entitled to relief either by winding up the company or by some other means; and
- (b) in the absence of any other remedy it would be just and equitable that the company should be wound up;

shall make a winding up order unless it is also of the opinion that some other remedy is available to the applicants and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

- (5) Notwithstanding any rule of law to the contrary, the Court shall not refuse to make an order for winding up on the application of a contributory on the ground that, if the order were made, no property of the company would be available for distribution among the contributories.
- (7) At any time after the filing of a winding up application and before a winding up order has been made, the company or any creditor or contributory may, where any action or other civil proceeding against the company is pending, apply to the Court to stay or restrain further proceedings in the action or proceeding, and the Court may stay or restrain the proceedings accordingly on such terms as it thinks fit.

467A Effect of defect or irregularity on application under Part 5.4 or 5.4A

An application under Part 5.4 or 5.4A must not be dismissed merely because of one or more of the following:

- (a) in any case—a defect or irregularity in connection with the application;
- (b) in the case of an application for a company to be wound up in insolvency—a defect in a statutory demand;

unless the Court is satisfied that substantial injustice has been caused that cannot otherwise be remedied (for example, by an adjournment or an order for costs).

The Corporations Law—Section 467B

467B Court may order winding up of company that is being wound up voluntarily

The Court may make an order under section 246AA, 459A, 459B or 461 even if the company is already being wound up voluntarily.

468 Avoidance of dispositions of property, attachments etc.

- (1) Any disposition of property of the company, other than an exempt disposition, and any transfer of shares or alteration in the status of the members of the company made after the commencement of the winding up by the Court is, unless the Court otherwise orders, void.
- (2) In subsection (1), *exempt disposition*, in relation to a company that has commenced to be wound up by the Court, means:
 - (a) a disposition made by the liquidator, or by a provisional liquidator, of the company pursuant to a power conferred on him or her by:
 - (i) this Law; or
 - (ii) rules of the Court that appointed him or her; or
 - (iii) an order of the Court; or
 - (aa) a disposition made in good faith by, or with the consent of, an administrator of the company; or
 - (ab) a disposition under a deed of company arrangement executed by the company; or
 - (b) a payment of money by an Australian ADI out of an account maintained by the company with the Australian ADI, being a payment made by the Australian ADI:
 - (i) on or before the day on which the Court makes the order for the winding up of the company; and
 - (ii) in good faith and in the ordinary course of the banking business of the Australian ADI.
- (3) Notwithstanding subsection (1), the Court may, where an application for winding up has been filed but a winding up order has not been made, by order:

The Corporations Law—Section 469

- (a) validate the making, after the filing of the application, of a disposition of property of the company; or
 - (b) permit the business of the company or a portion of the business of the company to be carried on, and such acts as are incidental to the carrying on of the business or portion of the business to be done, during the period before a winding up order (if any) is made;
on such terms as it thinks fit.
- (4) Any attachment, sequestration, distress or execution put in force against the property of the company after the commencement of the winding up by the Court is void.

469 Application to be *lis pendens*

An application for winding up a company constitutes a *lis pendens* for the purposes of any law relating to the effect of a *lis pendens* upon purchasers or mortgagees.

470 Certain notices to be lodged

- (1) An applicant (other than the Commission) for the winding up of a company shall:
- (a) lodge, not later than 10.30 a.m. on the next business day after the filing of the application, notice of the filing of the application and of the date on which the application was filed;
 - (b) after an order for winding up is made—lodge, within 2 business days after the making of the order, notice of the making of the order, of the date on which the order was made and of the name and address of the liquidator; and
 - (c) if the application is withdrawn or dismissed—lodge, within 2 business days after the withdrawal or dismissal of the application, notice of the withdrawal or dismissal of the application and of the date on which the application was withdrawn or dismissed.

The Corporations Law—Section 470

- (2) The applicant shall, within 7 days after the passing and entering of a winding up order:
 - (a) except where the applicant is the Commission—lodge an office copy of the order;
 - (b) serve an office copy of the order on the company or such other person as the Court directs; and
 - (c) deliver to the liquidator an office copy of the order together with a statement that the order has been served as mentioned in paragraph (b).

- (3) Where the Commission applies for the winding up of a company, the Commission shall enter in its records particulars of the application and, after the passing and entering of a winding up order, an office copy of the order, and subsection 1274(2) applies in relation to the document containing those particulars and to the office copy as if they were documents lodged with the Commission.

Division 1A—Effect of winding up order

471 Effect on creditors and contributories

- (1) An order for winding up a company operates in favour of all the creditors and contributories of the company as if it had been made on the joint application of all the creditors and contributories.

471A Powers of other officers suspended during winding up

- (1) While a company is being wound up in insolvency or by the Court, a person cannot perform or exercise, and must not purport to perform or exercise, a function or power as an officer of the company, except:
 - (a) as a liquidator appointed for the purposes of the winding up; or
 - (b) as an administrator appointed for the purposes of an administration of the company beginning after the winding up order was made; or
 - (c) with the liquidator's written approval; or
 - (d) with the approval of the Court.
- (2) While a provisional liquidator of a company is acting, a person cannot perform or exercise, and must not purport to perform or exercise, a function or power as an officer of the company, except:
 - (a) as a provisional liquidator of the company; or
 - (b) as an administrator appointed for the purposes of an administration of the company beginning after the provisional liquidator was appointed; or
 - (c) with the provisional liquidator's written approval; or
 - (d) with the approval of the Court.
- (3) This section does not remove an officer of a company from office.
- (4) For the purposes of this section, a person is not an officer of a company merely because he or she is:

The Corporations Law—Section 471B

- (a) a receiver and manager, appointed under a power contained in an instrument, of property of the company; or
- (b) an employee of the company.

471B Stay of proceedings and suspension of enforcement process

While a company is being wound up in insolvency or by the Court, or a provisional liquidator of a company is acting, a person cannot begin or proceed with:

- (a) a proceeding in a court against the company or in relation to property of the company; or
 - (b) enforcement process in relation to such property;
- except with the leave of the Court and in accordance with such terms (if any) as the Court imposes.

471C Secured creditor's rights not affected

Nothing in section 471A or 471B affects a secured creditor's right to realise or otherwise deal with the security.

Division 2—Court-appointed liquidators

472 Court to appoint official liquidator

- (1) On an order being made for the winding up of a company, the Court may appoint an official liquidator to be liquidator of the company.
- (2) The Court may appoint an official liquidator provisionally at any time after the filing of a winding up application and before the making of a winding up order or, if there is an appeal against a winding up order, before a decision in the appeal is made.
- (3) A liquidator appointed provisionally has or may exercise such functions and powers:
 - (a) as are conferred on him or her by this Law or by rules of the Court that appointed him or her; or
 - (b) as the Court specifies in the order appointing him or her.
- (4) A liquidator of a company appointed provisionally also has:
 - (a) power to carry on the company's business; and
 - (b) the powers that a liquidator of the company would have under paragraph 477(1)(d), subsection 477(2) (except paragraph 477(2)(m)) and subsection 477(3) if the company were being wound up in insolvency or by the Court.
- (5) Subsections 477(2A) and (2B) apply in relation to a company's provisional liquidator, with such modifications (if any) as the circumstances require, as if he or she were a liquidator appointed for the purposes of a winding up in insolvency or by the Court.
- (6) The exercise by a company's provisional liquidator of the powers conferred by subsection (4) is subject to the control of the Court, and a creditor or contributory, or the Commission, may apply to the Court in relation to the exercise or proposed exercise of any of those powers.

The Corporations Law—Section 473

473 General provisions about liquidators

- (1) A liquidator appointed by the Court may resign or, on cause shown, be removed by the Court.
- (2) A provisional liquidator is entitled to receive such remuneration by way of percentage or otherwise as is determined by the Court.
- (3) A liquidator is entitled to receive such remuneration by way of percentage or otherwise as is determined:
 - (a) if there is a committee of inspection—by agreement between the liquidator and the committee of inspection; or
 - (b) if there is no committee of inspection or the liquidator and the committee of inspection fail to agree:
 - (i) by resolution of the creditors; or
 - (ii) if no such resolution is passed—by the Court.
- (4) A meeting of creditors for the purposes of subsection (3) shall be convened by the liquidator by sending to each creditor a notice to which is attached a statement of all receipts and expenditure by the liquidator and of the amount of remuneration sought by him or her.
- (5) Where the remuneration of a liquidator is determined in the manner specified in paragraph (3)(a), the Court may, on the application of:
 - (a) a member or members whose shareholding or shareholdings represents or represent in the aggregate at least 10% of the issued capital of the company;
 - (b) a creditor or creditors whose debts against the company that have been admitted to proof amount in the aggregate to at least 10% of the total amount of the debts of the creditors of the company that have been admitted to proof; or
 - (c) the Commission;review the liquidator's remuneration and may confirm, increase or reduce that remuneration.
- (6) Where the remuneration of a liquidator is determined in the manner specified in subparagraph (3)(b)(i) the Court may, on the application of the liquidator or of a member or members referred to

The Corporations Law—Section 474

in subsection (5), review the liquidator's remuneration and may confirm, increase or reduce that remuneration.

- (7) A vacancy in the office of a liquidator appointed by the Court shall be filled by the Court.
- (8) If more than one liquidator is appointed by the Court, the Court shall declare whether anything that is required or authorised by this Law to be done by the liquidator is to be done by all or any one or more of the persons appointed.
- (9) Subject to this Law, the acts of a liquidator are valid notwithstanding any defects that may afterwards be discovered in his or her appointment or qualification.

474 Custody and vesting of company's property

- (1) If a company is being wound up in insolvency or by the Court, or a provisional liquidator of a company has been appointed, the liquidator or provisional liquidator shall take into his or her custody or under his or her control all the property to which the company is or appears to be entitled, and, if there is no liquidator, all the property of the company shall be in the custody of the Court.
- (2) The Court may, on the application of the liquidator, by order direct that all or any part of the property of the company shall vest in the liquidator and thereupon the property to which the order relates shall vest accordingly and the liquidator may, after giving such indemnity (if any) as the Court directs, bring, or may defend, any action or other legal proceeding that relates to that property or that it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.
- (3) Where an order is made under this section, the liquidator of the company to which the order relates shall, within 14 days after the making of the order, lodge with the Commission an office copy of the order.

The Corporations Law—Section 475

475 Report as to company's affairs to be submitted to liquidator

(1A) In this section:

liquidator includes a provisional liquidator.

- (1) There shall be made out and verified by a statement in writing in the prescribed form, and submitted to the liquidator, by the persons who were, at the date of the winding up order or, if the liquidator specifies an earlier date, that earlier date, the directors and secretary of the company a report in the prescribed form as to the affairs of the company as at the date concerned.
- (2) The liquidator may, by notice in writing served personally or by post addressed to the last known address of the person, require one or more persons included in one or more of the following classes of persons to make out as required by the notice, verify by a statement in writing in the prescribed form, and submit to him or her, a report, containing such information as is specified in the notice as to the affairs of the company or as to such of those affairs as are specified in the notice, as at a date specified in the notice:
 - (a) persons who are or have been officers of the company;
 - (b) where the company was formed within one year before the date of the winding up order—persons who have taken part in the formation of the company;
 - (c) persons who are employed by the company or have been employed by the company within one year before the date of the winding up order and are, in the opinion of the liquidator, capable of giving the information required;
 - (d) persons who are, or have been within one year before the date of the winding up order, officers of, or employed by, a body corporate that is, or within that year was, an officer of the company to the affairs of which the report relates;
 - (e) a person who was a provisional liquidator of the company.
- (3) The liquidator may, in a notice under subsection (2), specify the information that he or she requires as to affairs of the company by

The Corporations Law—Section 475

reference to information required by this Law or the regulations to be included in any other report, statement or notice under this Law.

- (4) A report referred to in subsection (1) shall, subject to subsection (6), be submitted to the liquidator not later than 14 days after the making of the winding up order.
- (5) A person required to submit a report referred to in subsection (2) shall, subject to subsection (6), submit it not later than 14 days after the liquidator serves notice of the requirement.
- (6) Where the liquidator believes there are special reasons for so doing, he or she may, on an application in writing made to him or her before the end of the time limited by subsection (4) or (5) for the submission by the applicant of a report under subsection (1) or (2), grant, by notice in writing, an extension of that time.
- (7) A liquidator:
 - (a) shall, within 7 days after receiving a report under subsection (1) or (2), cause a copy of the report to be filed with the Court and a copy to be lodged; and
 - (b) shall, where he or she gives a notice under subsection (6), as soon as practicable lodge a copy of the notice.
- (8) A person making or concurring in making a report required by this section and verifying it as required by this section shall, subject to the rules, be allowed, and shall be paid by the liquidator out of the property of the company, such costs and expenses incurred in and about the preparation and making of the report and the verification of that report as the liquidator considers reasonable.
- (9) A person shall not, without reasonable excuse, contravene a provision of this section other than subsection (7).
- (10) A person shall not, without reasonable excuse, contravene subsection (7).

The Corporations Law—Section 476

476 Preliminary report by liquidator

A liquidator of a company shall, within 2 months, or such longer period (if any) as the Commission allows, after receiving a report referred to in subsection 475(1) or (2), lodge a preliminary report:

- (a) in the case of a company having a share capital—as to the amount of capital issued, subscribed and paid up;
- (b) as to the estimated amounts of assets and liabilities of the company;
- (c) if the company has failed—as to the causes of the failure; and
- (d) as to whether, in his or her opinion, further inquiry is desirable with respect to a matter relating to the promotion, formation or insolvency of the company or the conduct of the business of the company.

477 Powers of liquidator

- (1) Subject to this section, a liquidator of a company may:
 - (a) carry on the business of the company so far as is necessary for the beneficial disposal or winding up of that business;
 - (b) subject to the provisions of section 556, pay any class of creditors in full;
 - (c) make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging that they have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the company or whereby the company may be rendered liable; and
 - (d) compromise any calls, liabilities to calls, debts, liabilities capable of resulting in debts and any claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting or supposed to subsist between the company and a contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the property or the winding up of the company, on such terms as are agreed, and take any

The Corporations Law—Section 477

security for the discharge of, and give a complete discharge in respect of, any such call, debt, liability or claim.

- (2) Subject to this section, a liquidator of a company may:
- (a) bring or defend any legal proceeding in the name and on behalf of the company;
 - (b) appoint a solicitor to assist him or her in his or her duties;
 - (c) sell or otherwise dispose of, in any manner, all or any part of the property of the company;
 - (ca) exercise the Court's powers under subsection 483(3) (except paragraph 483(3)(b)) in relation to calls on contributories;
 - (d) do all acts and execute in the name and on behalf of the company all deeds, receipts and other documents and for that purpose use when necessary a seal of the company;
 - (e) subject to the *Bankruptcy Act 1966*, prove in the bankruptcy of any contributory or debtor of the company or under any deed executed under that Act;
 - (f) draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the company;
 - (g) obtain credit, whether on the security of the property of the company or otherwise;
 - (h) take out letters of administration of the estate of a deceased contributory or debtor, and do any other act necessary for obtaining payment of any money due from a contributory or debtor, or his or her estate, that cannot be conveniently done in the name of the company;
 - (k) appoint an agent to do any business that the liquidator is unable to do, or that it is unreasonable to expect the liquidator to do, in person; and
 - (m) do all such other things as are necessary for winding up the affairs of the company and distributing its property.
- (2A) Except with the approval of the Court, of the committee of inspection or of a resolution of the creditors, a liquidator of a company must not compromise a debt to the company if the amount claimed by the company is more than:

The Corporations Law—Section 478

- (a) if an amount greater than \$20,000 is prescribed—the prescribed amount; or
 - (b) otherwise—\$20,000.
- (2B) Except with the approval of the Court, of the committee of inspection or of a resolution of the creditors, a liquidator of a company must not enter into an agreement on the company's behalf (for example, but without limitation, a lease or a charge) if:
 - (a) without limiting paragraph (b), the term of the agreement may end; or
 - (b) obligations of a party to the agreement may, according to the terms of the agreement, be discharged by performance; more than 3 months after the agreement is entered into, even if the term may end, or the obligations may be discharged, within those 3 months.
- (3) A liquidator of a company is entitled to inspect at any reasonable time any books of the company and a person who refuses or fails to allow the liquidator to inspect such books at such a time is guilty of an offence.
- (5) For the purpose of enabling the liquidator to take out letters of administration or recover money as mentioned in paragraph (2)(h), the money due shall be deemed to be due to the liquidator.
- (6) The exercise by the liquidator of the powers conferred by this section is subject to the control of the Court, and any creditor or contributory, or the Commission, may apply to the Court with respect to any exercise or proposed exercise of any of those powers.
- (7) This section does not apply to calls on shares in a no liability company.

478 Application of property; list of contributories

- (1) As soon as practicable after the Court orders that a company be wound up, the liquidator must:

The Corporations Law—Section 479

- (a) cause the company's property to be collected and applied in discharging the company's liabilities; and
 - (b) consider whether subsection (1A) requires him or her to settle a list of contributories.
- (1A) A liquidator of a company that is being wound up in insolvency or by the Court must settle a list of contributories if it appears to him or her likely that:
- (a) either:
 - (i) there are persons liable as members or past members to contribute to the company's property on the winding up; or
 - (ii) there will be a surplus available for distribution; and
 - (b) it will be necessary:
 - (i) to make calls on contributories; or
 - (ii) to adjust the rights of the contributories among themselves.
- (1B) A liquidator of such a company may rectify the register of members so far as required under this Part.
- (3) In settling the list of contributories the liquidator shall distinguish between persons who are contributories in their own right and persons who are contributories by virtue of representing, or being liable for the debts of, other persons.
- (4) The list of contributories, when settled in accordance with the regulations, is *prima facie* evidence of the liabilities of the persons named in the list as contributories.
- (5) Paragraph (1)(b) and subsections (1A), (1B), (3) and (4) do not apply to a no liability company.

479 Exercise and control of liquidator's powers

- (1) Subject to this Part, the liquidator shall, in the administration of the property of the company and in the distribution of the property among its creditors, have regard to any directions given by

The Corporations Law—Section 480

resolution of the creditors or contributories at any general meeting or by the committee of inspection, and, in case of conflict, any directions so given by the creditors or contributories override any directions given by the committee of inspection.

- (2) The liquidator may convene general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and he or she shall convene meetings at such times as the creditors or contributories by resolution direct or whenever requested in writing to do so by at least one-tenth in value of the creditors or contributories.
- (3) The liquidator may apply to the Court for directions in relation to any particular matter arising under the winding up.
- (4) Subject to this Part, the liquidator shall use his or her own discretion in the management of affairs and property of the company and the distribution of its property.

480 Release of liquidator and deregistration of company

When the liquidator:

- (a) has realised all the property of the company or so much of that property as can in his or her opinion be realised without needlessly protracting the winding up, and has distributed a final dividend (if any) to the creditors and adjusted the rights of the contributories among themselves and made a final return (if any) to the contributories; or
- (b) has resigned or has been removed from office;

he or she may apply to the Court:

- (c) for an order that he or she be released; or
- (d) for an order that he or she be released and that ASIC deregister the company.

481 Orders for release or deregistration

- (1) The Court:
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- (a) may cause a report on the accounts of the liquidator to be prepared by the auditor appointed by the Commission under section 539 or by some other registered company auditor appointed by the Court;
 - (b) on the liquidator complying with all the requirements of the Court—shall take into consideration the report and any objection against the release of the liquidator that is made by the auditor or by any creditor, contributory or other person interested; and
 - (c) shall either grant or withhold the release accordingly.
- (2) Where the release of a liquidator is withheld and the Court is satisfied that the liquidator has been guilty of default, negligence, breach of trust or breach of duty, the Court may order the liquidator to make good any loss that the company has sustained by reason of the default, negligence, breach of trust or breach of duty and may make such other order as it thinks fit.
- (3) An order of the Court releasing the liquidator discharges him or her from all liability in respect of any act done or default made by him or her in the administration of the affairs of the company or otherwise in relation to his or her conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.
- (4) Where the liquidator has not previously resigned or been removed, his or her release operates as a removal from office.
- (5) Where the Court has made:
- (a) an order that the liquidator be released; or
 - (b) an order that the liquidator be released and that ASIC deregister the company;
- the liquidator shall, within 14 days after the making of the order, lodge an office copy of the order.

Division 3—General powers of Court

482 Power to stay or terminate winding up

- (1) At any time during the winding up of a company, the Court may, on the application of the liquidator or of a creditor or contributory, make an order staying the winding up either indefinitely or for a limited time or terminating the winding up on a day specified in the order.
- (2) On such an application, the Court may, before making an order, direct the liquidator to furnish a report with respect to a relevant fact or matter.
- (3) Where the Court has made an order terminating the winding up, the Court may give such directions as it thinks fit for the resumption of the management and control of the company by its officers, including directions for the convening of a general meeting of members of the company to elect directors of the company to take office upon the termination of the winding up.
- (4) The costs of proceedings before the Court under this section and the costs incurred in convening a meeting of members of the company in accordance with an order of the Court under this section shall, if the Court so directs, form part of the costs, charges and expenses of the winding up.
- (5) Where an order is made under this section, the company shall lodge an office copy of the order within 14 days after the making of the order.

483 Delivery of property to liquidator

- (1) The Court may require a person who is a contributory, trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender or transfer to the liquidator or provisional liquidator, as soon as practicable or within a specified period, any

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money, property or books in the person's hands to which the company is *prima facie* entitled.

- (2) The Court may make an order directing any contributory for the time being on the list of contributories to pay to the company in the manner directed by the order any money due from the contributory or from the estate of the person whom the contributory represents, exclusive of any money payable by the contributory or the estate by virtue of any call pursuant to this Law, and may:
- (a) in the case of an unlimited company—allow to the contributory by way of set-off any money due to the contributory or to the estate that the contributory represents from the company on any independent dealing or contract but not any money due to the contributory as a member of the company in respect of any dividend or profit; and
 - (b) in the case of a limited company—make to any director whose liability is unlimited or to such a director's estate the like allowance;
- and, in the case of any company whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him, her or it by way of set-off against any subsequent call.
- (3) The Court may, either before or after it has ascertained the sufficiency of the property of the company:
- (a) make calls on all or any of the contributories for the time being on the list of contributories, to the extent of their liability, for payment of any money that the Court considers necessary to satisfy the debts and liabilities of the company and the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves; and
 - (b) make an order for payment of any calls made by the Court or the company's liquidator;

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and, in making a call, may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

- (3A) Subsection (3) does not apply to a no liability company.
- (4) The Court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into a bank named in the order to the account of the liquidator instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator.
- (5) All money and securities paid or delivered into any bank under this Division are subject in all respects to orders of the Court.
- (6) An order made by the Court under this section is, subject to any right of appeal, conclusive evidence that the money (if any) thereby appearing to be due or ordered to be paid is due, and all other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings.

484 Appointment of special manager

- (1) The liquidator may, if satisfied that the nature of the property or business of the company, or the interests of the creditors or contributories generally, requires or require the appointment of a special manager of the property or business of the company other than himself or herself, apply to the Court, and the Court may appoint a special manager of the property or business to act during such time as the Court directs with such powers, including any of the powers of a receiver or manager, as are entrusted to him or her by the Court.
- (2) The special manager:
 - (a) shall give such security and account in such manner as the Court directs;
 - (b) shall receive such remuneration as is fixed by the Court; and
 - (c) may at any time resign by notice in writing addressed to the liquidator or may, on cause shown, be removed by the Court.

485 Claims of creditors and distribution of property

- (1) The Court may fix a day on or before which creditors are to prove their debts or claims or after which they will be excluded from the benefit of any distribution made before those debts are proved.
- (2) The Court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled to it.
- (3) The Court may, in the event of the property being insufficient to satisfy the liabilities, make an order as to the payment out of the property of the costs, charges and expenses incurred in the winding up in such order of priority as the Court thinks just.

486 Inspection of books by creditors and contributories

The Court may make such order for inspection of the books of the company by creditors and contributories as the Court thinks just, and any books in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

486A Court may make order to prevent officer or related entity from avoiding liability to company

- (1) On the application of a liquidator or provisional liquidator of a company, the Court may make one or more of the following:
 - (a) an order prohibiting, either absolutely or subject to conditions, an officer or related entity of the company from taking or sending out of this jurisdiction or out of Australia money or other property of the company or of the officer or related entity;
 - (b) an order appointing:
 - (i) a receiver or trustee, with specified powers, of property of an officer of the company, or of property of a related entity of the company that is a natural person; or

The Corporations Law—Section 486A

- (ii) a receiver, or a receiver and manager, with specified powers, of property of a related entity of the company that is not a natural person;
 - (c) an order requiring an officer of the company, or a related entity of the company that is a natural person, to surrender to the Court his or her passport and any other specified documents;
 - (d) an order prohibiting an officer of the company, or a related entity of the company that is a natural person, from leaving Australia without the Court's consent.
- (2) The Court may only make an order under subsection (1) if:
 - (a) the company is being wound up in insolvency or by the Court, or an application has been made for the company to be so wound up; and
 - (b) the Court is satisfied that there is at least a prima facie case that the officer or related entity is or will become liable:
 - (i) to pay money to the company, whether in respect of a debt, by way of damages or compensation or otherwise; or
 - (ii) to account for property of the company; and
 - (c) the Court is also satisfied that there is substantial evidence that the officer or related entity:
 - (i) has concealed or removed money or other property, has tried to do so, or intends to do so; or
 - (ii) has tried to leave Australia, or intends to do so; in order to avoid that liability or its consequences; and
 - (d) the Court thinks it necessary or desirable to make the order in order to protect the company's rights against the officer or related entity.
- (3) On hearing an application under subsection (1), the Court must have regard to any relevant application under section 1323.
- (4) Before considering an application under subsection (1), the Court may, if in the Court's opinion it is desirable to do so, grant an

The Corporations Law—Section 486B

interim order of the kind applied for that is expressed to have effect until the application is determined.

- (5) The Court must not require an applicant under subsection (1) or any other person, as a condition of granting an interim order under subsection (4), to give an undertaking as to damages.
- (6) On the application of a person who applied for, or is affected by, an order under this section, the Court may make a further order discharging or varying the first-mentioned order.
- (7) An order under subsection (1) may be expressed to operate for a specified period or until it is discharged by a further order.
- (8) A person must not contravene an order under this section that is applicable to the person.
- (9) This section has effect subject to the *Bankruptcy Act 1966*.
- (10) Nothing in this section affects any other powers of the Court.

486B Warrant to arrest person who is absconding, or who has dealt with property or books, in order to avoid obligations in connection with winding up

- (1) The Court may issue a warrant for a person to be arrested and brought before the Court if:
 - (a) a company is being wound up in insolvency or by the Court, or an application has been made for a company to be so wound up; and
 - (b) the Court is satisfied that the person:
 - (i) is about to leave Australia in order to avoid:
 - (A) paying money payable to the company; or
 - (B) being examined about the company's affairs; or
 - (C) complying with an order of the Court, or some other obligation, under this Chapter in connection with the winding up; or

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- (ii) has concealed or removed property of the company in order to prevent or delay the taking of the property into the liquidator's custody or control; or
 - (iii) has destroyed, concealed or removed books of the company or is about to do so.
- (2) A warrant under subsection (1) may also provide for property or books of the company in the person's possession to be seized and delivered into the custody of a specified person.
- (3) A warrant under subsection (1) may only be issued on the application of:
- (a) a liquidator or provisional liquidator of the company; or
 - (b) the Commission.

487 Power to arrest absconding contributory

The Court, at any time before or after making a winding up order, on proof of probable cause for believing that a contributory is about to leave Australia or otherwise to abscond or to remove or conceal any of his or her property for the purpose of evading payment of calls or of avoiding examination respecting affairs of the company, may cause the contributory to be arrested and held in custody and the books and movable personal property of the contributory to be seized and safely kept until such time as the Court orders.

488 Delegation to liquidator of certain powers of Court

- (1) Provision may be made by rules or regulations for enabling or requiring all or any of the powers and duties conferred and imposed on the Court by this Part in respect of:
- (a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;
 - (b) the paying, delivery, conveyance, surrender or transfer of money, property or books to the liquidator;

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- (c) the adjusting of the rights of contributories among themselves and the distribution of any surplus among the persons entitled to it; and
 - (d) the fixing of a time within which debts and claims must be proved;
- to be exercised or performed by the liquidator as an officer of the Court and subject to the control of the Court.
- (2) Despite anything in rules or regulations made for the purposes of subsection (1), a liquidator may distribute a surplus only with the Court's special leave.

489 Powers of Court cumulative

Any powers conferred on the Court by this Law are in addition to, and not in derogation of, any existing powers of instituting proceedings against any contributory or debtor of the company or the property of any contributory or debtor for the recovery of any call or other sums.

Part 5.5—Voluntary winding up

Division 1—Resolution for winding up

490 When company cannot wind up voluntarily

Except with the leave of the Court, a company cannot resolve that it be wound up voluntarily if:

- (a) an application for the company to be wound up in insolvency has been filed; or
- (b) the Court has ordered that the company be wound up in insolvency, whether or not the order was made on such an application.

491 Circumstances in which company may be wound up voluntarily

- (1) Subject to section 490, a company may be wound up voluntarily if the company so resolves by special resolution.
- (2) A company shall:
 - (a) within 7 days after the passing of a resolution for voluntary winding up, lodge a printed copy of the resolution; and
 - (b) within 21 days after the passing of the resolution, cause notice of the resolution to be published in the *Gazette*.

493 Effect of voluntary winding up

- (1) The company shall, from the passing of the resolution, cease to carry on its business except so far as is in the opinion of the liquidator required for the beneficial disposal or winding up of that business, but the corporate state and corporate powers of the company, notwithstanding anything to the contrary in its constitution, continue until it is deregistered.

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- (2) Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members, made after the passing of the resolution are void.

494 Declaration of solvency

- (1) Where it is proposed to wind up a company voluntarily, a majority of the directors may, before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out, make a written declaration to the effect that they have made an inquiry into the affairs of the company and that, at a meeting of directors, they have formed the opinion that the company will be able to pay its debts in full within a period not exceeding 12 months after the commencement of the winding up.
- (2) There shall be attached to the declaration a statement of affairs of the company showing, in the prescribed form:
- (a) the property of the company, and the total amount expected to be realised from that property;
 - (b) the liabilities of the company; and
 - (c) the estimated expenses of winding up;
- made up to the latest practicable date before the making of the declaration.
- (3) A declaration so made has no effect for the purposes of this Law unless:
- (a) the declaration is made at the meeting of directors referred to in subsection (1);
 - (b) the declaration is lodged before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out or such later date as the Commission, whether before, on or after the first-mentioned date, allows; and
 - (c) the resolution for voluntary winding up is passed within the period of 5 weeks after the making of the declaration or within such further period after the making of that

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declaration as the Commission, whether before or after the end of that period of 5 weeks, allows.

- (4) A director who makes a declaration under this section (including a declaration that has no effect for the purposes of this Law by reason of subsection (3)) without having reasonable grounds for his or her opinion that the company will be able to pay its debts in full within the period stated in the declaration is guilty of an offence.
- (5) If the company is wound up pursuant to a resolution for voluntary winding up passed within the period of 5 weeks after the making of the declaration or, if pursuant to paragraph (3)(c) the Commission has allowed a further period after the end of that period of 5 weeks, within that further period, but its debts are not paid or provided for in full within the period stated in the declaration, it shall be presumed, unless the contrary is shown, that a director who made the declaration did not have reasonable grounds for his or her opinion.

Division 2—Members' voluntary winding up

495 Liquidators

- (1) The company in general meeting shall appoint a liquidator or liquidators for the purpose of winding up the affairs and distributing the property of the company and may fix the remuneration to be paid to him, her or them.
- (2) On the appointment of a liquidator, all the powers of the directors cease except so far as the liquidator, or the company in general meeting with the consent of the liquidator, approves the continuance of any of those powers.
- (3) If a vacancy occurs by death, resignation or otherwise in the office of a liquidator, the company in general meeting may fill the vacancy by the appointment of a liquidator and fix the remuneration to be paid to him or her, and for that purpose a general meeting may be convened by any contributory or, if there were 2 or more liquidators, by the continuing liquidators.
- (4) The meeting shall be held in the manner provided by this Law or by the company's constitution or in such manner as is, on application by any contributory or by the continuing liquidators, determined by the Court.

496 Duty of liquidator where company turns out to be insolvent

- (1) Where a declaration has been made under section 494 and the liquidator is at any time of the opinion that the company will not be able to pay or provide for the payment of its debts in full within the period stated in the declaration, he or she must do one of the following as soon as practicable:
 - (a) apply under section 459P for the company to be wound up in insolvency;
 - (b) appoint an administrator of the company under section 436B;
 - (c) convene a meeting of the company's creditors;

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and if he or she convenes such a meeting, the following subsections apply.

- (2) The liquidator shall send to each creditor with the notice convening the meeting a list setting out the names of all creditors, the addresses of those creditors and the estimated amounts of their claims, as shown in the records of the company.
- (3) Unless the Court otherwise orders, nothing in subsection (2) requires the liquidator to send, to a creditor whose debt does not exceed \$200, a list of creditors referred to in that subsection, but the notice convening the meeting that is sent to a creditor to whom the liquidator is not required to send such a list shall specify a place at which copies of the list referred to in that subsection can be obtained on request made orally or in writing and, where such a creditor so requests, the liquidator shall as soon as practicable comply with the request.
- (4) The liquidator shall lay before the meeting a statement of the assets and liabilities of the company and the notice convening the meeting shall draw the attention of the creditors to the right conferred upon them by subsection (5).
- (5) The creditors may, at the meeting convened under subsection (1), appoint some other person to be liquidator for the purpose of winding up the affairs and distributing the property of the company instead of the liquidator appointed by the company.
- (6) If the creditors appoint some other person under subsection (5), the winding up shall thereafter proceed as if the winding up were a creditors' voluntary winding up.
- (7) The liquidator or, if another person is appointed by the creditors to be liquidator, the person so appointed shall, within 7 days after a meeting has been held pursuant to subsection (1), lodge a notice in the prescribed form.
- (8) Where the liquidator has convened a meeting under subsection (1) and the creditors do not appoint a liquidator instead of the liquidator appointed by the company, the winding up shall

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thereafter proceed as if the winding up were a creditors' voluntary winding up, but the liquidator is not required to convene an annual meeting of creditors at the end of the first year from the commencement of the winding up if the meeting held under subsection (1) was held less than 3 months before the end of that year.

Division 3—Creditors' voluntary winding up

497 Meeting of creditors

- (1) The company shall cause a meeting of the creditors of the company to be convened for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the company.
- (2) The company shall convene a meeting at a date, time and place convenient to the majority in value of the creditors and shall:
 - (a) give to the creditors at least 7 days notice by post of the meeting;
 - (b) send to each creditor with the notice:
 - (i) a summary of the affairs of the company in the prescribed form; and
 - (ii) a list setting out the names of all creditors, the addresses of those creditors and the estimated amounts of their claims, as shown in the records of the company;
 - (c) lodge, not less than 7 days before the day fixed for the holding of the meeting, a copy of the notice given under paragraph (a) and of the documents that accompanied that notice in accordance with paragraph (b); and
 - (d) publish, not less than 7 days, nor more than 14 days, before the day fixed for the holding of the meeting, a copy of the notice given or to be given under paragraph (a) in each State, Territory or excluded Territory in which the company carries on business or has carried on business at any time during the 2 years immediately preceding that day in a daily newspaper circulating generally in that State, Territory or excluded Territory.

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- (3) Unless the Court otherwise orders, nothing in subsection (2) requires the company to send, to a creditor whose debt does not exceed \$200, a list of creditors referred to in subparagraph (2)(b)(ii), but the notice convening the meeting that is sent to a creditor to whom the company is not required to send such a list shall specify a place at which copies of the list referred to in that subparagraph can be obtained on request made orally or in writing and, where such a creditor so requests, the company shall as soon as practicable comply with the request.
- (4) If the company contravenes subsection (1) or (2):
 - (a) the company is not guilty of an offence by virtue of this section or section 1311; and
 - (b) a person involved in the contravention contravenes this subsection.
- (5) The directors of the company shall:
 - (a) cause to be laid before the meeting of creditors a report in the prescribed form, and verified by all the directors, as to the affairs of the company, made up to the latest practicable date before the notices of the meeting were sent; and
 - (b) appoint one of their number to attend the meeting.
- (6) The director so appointed and a secretary shall attend the meeting and disclose to the meeting the affairs of the company and the circumstances leading up to the proposed winding up.
- (7) The directors of the company shall, not later than 7 days after the report referred to in paragraph (5)(a) is laid before the meeting of creditors as mentioned in that paragraph, lodge a copy of the report with the Commission.
- (8) The creditors may appoint one of their number or the director appointed under subsection (5) to preside at the meeting.
- (9) The chairman shall, at the meeting, determine whether the meeting has been held at a date, time and place convenient to the majority in value of the creditors and his or her decision is final.

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- (10) At a meeting of creditors held under this section the creditors may determine the matters referred to in paragraphs 548(1)(a) and (b) and, where the creditors so determine those matters, a meeting of the creditors for the purposes of section 548 shall be deemed to have been held and the determinations shall be deemed to have been made under that section.

498 Power to adjourn meeting

- (1) A meeting convened under section 497 may by resolution be adjourned from time to time to a time and day specified in the resolution but shall not be adjourned to a day later than 21 days after the day for which the meeting was originally convened.
- (2) Where a meeting is adjourned, the adjourned meeting shall, unless it is otherwise provided by the resolution by which it is adjourned, be held at the same place as the original meeting.
- (3) Where a meeting is adjourned to a day more than 8 days after the passing of the resolution by which it is adjourned, the company shall cause notice of the day, time and place of the resumption of the meeting to be published, in a daily newspaper circulating generally in the State or Territory in which the resumed meeting is to be held, at least 7 days before that day.
- (4) If the meeting of the company is adjourned and the resolution for winding up is passed at an adjourned meeting, any resolution passed at the meeting of the creditors has effect as if it had been passed immediately after the passing of the resolution for winding up.

499 Liquidators

- (1) The company shall, and the creditors may, at their respective meetings nominate a person to be liquidator for the purpose of winding up the affairs and distributing the property of the company and, if the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator but, if no

The Corporations Law—Section 500

person is nominated by the creditors, the person nominated by the company shall be liquidator.

- (2) Notwithstanding the provisions of subsection (1), where different persons are nominated, any director or member may, within 7 days after the date on which the nomination was made by the creditors, apply to the Court for an order directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors.
- (3) The committee of inspection, or, if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator.
- (4) On the appointment of a liquidator, the powers of the directors cease except so far as the committee of inspection, or, if there is no such committee, the creditors, approve the continuance of any of those powers.
- (5) If a liquidator, other than a liquidator appointed by or by the direction of the Court, dies, resigns or otherwise vacates his or her office, the creditors may fill the vacancy and, for the purpose of so doing, a meeting of the creditors may be convened by any 2 of their number.

500 Execution and civil proceedings

- (1) Any attachment, sequestration, distress or execution put in force against the property of the company after the passing of the resolution for voluntary winding up is void.
- (2) After the passing of the resolution for voluntary winding up, no action or other civil proceeding shall be proceeded with or commenced against the company except by leave of the Court and subject to such terms as the Court imposes.
- (3) The Court may require any contributory, trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender or transfer forthwith or within such time as the Court directs to the

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Part 5.5 Voluntary winding up

Division 3 Creditors' voluntary winding up

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liquidator any money, property or books in his, her or its hands to which the company is *prima facie* entitled.

Division 4—Voluntary winding up generally

501 Distribution of property of company

Subject to the provisions of this Law as to preferential payments, the property of a company shall, on its winding up, be applied in satisfaction of its liabilities equally and, subject to that application, shall, unless the company's constitution otherwise provides, be distributed among the members according to their rights and interests in the company.

502 Appointment of liquidator

If from any cause there is no liquidator acting, the Court may appoint a liquidator.

503 Removal of liquidator

The Court may, on cause shown, remove a liquidator and appoint another liquidator.

504 Review of liquidator's remuneration

Any member or creditor, or the liquidator, may at any time before the deregistration of the company apply to the Court to review the amount of the remuneration of the liquidator, and the decision of the Court is final and conclusive.

505 Acts of liquidator valid etc.

- (1) The acts of a liquidator are valid notwithstanding any defects that may afterwards be discovered in his or her appointment or qualification.
- (2) A conveyance, assignment, transfer, mortgage, charge or other disposition of a company's property made by a liquidator is, notwithstanding any defect or irregularity affecting the validity of

The Corporations Law—Section 506

the winding up or the appointment of the liquidator, valid in favour of any person taking such property in good faith and for value and without actual knowledge of the defect or irregularity.

- (3) A person making or permitting a disposition of property to a liquidator shall be protected and indemnified in so doing notwithstanding any defect or irregularity affecting the validity of the winding up or the appointment of the liquidator that is not then known to that person.
- (4) For the purposes of this section, a disposition of property shall be taken as including a payment of money.

506 Powers and duties of liquidator

- (1) The liquidator may:
 - (b) exercise any of the powers that this Law confers on a liquidator in a winding up in insolvency or by the Court;
 - (c) exercise the power under section 478 of a liquidator appointed by the Court to settle a list of contributors;
 - (d) exercise the Court's powers under subsection 483(3) (except paragraph 483(3)(b)) in relation to calls on contributories;
 - (e) exercise the power of the Court of fixing a time within which debts and claims must be proved; or
 - (f) convene a general meeting of the company for the purpose of obtaining the sanction of the company by special resolution in respect of any matter or for any other purpose he or she thinks fit.
- (1A) Subsections 477(2A) and (2B) apply in relation to the liquidator as if:
 - (a) he or she were a liquidator in a winding up in insolvency or by the Court; and
 - (b) in the case of a members' voluntary winding up—a reference in those subsections to an approval were a reference to the approval of a special resolution of the company.

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- (1B) The company must lodge a copy of a special resolution referred to in paragraph (1A)(b) with ASIC within 14 days after the resolution is passed.
- (2) A list of contributories settled in accordance with paragraph (1)(c) is *prima facie* evidence of the liability of the persons named in the list to be contributories.
- (3) The liquidator shall pay the debts of the company and adjust the rights of the contributories among themselves.
- (4) When several liquidators are appointed, any power given by this Law may be exercised by such one or more of them as is determined at the time of their appointment, or in default of such determination, by any number not less than 2.

507 Power of liquidator to accept shares etc. as consideration for sale of property of company

- (1) This section applies where it is proposed to transfer or sell to a body corporate the whole or a part of the business or property of a company.
- (2) The liquidator of the company may, with the sanction of a special resolution of the company conferring on the liquidator either a general authority or an authority in respect of a particular arrangement, enter into an arrangement under which, in compensation or part compensation for the transfer or sale:
 - (a) the liquidator is to receive shares, debentures, policies or other like interests in the body corporate for distribution among the members of the company; or
 - (b) the members of the company may, instead of, or as well as, receiving cash, shares, debentures, policies or other like interests in the body corporate, participate in the profits of, or receive any other benefit from, the body corporate.
- (3) A transfer, sale or arrangement under this section is binding on the members of the company.

The Corporations Law—Section 507

- (4) If a member of the company who did not vote in favour of a special resolution expresses dissent from the resolution in writing addressed to the liquidator and left at the office of the liquidator within 7 days after the passing of the resolution, the member may require the liquidator either to abstain from carrying the resolution into effect or to purchase the member's interest at a price to be determined by agreement or by arbitration under this section.
- (5) If the liquidator elects to purchase the member's interest, the purchase money shall be paid before the company is deregistered and be raised by the liquidator in such manner as is determined by special resolution.
- (6) A special resolution is not invalid for the purposes of this section because it is passed before, or concurrently with, a resolution for voluntary winding up or for appointing liquidators but, if an order for winding up the company by the Court is made within 1 year after the passing of the resolution, the resolution is not valid unless sanctioned by the Court.
- (7) For the purposes of an arbitration under this section, the law of this jurisdiction relating to commercial arbitration applies as if there were a submission for reference to 2 arbitrators, one to be appointed by each party.
- (8) The appointment of an arbitrator may be made in writing signed by:
 - (a) if there is only one liquidator—the liquidator; or
 - (b) if there is more than one liquidator—any 2 or more of the liquidators.
- (9) The Court may give any directions necessary for the initiation and conduct of the arbitration and any such direction is binding on the parties.
- (10) In the case of a creditors' voluntary winding up, the powers of the liquidator under this section shall not be exercised except with the approval of the Court or the committee of inspection.

The Corporations Law—Section 508

- (11) The company must lodge a copy of a special resolution referred to in subsection (2) or (5) with ASIC within 14 days after the resolution is passed.

508 Annual meeting of creditors

- (1) If the winding up continues for more than 1 year, the liquidator shall:
- (a) in the case of a members' voluntary winding up—convene a general meeting of the company; or
 - (b) in the case of a creditors' voluntary winding up—convene a general meeting of the company and a meeting of the creditors;
- within 3 months after the end of the first year from the commencement of the winding up and the end of each succeeding year, and shall lay before the meeting or each meeting an account of his or her acts and dealings and of the conduct of the winding up during that first year or that succeeding year, as the case may be.
- (2) The liquidator shall cause the notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the company.

509 Final meeting and deregistration

- (1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account showing how the winding up has been conducted and the property of the company has been disposed of and, when the account is so made up, he or she shall convene a general meeting of the company, or, in the case of a creditors' voluntary winding up, a meeting of the creditors and members of the company, for the purpose of laying before it the account and giving any explanation of the account.
- (2) The meeting shall be convened by an advertisement published in the *Gazette* at least 1 month before the meeting specifying the date, time, place and purpose of the meeting.

The Corporations Law—Section 510

- (3) The liquidator shall, within 7 days after the meeting, lodge a return of the holding of the meeting and of its date with a copy of the account attached to the return.
- (4) At a meeting of the company, 2 members constitute a quorum and, at a meeting of the creditors and members of the company, 2 creditors and 2 members constitute a quorum and, if a quorum is not present at the meeting, the liquidator shall, in place of the return mentioned in subsection (3), lodge a return (with account attached) stating that the meeting was duly convened and that no quorum was present and, upon such a return being lodged, the provisions of that subsection as to the lodging of the return shall be deemed to have been complied with.

ASIC must deregister at the end of 3 month period

- (5) ASIC must deregister the company at the end of the 3 month period after the return was lodged.

ASIC must deregister on a day specified by the Court

- (6) On application by the liquidator or any other interested party, the Court may make an order that ASIC deregister the company on a specified day. The Court must make the order before the end of the 3 month period after the return was lodged.
- (7) The person on whose application an order of the Court under this section is made shall, within 14 days after the making of the order, lodge an office copy of the order.

510 Arrangement: when binding on creditors

- (1) An arrangement entered into between a company about to be, or in the course of being, wound up and its creditors is, subject to subsection (4):
 - (a) binding on the company if sanctioned by a special resolution; and
 - (b) binding on the creditors if sanctioned by a resolution of the creditors.

The Corporations Law—Section 511

- (1A) The company must lodge a copy of a special resolution referred to in paragraph (1)(a) with ASIC within 14 days after the resolution is passed.
- (2) A creditor shall be accounted a creditor for value for such sum as upon an account fairly stated, after allowing the value of security or liens held by the creditor and the amount of any debt or set-off owing by the creditor to the company, appears to be the balance due to the creditor.
- (3) A dispute about the value of any such security or lien or the amount of any such debt or set-off may be settled by the Court on the application of the company, the liquidator or the creditor.
- (4) A creditor or contributory may, within 3 weeks after the completion of the arrangement, appeal to the Court in respect of the arrangement, and the Court may confirm, set aside or modify the arrangement and make such further order as it thinks just.

511 Application to Court to have questions determined or powers exercised

- (1) The liquidator, or any contributory or creditor, may apply to the Court:
 - (a) to determine any question arising in the winding up of a company; or
 - (b) to exercise all or any of the powers that the Court might exercise if the company were being wound up by the Court.
- (2) The Court, if satisfied that the determination of the question or the exercise of power will be just and beneficial, may accede wholly or partially to any such application on such terms and conditions as it thinks fit or may make such other order on the application as it thinks just.

512 Costs

All proper costs, charges and expenses of and incidental to the winding up (including the remuneration of the liquidator) are

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Part 5.5 Voluntary winding up

Division 4 Voluntary winding up generally

The Corporations Law—Section 512

payable out of the property of the company in priority to all other claims.

Part 5.6—Winding up generally

Division 1—Preliminary

513 Application of Part

Except so far as the contrary intention appears, the provisions of this Law about winding up apply in relation to the winding up of a company whether in insolvency, by the Court or voluntarily.

Division 1A—When winding up taken to begin

513A Winding up ordered by the Court

If the Court orders under section 246AA, 459A, 459B or 461 that a company be wound up, the winding up is taken to have begun or commenced:

- (a) if, when the order was made, a winding up of the company was already in progress—when the last-mentioned winding up is taken because of this Division to have begun or commenced; or
- (b) if, immediately before the order was made, the company was under administration—on the section 513C day in relation to the administration; or
- (c) if:
 - (i) when the order was made, a provisional liquidator of the company was acting; and
 - (ii) immediately before the provisional liquidator was appointed, the company was under administration; on the section 513C day in relation to the administration; or
- (d) if, immediately before the order was made, a deed of company arrangement had been executed by the company and had not yet terminated—on the section 513C day in relation to the administration that ended when the deed was executed; or
- (e) otherwise—on the day when the order was made.

513B Voluntary winding up

Where a company resolves by special resolution that it be wound up voluntarily, the winding up is taken to have begun or commenced:

- (a) if, when the resolution was passed, a winding up of the company was already in progress—when the last-mentioned

The Corporations Law—Section 513C

winding up is taken because of this Division to have begun or commenced; or

- (b) if, immediately before the resolution was passed, the company was under administration—on the section 513C day in relation to the administration; or
- (c) if, immediately before the resolution was passed, a deed of company arrangement had been executed by the company but had not yet terminated—on the section 513C day in relation to the administration that ended when the deed was executed; or
- (d) if the resolution is taken to have been passed because, at a meeting convened under section 445F, the company's creditors:
 - (i) passed a resolution terminating a deed of company arrangement executed by the company; and
 - (ii) also resolved under section 445E that the company be wound up;on the section 513C day in relation to the administration that ended when the deed was executed;
- (e) otherwise—on the day on which the resolution was passed.

513C Section 513C day in relation to an administration under Part 5.3A

The section 513C day in relation to the administration of a company is:

- (a) if, when the administration began, a winding up of the company was in progress—the day on which the winding up is taken because of this Division to have begun; or
- (b) otherwise—the day on which the administration began.

513D Validity of proceedings in earlier winding up

Where, at the time when:

- (a) the Court orders under section 246AA, 459A, 459B or 461 that a company be wound up; or

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Part 5.6 Winding up generally

Division 1A When winding up taken to begin

The Corporations Law—Section 513D

(b) a company resolves by special resolution that it be wound up voluntarily;

a winding up of the company is already in progress, all proceedings in the last-mentioned winding up are taken to have been valid, except so far as the Court otherwise orders because fraud or mistake has been proved.

Division 2—Contributories

514 Where Division applies

- (1) This Division applies where a company is wound up.
- (2) This Division does not apply to the winding up of a no liability company.

515 General liability of contributory

Subject to this Division, a present or past member is liable to contribute to the company's property to an amount sufficient:

- (a) to pay the company's debts and liabilities and the costs, charges and expenses of the winding up; and
- (b) to adjust the rights of the contributories among themselves.

516 Company limited by shares

Subject to section 519, if the company is a company limited by shares, a member need not contribute more than the amount (if any) unpaid on the shares in respect of which the member is liable as a present or past member.

517 Company limited by guarantee

Subject to section 519, if the company is a company limited by guarantee, a member need not contribute more than the amount the member has undertaken to contribute to the company's property if the company is wound up.

519 Exceptions for former unlimited company

Despite sections 516 and 517, if the company is a limited company and became a limited company by virtue of a change of status, the amount that a member at the time of the change of status, or a person who at that time was a past member, is liable to contribute

The Corporations Law—Section 520

in respect of the company's debts and liabilities contracted before that time is unlimited.

520 Past member: later debts

A past member need not contribute in respect of a debt or liability of the company contracted after the past member ceased to be a member.

521 Person ceasing to be a member a year or more before winding up

Subject to section 523, a past member need not contribute if he, she or it was a member at no time during the year ending on the day of the commencement of the winding up.

522 Present members to contribute first

Subject to paragraph 523(b), a past member need not contribute unless it appears to the Court that the existing members are unable to satisfy the contributions they are liable to make under this Law.

523 Past member of former unlimited company

If an unlimited company changes to a limited company under section 164, a past member who was a member at the time of the change is liable:

(a) despite section 521; and

(b) if no person who was a member at that time is a member at the commencement of the winding up—despite section 522;

to contribute in respect of the company's debts and liabilities contracted before that time.

524 Past member of former limited company

If a limited company changes to an unlimited company under section 164, a person who, at the time when the company applied for the change, was a past member and did not again become a

The Corporations Law—Section 526

member after that time need not contribute more than they would have been liable to contribute if the company had not changed type.

526 Liability on certain contracts

Nothing in this Law invalidates a provision, in a policy of insurance or other contract, whereby the liability of individual members on the policy or contract is restricted or whereby the funds of the company are alone made liable in respect of the policy or contract.

527 Nature of contributory's liability

A contributory's liability is of the nature of a specialty debt according to the law of the Capital Territory accruing due from the contributory when the contributory's liability commenced but payable at the times when calls are made for enforcing the liability.

528 Death of contributory

If a contributory dies, whether before or after being placed on the list of contributories:

- (a) his or her personal representatives are liable in due course of administration to contribute to the company's property in discharge of his or her liability to contribute and are contributories accordingly; and
- (b) if his or her personal representatives default in paying any money that they are ordered to pay—proceedings may be taken for administering his or her estate and for compelling payment, out of the assets of that estate, of the money due.

529 Bankruptcy of contributory

If a contributory becomes an insolvent under administration, or assigns his or her estate for the benefit of his or her creditors, whether before or after being placed on the list of contributories:

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Division 2 Contributories

The Corporations Law—Section 529

- (a) his or her trustee shall represent him or her for the purposes of the winding up and shall be a contributory accordingly;
and
- (b) calls already made, and the estimated value of his or her liability to future calls, may be proved against his or her estate.

Division 3—Liquidators

530A Officers to help liquidator

- (1) As soon as practicable after the Court orders that a company be wound up or appoints a provisional liquidator of a company, or a company resolves that it be wound up, each officer of the company must:
 - (a) deliver to the liquidator appointed for the purposes of the winding up, or to the provisional liquidator, as the case may be, all books in the officer's possession that relate to the company, other than books possession of which the officer is entitled, as against the company and the liquidator or provisional liquidator, to retain; and
 - (b) if the officer knows where other books relating to the company are—tell the liquidator or provisional liquidator where those books are.
- (2) Where a company is being wound up, or a provisional liquidator of a company is acting, an officer of the company must:
 - (a) attend on the liquidator or provisional liquidator at such times; and
 - (b) give the liquidator or provisional liquidator such information about the company's business, property, affairs and financial circumstances; and
 - (c) attend such meetings of the company's creditors or members; as the liquidator or provisional liquidator reasonably requires.
- (3) An officer of a company that is being wound up must do whatever the liquidator reasonably requires the officer to do to help in the winding up.
- (4) An officer of a company must do whatever a provisional liquidator of the company reasonably requires the officer to do to help in the performance or exercise of any of the provisional liquidator's functions and powers.

The Corporations Law—Section 530B

- (5) The liquidator or provisional liquidator of a company may require an officer of the company:
- (a) to tell the liquidator the officer's residential address and work or business address; or
 - (b) to keep the liquidator informed of any change in either of those addresses that happens during the winding up.
- (6) A person must not, without reasonable excuse, fail to comply with subsection (1), (2), (3) or (4), or with a requirement under subsection (5).
- (7) In this section:
- officer*, in relation to a company, means a person who is, or has been but is no longer, an officer (as defined by section 82A) of the company.
- (8) However, a person is not an officer of a company for the purposes of this section merely because he or she is or has been an employee of the company.
- (9) Nothing in this section limits the generality of anything else in it.

530B Liquidator's rights to company's books

- (1) A person is not entitled, as against the liquidator of a company:
- (a) to retain possession of books of the company; or
 - (b) to claim or enforce a lien on such books;
- but such a lien is not otherwise prejudiced.
- (2) Paragraph (1)(a) does not apply in relation to books of which a secured creditor of the company is entitled to possession otherwise than because of a lien, but the liquidator is entitled to inspect, and make copies of, such books at any reasonable time.
- (3) A person must not hinder or obstruct a liquidator of a company in obtaining possession of books of the company, unless the person is entitled, as against the company and the liquidator, to retain possession of the books.

The Corporations Law—Section 530C

- (4) The liquidator of a company may give to a person a written notice requiring the person to deliver to the liquidator, as specified in the notice, books so specified that are in the person's possession.
- (5) A notice under subsection (4) must specify a period of at least 3 days as the period within which the notice must be complied with.
- (6) A person must comply with a notice under subsection (4) except so far as the person is entitled, as against the company and the liquidator, to retain possession of the books.
- (7) In this section:
liquidator includes a provisional liquidator.

530C Warrant to search for, and seize, company's property or books

- (1) The Court may issue a warrant under subsection (2) if:
 - (a) a company is being wound up or a provisional liquidator of a company is acting; and
 - (b) on application by the liquidator or provisional liquidator, as the case may be, by the Commission, the Court is satisfied that a person:
 - (i) has concealed or removed property of the company with the result that the taking of the property into the custody or control of the liquidator or provisional liquidator will be prevented or delayed; or
 - (ii) has concealed, destroyed or removed books of the company or is about to do so.
- (2) The warrant may authorise a specified person, with such help as is reasonably necessary:
 - (a) to search for and seize property or books of the company in the possession of the person referred to in subsection (1); and
 - (b) to deliver, as specified in the warrant, property or books seized under it.

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- (3) In order to seize property or books under the warrant, the specified person may break open a building, room or receptacle where the property is or the books are, or where the person reasonably believes the property or books to be.
- (4) A person who has custody of property or a book because of the execution of the warrant must retain it until the Court makes an order for its disposal.

531 Books to be kept by liquidator

A liquidator or provisional liquidator shall keep proper books in which he or she shall cause to be made entries or minutes of proceedings at meetings and of such other matters as are prescribed, and any creditor or contributory may, unless the Court otherwise orders, personally or by an agent inspect them.

532 Disqualification of liquidator

(1A) In this section:

liquidator includes a provisional liquidator.

- (1) Subject to this section, a person shall not consent to be appointed, and shall not act, as liquidator of a company unless he or she is:
 - (a) a registered liquidator; or
 - (b) registered as a liquidator of that company under subsection 1282(3).
- (2) Subject to this section, a person shall not, except with the leave of the Court, seek to be appointed, or act, as liquidator of a company:
 - (a) if the person, or a body corporate in which the person is a substantial shareholder for the purposes of Part 6.7, is indebted in an amount exceeding \$5,000 to the company or a body corporate related to the company;
 - (b) if the person is, otherwise than in his or her capacity as liquidator, a creditor of the company or of a related body corporate in an amount exceeding \$5,000; or

- (c) if:
 - (i) the person is an officer of the company (otherwise than by reason of being a liquidator of the company or of a related body corporate);
 - (ii) the person is an officer of any body corporate that is a mortgagee of property of the company;
 - (iii) the person is an auditor of the company;
 - (iv) the person is a partner or employee of an auditor of the company;
 - (v) the person is a partner, employer or employee of an officer of the company; or
 - (vi) the person is a partner or employee of an employee of an officer of the company.
- (3) For the purposes of paragraph (2)(a), disregard a debt owed by a natural person to a body corporate if:
 - (a) the body corporate is:
 - (i) an Australian ADI; or
 - (ii) a body corporate registered under the *Life Insurance Act 1995*; and
 - (b) the debt arose because of a loan that the body corporate or entity made to the person in the ordinary course of its ordinary business; and
 - (c) the person used the amount of the loan to pay the whole or part of the purchase price of premises that the person uses as their principal place of residence.
- (4) Subsection (1) and paragraph (2)(c) do not apply to a members' voluntary winding up of a proprietary company.
- (5) Paragraph (2)(c) does not apply to a creditors' voluntary winding up if, by a resolution of the creditors passed at a meeting of the creditors of which 7 days notice has been given to every creditor stating the purpose of the meeting, it is determined that that paragraph shall not so apply.

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- (6) For the purposes of subsection (2), a person shall be deemed to be an officer or auditor of a company if:
 - (a) the person is an officer or auditor of a related body corporate; or
 - (b) except where the Commission, if it thinks fit in the circumstances of the case, directs that this paragraph shall not apply in relation to the person—the person has, at any time within the immediately preceding period of 2 years, been an officer, auditor or promoter of the company or of a related body corporate.
- (7) A person shall not consent to be appointed, and shall not act, as liquidator of a company if he or she is an insolvent under administration.
- (8) A person shall not consent to be appointed, and shall not act, as liquidator of a company that is being wound up by order of the Court unless he or she is an official liquidator.
- (9) A person shall not be appointed as liquidator of a company unless the person has, before his or her appointment, consented in writing to act as liquidator of the company.

533 Reports by liquidator

- (1) If it appears to the liquidator of a company, in the course of a winding up of the company, that:
 - (a) a past or present officer, or a member or contributory, of the company may have been guilty of an offence under a law of the Commonwealth or a State or Territory in relation to the company;
 - (b) a person who has taken part in the formation, promotion, administration, management or winding up of the company:
 - (i) may have misapplied or retained, or may have become liable or accountable for, any money or property of the company; or
 - (ii) may have been guilty of any negligence, default, breach of duty or breach of trust in relation to the company; or

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- (c) the company may be unable to pay its unsecured creditors more than 50 cents in the dollar;
- the liquidator shall:
- (d) as soon as practicable lodge a report with respect to the matter and state in the report whether he or she proposes to make an application for an examination or order under section 597; and
 - (e) furnish the Commission with such information, and give to it such access to and facilities for inspecting and taking copies of any documents, as the Commission requires.
- (2) The liquidator may also, if he or she thinks fit, lodge further reports specifying any other matter that, in his or her opinion, it is desirable to bring to the notice of the Commission.
- (3) If it appears to the Court, in the course of winding up a company:
- (a) that a past or present officer, or a contributory or member, of the company has been guilty of an offence under a law referred to in paragraph (1)(a) in relation to the company; or
 - (b) that a person who has taken part in the formation, promotion, administration, management or winding up of the company has engaged in conduct referred to in paragraph (1)(b) in relation to the company;
- and that the liquidator has not lodged with the Commission a report with respect to the matter, the Court may, on the application of a person interested in the winding up or of its own motion, direct the liquidator so to lodge such a report.

534 Prosecution by liquidator of delinquent officers and members

- (1) Where:
- (a) a report has been lodged under section 533; and
 - (b) it appears to the Commission that the matter is not one in respect of which a prosecution ought to be begun;
- it shall inform the liquidator accordingly, and the liquidator may begin a prosecution for any offence referred to in the report.

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- (2) The Commission may direct that the whole or a specified part of the costs and expenses properly incurred by a liquidator in proceedings under this section shall be paid out of money of the Commission.
- (3) Subject to a direction under subsection (2), to any charges on the property of the company and to any debts to which this Law gives priority, all such costs and expenses are payable out of that property as part of the costs of the winding up.

535 When liquidator has qualified privilege

- (1) A liquidator has qualified privilege in respect of a statement that he or she makes, whether orally or in writing, in the course of his or her duties as liquidator.

- (2) In this section:

liquidator includes a provisional liquidator.

536 Supervision of liquidators

- (1A) In this section:

liquidator includes a provisional liquidator.

- (1) Where:

- (a) it appears to the Court or to the Commission that a liquidator has not faithfully performed or is not faithfully performing his or her duties or has not observed or is not observing:
 - (i) a requirement of the Court; or
 - (ii) a requirement of this Law, of the regulations or of the rules; or
- (b) a complaint is made to the Court or to the Commission by any person with respect to the conduct of a liquidator in connection with the performance of his or her duties;

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the Court or the Commission, as the case may be, may inquire into the matter and, where the Court or the Commission so inquires, the Court may take such action as it thinks fit.

- (2) The Commission may report to the Court any matter that in its opinion is a misfeasance, neglect or omission on the part of the liquidator and the Court may order the liquidator to make good any loss that the estate of the company has sustained thereby and may make such other order or orders as it thinks fit.
- (3) The Court may at any time require a liquidator to answer any inquiry in relation to the winding up and may examine the liquidator or any other person on oath concerning the winding up and may direct an investigation to be made of the books of the liquidator.

537 Notice of appointment and address of liquidator

(1A) In this section:

liquidator includes a provisional liquidator.

- (1) A liquidator shall, within 14 days after his or her appointment, lodge notice in the prescribed form of his or her appointment and of the address of his or her office and, in the event of any change in the situation of his or her office, shall, within 14 days after the change, lodge notice in the prescribed form of the change.
- (2) A liquidator shall, within 14 days after his or her resignation or removal from office, lodge notice of the resignation or removal in the prescribed form.

538 Regulations relating to money etc. received by liquidator

(1A) In this section:

liquidator includes a provisional liquidator.

- (1) The regulations may:

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- (a) require a liquidator to pay, into such bank and account, in such manner and at such times as are prescribed, money received by him or her;
 - (b) prescribe the circumstances and manner in which money paid into such an account is to be paid out;
 - (c) require a liquidator of a company to deposit, in such bank, in such manner and at such times as are prescribed, bills, notes or other securities payable to the company or its liquidator;
 - (d) prescribe the circumstances and manner in which bills, notes or other securities so deposited are to be delivered out;
 - (e) make provision in relation to the giving by the Court of directions with respect to the payment, deposit or custody of money payable to or into the possession of a liquidator, or of bills, notes or other securities so payable; and
 - (f) provide for:
 - (i) the payment by a liquidator of interest at such rate, on such amount and in respect of such period as is prescribed;
 - (ii) disallowance of all or of such part as is prescribed of the remuneration of a liquidator;
 - (iii) the removal from office of a liquidator by the Court; and
 - (iv) the payment by a liquidator of any expenses occasioned by reason of his or her default;where a liquidator contravenes or fails to comply with regulations made under this section.
- (2) Regulations made under this section may apply generally or in relation to a specified class of windings up.

539 Liquidator's accounts

(1A) In this section:

liquidator includes a provisional liquidator.

- (1) A liquidator shall, within 1 month after the end of the period of 6 months from the date of his or her appointment and of every

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subsequent period of 6 months during which he or she acts as liquidator and within 1 month after he or she ceases to act as liquidator, lodge:

- (a) an account in the prescribed form and verified by a statement in writing showing:
 - (i) his or her receipts and his or her payments during each such period or, where he or she ceases to act as liquidator, during the period from the end of the period to which the last preceding account related or from the date of his or her appointment, as the case requires, up to the date of his or her so ceasing to act; and
 - (ii) in the case of the second account lodged under this subsection and all subsequent accounts—the aggregate amount of receipts and payments during all preceding periods since his or her appointment; and
 - (b) in the case of a liquidator other than a provisional liquidator—a statement in the prescribed form relating to the position in the winding up, verified by a statement in writing.
- (2) The Commission may cause the account and, where a statement of the position in the winding up has been lodged, that statement to be audited by a registered company auditor, who shall prepare a report on the account and the statement (if any).
 - (3) For the purposes of the audit under subsection (2) the liquidator shall furnish the auditor with such books and information as the auditor requires.
 - (4) Where the Commission causes an account, or an account and a statement, to be audited under subsection (2):
 - (a) the Commission shall furnish to the liquidator a copy of the report prepared by the auditor; and
 - (b) subsection 1289(2) applies in relation to the report prepared by the auditor as if it were a document required to be lodged.
 - (5) The liquidator shall give notice that the account has been made up to every creditor and contributory when next forwarding any report, notice of meeting, notice of call or dividend.

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- (6) The costs of an audit under this section shall be fixed by the Commission and form part of the expenses of winding up.

540 Liquidator to remedy defaults

- (1A) In this section:

liquidator includes a provisional liquidator.

- (1) If any liquidator who has made any default in lodging or making any application, return, account or other document, or in giving any notice that he or she is by law required to lodge, make or give, fails to make good the default within 14 days after the service on him or her of a notice requiring him or her to do so, the Court may, on the application of any contributory or creditor of the company or the Commission, make an order directing the liquidator to make good the default within such time as is specified in the order.
- (2) Any order made under subsection (1) may provide that all costs of and incidental to the application shall be borne by the liquidator.
- (3) Nothing in subsection (1) prejudices the operation of any law imposing penalties on a liquidator in respect of any such default.

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Division 4—General**541 Notification that company is in liquidation**

A company that is being wound up shall set out, in every public document, and in every negotiable instrument, of the company, after the name of the company where it first appears, the expression “in liquidation”.

542 Books of company

- (1) Where a company is being wound up, all books of the company and of the liquidator that are relevant to affairs of the company at or subsequent to the commencement of the winding up of the company are, as between the contributories of the company, *prima facie* evidence of the truth of all matters purporting to be recorded in those books.
- (2) If a company has been wound up, the liquidator shall retain the books referred to in subsection (1) for a period of 5 years from the date of deregistration of the company and, subject to section 262A of the *Income Tax Assessment Act 1936*, may, at the end of that period, destroy them.
- (3) Despite subsection (2) but subject to subsection (4), when a company has been wound up, the books referred to in subsection (1) may be destroyed within a period of 5 years after the deregistration of the company:
 - (a) in the case of a winding up by the Court—in accordance with the directions of the Court given pursuant to an application of which at least 14 days notice has been given to the Commission;
 - (b) in the case of a members’ voluntary winding up—as the company by resolution directs; and
 - (c) in the case of a creditors’ voluntary winding up—as the committee of inspection directs, or, if there is no such

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committee, as the creditors of the company by resolution direct.

- (4) The liquidator is not entitled to destroy books as mentioned in paragraph (3)(b) or (c) unless the Commission consents to the destruction of those books.

543 Investment of surplus funds on general account

- (1) Whenever the cash balance standing to the credit of a company that is in the course of being wound up is in excess of the amount that, in the opinion of the committee of inspection, or, if there is no committee of inspection, of the liquidator, is required for the time being to answer demands in respect of the property of the company, the liquidator, if so directed in writing by the committee of inspection, or, if there is not committee of inspection, the liquidator himself or herself, may, unless the Court on application by any creditor thinks fit to order otherwise and so orders, invest the sum or any part of the sum:
- (a) in any manner in which trustees are for the time being authorised by law to invest trust funds;
 - (b) on deposit with an eligible money market dealer; or
 - (c) on deposit at interest with any bank;
- and any interest received in respect of that money so invested forms part of the property of the company.
- (2) Whenever any part of the money so invested is, in the opinion of the committee of inspection, or, if there is no committee of inspection, of the liquidator, required to answer any demands in respect of the property of the company, the committee of inspection may direct, or, if there is no committee of inspection, the liquidator may arrange for, the sale or realisation of such part of the securities as is necessary.

544 Unclaimed money to be paid to Commission

- (1) Where a liquidator of a company has in his or her hands or under his or her control:
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- (a) any amount being a dividend or other money that has remained unclaimed for more than 6 months after the day when the dividend or other money became payable; or
 - (b) after making a final distribution, any unclaimed or undistributed amount of money arising from the property of the company;
- he or she shall forthwith pay that money to the Commission to be dealt with under Part 9.7.
- (1A) If a liquidator has, or has control of, the money of a company that has no members, the liquidator must pay it to ASIC as soon as practicable for it to be dealt with under Part 9.7.
 - (2) The Court may at any time, on the application of the Commission:
 - (a) order a liquidator of a company to submit to it an account, verified by affidavit, of any unclaimed or undistributed funds, dividends or other money in his or her hands or under his or her control;
 - (b) direct an audit of accounts submitted to it in accordance with paragraph (a); and
 - (c) direct a liquidator of a company to pay any money referred to in paragraph (a) to the Commission to be dealt with under Part 9.7.
 - (3) Where a liquidator of a company pays money to the Commission pursuant to subsection (1) or (1A) or an order of the Court made under paragraph (2)(c), the liquidator is entitled to a receipt for the money so paid and the giving of that receipt discharges the liquidator from any liability in respect of the money.
 - (4) For the purposes of this section the Court may exercise all the powers conferred by this Law with respect to the discovery and realisation of the property of a company and the provisions of this Law with respect to the exercise of those powers apply, with such adaptations as are prescribed, to proceedings under this section.

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- (5) The provisions of this section do not, except as expressly declared in this Law, deprive a person of any other right or remedy to which the person is entitled against the liquidator or another person.

545 Expenses of winding up where property insufficient

- (1) Subject to this section, a liquidator is not liable to incur any expense in relation to the winding up of a company unless there is sufficient available property.
- (2) The Court or the Commission may, on the application of a creditor or a contributory, direct a liquidator to incur a particular expense on condition that the creditor or contributory indemnifies the liquidator in respect of the recovery of the amount expended and, if the Court or the Commission so directs, gives such security to secure the amount of the indemnity as the Court or the Commission thinks reasonable.
- (3) Nothing in this section shall be taken to relieve a liquidator of any obligation to lodge a document (including a report) with the Commission under any provision of this Law by reason only that he or she would be required to incur expense in order to perform that obligation.

546 Resolutions passed at adjourned meetings of creditors and contributories

Subject to subsection 498(4), where a resolution is passed at an adjourned meeting of any creditors or contributories of a company, the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed and not on any earlier date.

547 Meetings to ascertain wishes of creditors or contributories

- (1) The Court may, as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence and may, if

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it thinks fit for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be convened, held and conducted in such manner as the Court directs, and may appoint a person to act as chairman of any such meeting and to report the result of the meeting to the Court.

- (2) In the case of creditors, regard shall be had to the value of each creditor's debt.
- (3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Law or the company's constitution.

Division 5—Committees of inspection

548 Convening of meetings by liquidator for appointment of committee of inspection

- (1) The liquidator of a company shall, if so requested by a creditor or contributory, convene separate meetings of the creditors and contributories for the purpose of determining:
 - (a) whether a committee of inspection should be appointed; and
 - (b) where a committee of inspection is to be appointed:
 - (i) the numbers of members to represent the creditors and the contributories, respectively; and
 - (ii) the persons who are to be members of the committee representing creditors and contributories, respectively.
- (2) If there is a difference between the determination of the meeting of creditors and the determination of the meeting of contributories, the Court may resolve the difference and make such order as it thinks proper.
- (3) A person is not eligible to be appointed a member of a committee of inspection unless the person is:
 - (a) in the case of an appointment by creditors of the company:
 - (i) a creditor of the company;
 - (ii) the attorney of a creditor of the company by virtue of a general power of attorney given by the creditor; or
 - (iii) a person authorised in writing by a creditor of the company to be a member of the committee of inspection; or
 - (b) in the case of an appointment by the contributories of the company:
 - (i) a contributory of the company;
 - (ii) the attorney of a contributory of the company by virtue of a general power of attorney given by the contributory; or

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- (iii) a person authorised in writing by a contributory of the company to be a member of the committee of inspection.

549 Proceedings of committee of inspection

- (1) A committee of inspection shall meet at such times and places as its members from time to time appoint.
- (2) The liquidator or a member of the committee may convene a meeting of the committee.
- (3) A committee may act by a majority of its members present at a meeting, but shall not act unless a majority of its members are present.

550 Vacancies on committee of inspection

- (1) A member of a committee may resign by notice in writing signed by the member and delivered to the liquidator.
- (2) If a member of a committee:
 - (a) becomes an insolvent under administration; or
 - (b) is absent from 5 consecutive meetings of the committee without the leave of those members who together with himself or herself represent the creditors or contributories, as the case may be;his or her office becomes vacant.
- (3) A member of the committee who represents creditors may be removed by a resolution at a meeting of creditors of which 7 days' notice has been given stating the object of the meeting, and a member of the committee who represents contributories may be removed by a resolution at a meeting of contributories of which such notice has been given.
- (4) A meeting referred to in subsection (3) may appoint a person to fill a vacancy caused by the removal of a member of the committee.

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- (5) A vacancy in the committee may be filled by the appointment of a person by a resolution at a meeting of the creditors or of the contributories, as the case may be, of which 7 days' notice has been given.
- (6) A vacancy in the committee that is not filled as provided by subsection (4) or (5) may be filled by the appointment of a person by the committee and a person so appointed represents the creditors, or the contributories, as the case may be.
- (7) Notwithstanding a vacancy in the committee, the continuing members of the committee may act provided they are not less than 2 in number.

551 Member of committee not to accept extra benefit

- (1) A member of a committee of inspection shall not, while acting as such a member, except as provided by this Law or with the leave of the Court:
 - (a) make an arrangement for receiving, or accept, from the company or any other person, in connection with the winding up, a gift, remuneration or pecuniary or other consideration or benefit;
 - (b) directly or indirectly derive any profit or advantage from a transaction, sale or purchase for or on account of the company or any gift, profit or advantage from a creditor; or
 - (c) directly or indirectly become the purchaser of any property of the company.
- (2) A transaction entered into in contravention of subsection (1) may be set aside by the Court on the application of a creditor or member of the company.

552 Powers of Court where no committee of inspection

Where there is no committee of inspection, the Court may, on the application of the liquidator, do any thing and give any direction or

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permission that is by this Part authorised or required to be done or given by the committee.

Division 6—Proof and ranking of claims

Subdivision A—Admission to proof of debts and claims

553 Debts or claims that are provable in winding up

(1) Subject to this Division, in every winding up, all debts payable by, and all claims against, the company (present or future, certain or contingent, ascertained or sounding only in damages), being debts or claims the circumstances giving rise to which occurred before the relevant date, are admissible to proof against the company.

(1A) Even though the circumstances giving rise to a debt payable by the company, or a claim against the company, occur on or after the relevant date, the debt or claim is admissible to proof against the company in the winding up if:

- (a) the circumstances occur at a time when the company is under a deed of company arrangement; and
- (b) the company is under the deed immediately before the resolution or court order that the company be wound up.

This subsection has effect subject to the other sections in this Division.

Note 1: See Division 10 of Part 5.3A (sections 444A-444H) for the provisions dealing with deeds of company arrangement.

Note 2: Section 1411 makes provision for distributions etc. made by liquidators before the commencement of this subsection.

Note 3: See paragraph 513A(d) for deeds that are followed immediately by court ordered winding up. See paragraphs 513B(c) and (d) for deeds that are followed immediately by voluntary winding up. Subsection 446A(2) and section 446B provide that companies are to be taken in certain circumstances to have passed resolutions that they be wound up.

(1B) For the purpose of applying the other sections of this Division to a debt or claim that is admissible to proof under subsection (1A), the relevant date for the debt or claim is the date on which the deed terminates.

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- (2) Where, after the relevant date, an order is made under section 91 of the ASC Law against a company that is being wound up, the amount that, pursuant to the order, the company is liable to pay is admissible to proof against the company.

553A Member cannot prove debt unless contributions paid

A debt owed by a company to a person in the person's capacity as a member of the company, whether by way of dividends, profits or otherwise, is not admissible to proof against the company unless the person has paid to the company or the liquidator all amounts that the person is liable to pay as a member of the company.

553AA Selling shareholder cannot prove debt unless documents given

The selling shareholder in a share buy-back may claim in a winding up of the company but is not entitled to a distribution of money or property unless the shareholder has discharged the shareholder's obligations to give documents in connection with the buy-back.

Note: The selling shareholder's claim ranks after those of non-member creditors and before those of other member creditors (see section 563AA).

553B Insolvent companies—penalties and fines not generally provable

- (1) Subject to subsection (2), penalties or fines imposed by a court in respect of an offence against a law are not admissible to proof against an insolvent company.
- (2) An amount payable under a pecuniary penalty order, or an interstate pecuniary penalty order, within the meaning of the *Proceeds of Crime Act 1987*, is admissible to proof against an insolvent company.

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553C Insolvent companies—mutual credit and set-off

- (1) Subject to subsection (2), where there have been mutual credits, mutual debts or other mutual dealings between an insolvent company that is being wound up and a person who wants to have a debt or claim admitted against the company:
 - (a) an account is to be taken of what is due from the one party to the other in respect of those mutual dealings; and
 - (b) the sum due from the one party is to be set off against any sum due from the other party; and
 - (c) only the balance of the account is admissible to proof against the company, or is payable to the company, as the case may be.
- (2) A person is not entitled under this section to claim the benefit of a set-off if, at the time of giving credit to the company, or at the time of receiving credit from the company, the person had notice of the fact that the company was insolvent.

553D Debts or claims may be proved formally or informally

- (1) A debt or claim must be proved formally if the liquidator, in accordance with the regulations, requires it to be proved formally.
- (2) A debt or claim that is not required to be proved formally:
 - (a) may be proved formally; or
 - (b) may be proved in some other way, subject to compliance with the requirements of the regulations (if any) relating to the informal proof of debts and claims.
- (3) A debt or claim is proved formally if it satisfies the requirements of the regulations relating to the formal proof of debts and claims.

553E Application of Bankruptcy Act to winding up of insolvent company

Subject to this Division and to section 279, in the winding up of an insolvent company the same rules are to prevail and be observed

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with regard to debts provable as are in force for the time being under the *Bankruptcy Act 1966* in relation to the estates of bankrupt persons (except the rules in sections 82 to 94 (inclusive) and 96 of that Act), and all persons who in any such case would be entitled to prove for and receive dividends out of the property of the company may come in under the winding up and make such claims against the company as they respectively are entitled to because of this section.

Subdivision B—Computation of debts and claims

554 General rule—compute amount as at relevant date

- (1) The amount of a debt or claim of a company (including a debt or claim that is for or includes interest) is to be computed for the purposes of the winding up as at the relevant date.
- (2) Subsection (1) does not apply to an amount admissible to proof under subsection 553(2).

554A Determination of value of debts and claims of uncertain value

- (1) This section applies where, in the winding up of a company, the liquidator admits a debt or claim that, as at the relevant date, did not bear a certain value.
- (2) The liquidator must:
 - (a) make an estimate of the value of the debt or claim as at the relevant date; or
 - (b) refer the question of the value of the debt or claim to the Court.
- (3) A person who is aggrieved by the liquidator's estimate of the value of the debt or claim may, in accordance with the regulations, appeal to the Court against the liquidator's estimate.
- (4) If:

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- (a) the liquidator refers the question of the value of the debt or claim to the Court; or
 - (b) a person appeals to the Court against the liquidator's estimate of the value of the debt or claim;
- the Court must:
- (c) make an estimate of the value of the debt or claim as at the relevant date; or
 - (d) determine a method to be applied by the liquidator in working out the value of the debt or claim as at the relevant date.
- (5) If the Court determines a method to be applied by the liquidator in working out the value of the debt or claim, the liquidator must work out the value of the debt or claim as at the relevant date in accordance with that method.
- (6) If:
- (a) the Court has determined a method to be applied by the liquidator in working out the value of the debt or claim as at the relevant date; and
 - (b) a person is aggrieved by the way in which that method has been applied by the liquidator in working out that value;
- the person may, in accordance with the regulations, appeal to the Court against the way in which the method was applied.
- (7) If:
- (a) a person appeals to the Court against the way in which the liquidator, in working out the value of the debt or claim, applied a method determined by the court; and
 - (b) the Court is satisfied that the liquidator did not correctly apply that method;
- the Court must work out the value of the debt or claim as at the relevant date in accordance with that method.
- (8) For the purposes of this Division, the amount of the debt or claim that is admissible to proof is the value as estimated or worked out under this section.

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554B Discounting of debts payable after relevant date

The amount of a debt that is admissible to proof but that, as at the relevant date, was not payable by the company until an ascertained or ascertainable date (*the future date*) after the relevant date is the amount payable on the future date reduced by the amount of the discount worked out in accordance with the regulations.

554C Conversion into Australian currency of foreign currency debts or claims

- (1) This section applies if the amount of a debt or claim admissible to proof against a company would, apart from this section, be an amount of foreign currency.
- (2) If the company and the creditor or claimant have, in an instrument created before the relevant date, agreed on a method to be applied for the purpose of converting the company's liability in respect of the debt or claim into Australian currency, the amount of the debt or claim that is admissible to proof is the equivalent in Australian currency of the amount of foreign currency, worked out as at the relevant date and in accordance with the agreed method.
- (3) If subsection (2) does not apply, the amount of the debt or claim that is admissible to proof is the equivalent in Australian currency of the amount of foreign currency, worked out by reference to the opening carded on demand airmail buying rate in relation to the foreign currency available at the Commonwealth Bank of Australia on the relevant date.

Subdivision C—Special provisions relating to secured creditors of insolvent companies

554D Application of Subdivision

- (1) This Subdivision applies in relation to the proof of a secured debt in the winding up of an insolvent company.

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- (2) For the purposes of the application of this Subdivision in relation to a secured debt of an insolvent company that is being wound up, the amount of the debt is taken to be the amount of the debt as at the relevant date (as worked out in accordance with Subdivision B).

554E Proof of debt by secured creditor

- (1) In the winding up of an insolvent company, a secured creditor is not entitled to prove the whole or a part of the secured debt otherwise than in accordance with this section and with any other provisions of this Law or the regulations that are applicable to proving the debt.
- (2) The creditor's proof of debt must be in writing.
- (3) If the creditor surrenders the security to the liquidator for the benefit of creditors generally, the creditor may prove for the whole of the amount of the secured debt.
- (4) If the creditor realises the security, the creditor may prove for any balance due after deducting the net amount realised, unless the liquidator is not satisfied that the realisation has been effected in good faith and in a proper manner.
- (5) If the creditor has not realised or surrendered the security, the creditor may:
 - (a) estimate its value; and
 - (b) prove for the balance due after deducting the value so estimated.
- (6) If subsection (5) applies, the proof of debt must include particulars of the security and the creditor's estimate of its value.

554F Redemption of security by liquidator

- (1) This section applies where a secured creditor's proof of debt is in respect of the balance due after deducting the creditor's estimate of the value of the security.

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- (2) The liquidator may, at any time, redeem the security on payment to the creditor of the amount of the creditor's estimate of its value.
- (3) If the liquidator is dissatisfied with the amount of the creditor's estimate of the value of the security, the liquidator may require the property comprised in the security to be offered for sale at such times and on such terms and conditions as are agreed on by the creditor and the liquidator or, in default of agreement, as the Court determines.
- (4) If the property is offered for sale by public auction, both the creditor and the liquidator are entitled to bid for, and purchase, the property.
- (5) The creditor may at any time, by notice in writing, require the liquidator to elect whether to exercise the power to redeem the security or to require it to be sold and, if the liquidator does not, within 3 months after receiving the notice, notify the creditor, in writing, that the liquidator elects to exercise the power:
 - (a) the liquidator is not entitled to exercise it; and
 - (b) subject to subsection (6), any equity of redemption or other interest in the property comprised in the security that is vested in the company or the liquidator vests in the creditor; and
 - (c) the amount of the creditor's debt is, for the purposes of this Division, taken to be reduced by the amount of the creditor's estimate of the value of the security.
- (6) The vesting of an equity of redemption or other interest in property because of paragraph (5)(b) is subject to compliance with any law requiring the transmission of such interests in property to be registered.

554G Amendment of valuation

- (1) If a secured creditor's proof of debt is in respect of the balance due after deducting the creditor's estimate of the value of the security, the creditor may, at any time, apply to the liquidator or the Court

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for permission to amend the proof of debt by altering the estimated value.

- (2) If the liquidator or the Court is satisfied:
 - (a) that the estimate of the value of the security was made in good faith on a mistaken basis; or
 - (b) that the value of the security has changed since the estimate was made;the liquidator or the Court may permit the creditor to amend the proof of debt accordingly.
- (3) If the Court permits the creditor to amend the proof of debt, it may do so on such terms as it thinks just and equitable.

554H Repayment of excess

- (1) Where a creditor who has amended a proof of debt under section 554G has received, in the winding up of the debtor company, an amount in excess of the amount to which the creditor would have been entitled under the amended proof of debt, the creditor must, without delay, repay the amount of the excess to the liquidator.
- (2) Where a creditor who has so amended a proof of debt has received, in the winding up of the debtor company, less than the amount to which the creditor would have been entitled under the amended proof of debt, the creditor is entitled to be paid, out of the money remaining for distribution in the winding up, the amount of the deficiency before any of that money is applied in the payment of future distributions, but the creditor is not entitled to affect a distribution made before the amendment of the proof of debt.

554J Subsequent realisation of security

Where:

- (a) a secured creditor's proof of debt is in respect of the balance due after deducting the creditor's estimate of the value of the security; and

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(b) subsequently:

(i) the creditor realises the security; or

(ii) the security is realised under section 554F;

the net amount realised is to be substituted for the estimated value of the security and section 554H applies as if the proof of debt had been amended accordingly under section 554G.

Subdivision D—Priorities

555 Debts and claims proved to rank equally except as otherwise provided

Except as otherwise provided by this Law, all debts and claims proved in a winding up rank equally and, if the property of the company is insufficient to meet them in full, they shall be paid proportionately.

556 Priority payments

- (1) Subject to this Division, in the winding up of a company the following debts and claims must be paid in priority to all other unsecured debts and claims:
- (a) first, expenses (except deferred expenses) properly incurred by a relevant authority in preserving, realising or getting in property of the company, or in carrying on the company's business;
 - (b) if the Court ordered the winding up—next, the costs in respect of the application for the order (including the applicant's taxed costs payable under section 466);
 - (c) next, the debts for which paragraph 443D(a) entitles an administrator of the company to be indemnified (even if the administration ended before the relevant date), except expenses covered by paragraph (a) of this subsection and deferred expenses;
 - (d) if the winding up began within 2 months after the end of a period of official management of the company—next, debts of the company properly incurred by an official manager in

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- carrying on the company's business during the period of official management, except expenses covered by paragraph (a) of this subsection and deferred expenses;
- (da) if the Court ordered the winding up—next, costs and expenses that are payable under subsection 475(8) out of the company's property;
 - (db) next, costs that form part of the expenses of the winding up because of subsection 539(6);
 - (dc) if the winding up began within 2 months after the end of a period of official management of the company—next, the remuneration, in respect of the period of official management, of any auditor appointed in accordance with Part 2M.4;
 - (dd) next, any other expenses (except deferred expenses) properly incurred by a relevant authority;
 - (de) next, the deferred expenses;
 - (df) if a committee of inspection has been appointed for the purposes of the winding up—next, expenses incurred by a person as a member of the committee;
 - (e) subject to subsection (1A)—next, wages and superannuation contributions payable by the company in respect of services rendered to the company by employees before the relevant date;
 - (f) next, amounts due in respect of injury compensation, being compensation the liability for which arose before the relevant date;
 - (g) subject to subsection (1B)—next, all amounts due:
 - (i) on or before the relevant date; and
 - (ii) because of an industrial instrument; and
 - (iii) to, or in respect of, employees of the company; and
 - (iv) in respect of leave of absence;
 - (h) subject to subsection (1C)—next, retrenchment payments payable to employees of the company.
- (1A) The amount or total paid under paragraph (1)(e) to, or in respect of, an excluded employee of the company must be such that so much

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(if any) of it as is attributable to non-priority days does not exceed \$2,000.

(1B) The amount or total paid under paragraph (1)(g) to, or in respect of, an excluded employee of the company must be such that so much (if any) of it as is attributable to non-priority days does not exceed \$1,500.

(1C) A payment under paragraph (1)(h) to an excluded employee of the company must not include an amount attributable to non-priority days.

(2) In this section:

company means a company that is being wound up;

deferred expenses, in relation to a company, means expenses properly incurred by a relevant authority, in so far as they consist of:

- (a) remuneration, or fees for services, payable to the relevant authority; or
- (b) expenses incurred by the relevant authority in respect of the supply of services to the relevant authority by:
 - (i) a partnership of which the relevant authority is a member; or
 - (ii) an employee of the relevant authority; or
 - (iii) a member or employee of such a partnership; or
- (c) expenses incurred by the relevant authority in respect of the supply to the relevant authority of services that it is reasonable to expect could have instead been supplied by:
 - (i) the relevant authority; or
 - (ii) a partnership of which the relevant authority is a member; or
 - (iii) an employee of the relevant authority; or
 - (iv) a member or employee of such a partnership;

employee, in relation to a company, means a person:

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- (a) who has been or is an employee of the company, whether remunerated by salary, wages, commission or otherwise; and
- (b) whose employment by the company commenced before the relevant date;

excluded employee, in relation to a company, means:

- (a) an employee of the company who has been:
 - (i) at any time during the period of 12 months ending on the relevant date; or
 - (ii) at any time since the relevant date;or who is, a director of the company;
- (b) an employee of the company who has been:
 - (i) at any time during the period of 12 months ending on the relevant date; or
 - (ii) at any time since the relevant date;or who is, the spouse of an employee of the kind referred to in paragraph (a); or
- (c) an employee of the company who is a relative (other than a spouse) of an employee of the kind referred to in paragraph (a);

non-priority day, in relation to an excluded employee of a company, means a day on which the employee was:

- (a) if paragraph (a) of the definition of **excluded employee** applies—a director of the company; or
- (b) if paragraph (b) of that definition applies—a spouse of an employee of the kind referred to in paragraph (a) of that definition; or
- (c) if paragraph (c) of that definition applies—a relative (other than a spouse) of an employee of the kind referred to in paragraph (a) of that definition;

even if the day was more than 12 months before the relevant date;

official manager includes a deputy official manager;

relevant authority, in relation to a company, means any of the following:

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- (a) in any case—a liquidator or provisional liquidator of the company;
- (b) if the winding up began within 2 months after the end of a period of official management of the company—an official manager appointed for the purposes of the official management;
- (c) in any case—an administrator of the company, even if the administration ended before the winding up began;
- (d) in any case—an administrator of a deed of company arrangement executed by the company, even if the deed terminated before the winding up began;

retrenchment payment, in relation to an employee of a company, means an amount payable by the company to the employee, by virtue of an industrial instrument, in respect of the termination of the employee's employment by the company, whether the amount becomes payable before, on or after the relevant date;

spouse includes a de facto spouse;

superannuation contribution, in relation to a company, means a contribution by the company to a fund for the purposes of making provision for, or obtaining, superannuation benefits for an employee of the company, or for dependants of such an employee.

558 Debts due to employees

- (1) Where a contract of employment with a company being wound up was subsisting immediately before the relevant date, the employee under the contract is, whether or not he or she is a person referred to in subsection (2), entitled to payment under section 556 as if his or her services with the company had been terminated by the company on the relevant date.
- (2) Where, for the purposes of the winding up of a company, a liquidator employs a person whose services with the company had been terminated by reason of the winding up, that person shall, for the purpose of calculating any entitlement to payment for leave of

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absence, or any entitlement to a retrenchment amount in respect of employment, be deemed, while the liquidator employs him or her for those purposes, to be employed by the company.

- (3) Subject to subsection (4), where, after the relevant date, an amount in respect of long service leave or extended leave, or a retrenchment amount, becomes payable to a person referred to in subsection (2) in respect of the employment so referred to, the amount is a cost of the winding up.
- (4) Where, at the relevant date, the length of qualifying service of a person employed by a company that is being wound up is insufficient to entitle him or her to any amount in respect of long service leave or extended leave, or to any retrenchment amount in respect of employment by the company, but, by the operation of subsection (2) he or she becomes entitled to such an amount after that date, that amount:
 - (a) is a cost of the winding up to the extent of an amount that bears to that amount the same proportion as the length of his or her qualifying service after that relevant date bears to the total length of his or her qualifying service; and
 - (b) shall, to the extent of the balance of that amount, be deemed, for the purposes of section 556, to be an amount referred to in paragraph 556(1)(g), or a retrenchment payment payable to the person, as the case may be.
- (5) In this section, **retrenchment amount**, in relation to employment of a person, means an amount payable to the person, by virtue of an industrial instrument, in respect of termination of the employment.

559 Debts of a class to rank equally

The debts of a class referred to in each of the paragraphs of subsection 556(1) rank equally between themselves and shall be paid in full, unless the property of the company is insufficient to meet them, in which case they shall be paid proportionately.

560 Advances for company to make priority payments in respect of employees

Where a payment has been made by a company on account of wages or of superannuation contributions (within the meaning of section 556), or in respect of leave of absence, or termination of employment, under an industrial instrument, being a payment made out of money advanced by a person for the purpose of making the payment, the person by whom the money was advanced has, in the winding up of the company, the same right of priority of payment in respect of the money so advanced and paid, but not exceeding the amount by which the sum in respect of which the person who received the payment would have been entitled to priority in the winding up has been diminished by reason of the payment, as the person who received the payment would have had if the payment had not been made.

561 Priority of employees' claims over floating charges

So far as the property of a company available for payment of creditors other than secured creditors is insufficient to meet payment of:

- (a) any debt referred to in paragraph 556(1)(e), (g) or (h);
- (b) any amount that pursuant to subsection 558(3) or (4) is a cost of the winding up, being an amount that, if it had been payable on or before the relevant date, would have been a debt referred to in paragraph 556(1)(e), (g) or (h); and
- (c) any amount in respect of which a right of priority is given by section 560;

payment of that debt or amount shall be made in priority over the claims of a chargee in relation to a floating charge created by the company and may be made accordingly out of any property comprised in or subject to that charge.

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562 Application of proceeds of contracts of insurance

- (1) Where a company is, under a contract of insurance (not being a contract of reinsurance) entered into before the relevant date, insured against liability to third parties, then, if such a liability is incurred by the company (whether before or after the relevant date) and an amount in respect of that liability has been or is received by the company or the liquidator from the insurer, the amount shall, after deducting any expenses of or incidental to getting in that amount, be paid by the liquidator to the third party in respect of whom the liability was incurred to the extent necessary to discharge that liability, or any part of that liability remaining undischarged, in priority to all payments in respect of the debts mentioned in section 556.
- (2) If the liability of the insurer to the company is less than the liability of the company to the third party, subsection (1) does not limit the rights of the third party in respect of the balance.
- (3) This section has effect notwithstanding any agreement to the contrary.

562A Application of proceeds of contracts of reinsurance

- (1) This section applies where:
 - (a) a company is insured, under a contract of reinsurance entered into before the relevant date, against liability to pay amounts in respect of a relevant contract of insurance or relevant contracts of insurance; and
 - (b) an amount in respect of that liability has been or is received by the company or the liquidator under the contract of reinsurance.
- (2) Subject to subsection (4), if the amount received, after deducting expenses of or incidental to getting in that amount, equals or exceeds the total of all the amounts that are payable by the company under relevant contracts of insurance, the liquidator must, out of the amount received and in priority to all payments in

The Corporations Law—Section 562A

respect of the debts mentioned in section 556, pay the amounts that are so payable under those contracts of insurance.

- (3) Subject to subsection (4), if subsection (2) does not apply, the liquidator must, out of the amount received and in priority to all payments in respect of the debts mentioned in section 556, pay to each person to whom an amount is payable by the company under a relevant contract of insurance an amount calculated in accordance with the formula:

$$\frac{\text{Particular amount owed}}{\text{Total amount owed}} \times \text{Reinsurance payment}$$

where:

Particular amount owed means the amount payable to the person under the relevant contract of insurance;

Total amount owed means the total of all the amounts payable by the company under relevant contracts of insurance;

Reinsurance payment means the amount received under the contract of reinsurance, less any expenses of or incidental to getting in that amount.

- (4) The Court may, on application by a person to whom an amount is payable under a relevant contract of insurance, make an order to the effect that subsections (2) and (3) do not apply to the amount received under the contract of reinsurance and that that amount must, instead, be applied by the liquidator in the manner specified in the order, being a manner that the Court considers just and equitable in the circumstances.
- (5) The matters that the Court may take into account in considering whether to make an order under subsection (4) include, but are not limited to:
- (a) whether it is possible to identify particular relevant contracts of insurance as being the contracts in respect of which the contract of reinsurance was entered into; and

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- (b) whether it is possible to identify persons who can be said to have paid extra in order to have particular relevant contracts of insurance protected by reinsurance; and
 - (c) whether particular relevant contracts of insurance include statements to the effect that the contracts are to be protected by reinsurance; and
 - (d) whether a person to whom an amount is payable under a relevant contract of insurance would be severely prejudiced if subsections (2) and (3) applied to the amount received under the contract of reinsurance.
- (6) If receipt of a payment under this section only partially discharges a liability of the company to a person, nothing in this section affects the rights of the person in respect of the balance of the liability.
- (7) This section has effect despite any agreement to the contrary.
- (8) in this section:

relevant contract of insurance means a contract of insurance entered into by the company, as insurer, before the relevant date.

563 Provisions relating to injury compensation

- (1) Notwithstanding anything in section 556, paragraph 556(1)(f) does not apply in relation to the winding up of a company in any case where:
- (a) the company is being wound up voluntarily merely for the purpose of reconstruction or of amalgamation with another company and the right to the injury compensation has, on the reconstruction or amalgamation, been preserved to the person entitled to it; or
 - (b) the company has entered into a contract with an insurer in respect of any liability for injury compensation.
- (2) Where injury compensation is payable by way of periodical payments, the amount of that compensation shall, for the purposes of paragraph 556(1)(f), be taken to be the lump sum for which

The Corporations Law—Section 563AA

those periodical payments could, if redeemable, be redeemed under the law under which the periodical payments are made.

563AA Seller under a buy-back agreement

- (1) The selling shareholder's claim under a buy-back agreement is postponed until all debts owed to people otherwise than as members of the company have been satisfied.
- (2) The shareholder's claim is not a debt owed by the company to the seller in the shareholder's capacity as a member of the company for the purposes of section 563A.

563A Member's debts to be postponed until other debts and claims satisfied

Payment of a debt owed by a company to a person in the person's capacity as a member of the company, whether by way of dividends, profits or otherwise, is to be postponed until all debts owed to, or claims made by, persons otherwise than as members of the company have been satisfied.

Subdivision E—Miscellaneous

563B Interest on debts and claims from relevant date to date of payment

- (1) If, in the winding up of a company, the liquidator pays an amount in respect of an admitted debt or claim, there is also payable to the debtor or claimant, as a debt payable in the winding up, interest, at the prescribed rate, on the amount of the payment in respect of the period starting on the relevant date and ending on the day on which the payment is made.
- (2) Subject to subsection (3), payment of the interest is to be postponed until all other debts and claims in the winding up have been satisfied, other than debts owed to members of the company

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as members of the company (whether by way of dividends, profits or otherwise).

- (3) If the admitted debt or claim is a debt to which section 554B applied, subsection (2) does not apply to postpone payment of so much of the interest as is attributable to the period starting at the relevant date and ending on the earlier of:
 - (a) the day on which the payment is made; and
 - (b) the future date, within the meaning of section 554B.

563C Debt subordination

- (1) Nothing in this Division renders a debt subordination by a creditor of a company unlawful or unenforceable, except so far as the debt subordination would disadvantage any creditor of the company who was not a party to, or otherwise concerned in, the debt subordination.
- (2) In this section:

debt subordination means an agreement or declaration by a creditor of a company, however expressed, to the effect that, in specified circumstances:

- (a) a specified debt that the company owes the creditor; or
- (b) a specified part of such a debt;

will not be repaid until other specified debts that the company owes are repaid to a specified extent.

564 Power of Court to make orders in favour of certain creditors

Where in any winding up:

- (a) property has been recovered under an indemnity for costs of litigation given by certain creditors, or has been protected or preserved by the payment of moneys or the giving of indemnity by creditors; or
- (b) expenses in relation to which a creditor has indemnified a liquidator have been recovered;

The Corporations Law—Section 564

the Court may make such orders, as it deems just with respect to the distribution of that property and the amount of those expenses so recovered with a view to giving those creditors an advantage over others in consideration of the risk assumed by them.

Division 7—Effect on certain transactions

565 Undue preference

- (1) A settlement, a conveyance or transfer of property, a charge on property, a payment made, or an obligation incurred, before the commencement of Part 5.7B, by a company that, if it had been made or incurred by a natural person, would, in the event of his or her becoming a bankrupt, be void as against the trustee in the bankruptcy, is, in the event of the company being wound up, void as against the liquidator.
- (2) For the purposes of subsection (1), the date that corresponds with the date of presentation of the petition in bankruptcy in the case of a natural person is:
 - (a) if the company was under official management at any time during the 6 months ending on the relation-back day—the day on which the official management commenced; or
 - (b) otherwise—the relation-back day.
- (3) For the purposes of this section, the date that corresponds with the date on which a person becomes a bankrupt is the relation-back day.
- (4) Subject to Part 5.3A, a transfer or assignment by a company of all its property to trustees for the benefit of all its creditors is void.

566 Effect of floating charge

A floating charge on the undertaking or property of the company created before the commencement of Part 5.7B and within 6 months before the relation-back day is, unless it is proved that the company immediately after the creation of the charge was solvent, invalid except to the amount of any moneys paid to the company at the time of or subsequently to the creation of and in consideration for the charge together with interest on that amount at the rate of 8% per annum or at such other rate as is prescribed.

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567 Liquidator's right to recover in respect of certain transactions

- (1) Where any property, business or undertaking has been acquired by a company for a cash consideration before the commencement of Part 5.7B and within 4 years before the relation-back day in relation to a winding up of the company:
- (a) from a promoter of the company or a spouse of such a promoter, or from a relative of such a promoter or spouse;
 - (b) from a person who was, at the time of the acquisition, a director of the company, from a spouse of such a director, or from a relative of such a person or spouse;
 - (c) from a body corporate that was, at the time of the acquisition, related to the company; or
 - (d) from a person who was, at the time of the acquisition, a director of a body corporate that was related to the company, from a spouse of such a person, or from a relative of such a person or spouse;

the liquidator may recover from the person or body corporate from which the property, business or undertaking was acquired any amount by which the cash consideration for the acquisition exceeded the value of the property, business or undertaking at the time of its acquisition.

- (2) Where any property, business or undertaking has been sold by a company for a cash consideration before the commencement of Part 5.7B and within 4 years before the relation-back day in relation to a winding up of the company:
- (a) to a promoter of the company or a spouse of such a promoter, or to a relative of such a promoter or spouse;
 - (b) to a person who was, at the time of the sale, a director of the company, to a spouse of such a director, or to a relative of such a person or spouse;
 - (c) to a body corporate that was, at the time of the sale, related to the company; or
 - (d) to a person who was, at the time of the sale, a director of a body corporate that was related to the company, to a spouse of such a director, or to a relative of such a person or spouse;

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the liquidator may recover from the person or body corporate to which the property, business or undertaking was sold any amount by which the value of the property, business or undertaking at the time of the sale exceeded the cash consideration.

- (3) For the purposes of this section, the value of the property, business or undertaking includes the value of any goodwill, profits or gain that might have been made from the property, business or undertaking.
- (4) In this section, *cash consideration* means any consideration payable otherwise than by the issue of shares in the company.
- (5) Where:
 - (a) a disposition of property is made by a company before the commencement of Part 5.7B and within 6 months before the relation-back day in relation to a winding up of the company;
 - (b) the disposition of property confers a preference upon a creditor of the company; and
 - (c) the disposition of property has the effect of discharging an officer of the company from a liability (whether under a guarantee or otherwise and whether contingent or otherwise);the liquidator:
 - (d) in a case to which paragraph (e) does not apply—may recover from that officer an amount equal to the value of the relevant property, as the case may be; or
 - (e) where the liquidator has recovered from the creditor in respect of the disposition of the relevant property:
 - (i) an amount equal to part of the value of the relevant property; or
 - (ii) part of the relevant property;

may recover from that officer an amount equal to the amount by which the value of the relevant property exceeds the sum of any amounts recovered as mentioned in subparagraph (i) and the amount of the value of any property recovered as mentioned in subparagraph (ii).

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(6) Where:

- (a) a liquidator recovers an amount of money from an officer of a company in respect of a disposition of property to a creditor as mentioned in subsection (5); and
- (b) the liquidator subsequently recovers from that creditor an amount equal to the whole or part of the value of the property disposed of;

the officer may recover from the liquidator an amount equal to the amount so recovered or the value of the property so recovered.

Division 7A—Disclaimer of onerous property

568 Disclaimer by liquidator; application to Court by party to contract

- (1) Subject to this section, a liquidator of a company may at any time, on the company's behalf, by signed writing disclaim property of the company that consists of:
- (a) land burdened with onerous covenants; or
 - (b) shares; or
 - (c) property that is unsaleable or is not readily saleable; or
 - (d) property that may give rise to a liability to pay money or some other onerous obligation; or
 - (e) property where it is reasonable to expect that the costs, charges and expenses that would be incurred in realising the property would exceed the proceeds of realising the property; or
 - (f) a contract;
- whether or not:
- (g) except in the case of a contract—the liquidator has tried to sell the property, has taken possession of it or exercised an act of ownership in relation to it; or
 - (h) in the case of a contract—the company or the liquidator has tried to assign, or has exercised rights in relation to, the contract or any property to which it relates.

(1AA) This section does not apply to an agreement by the company to buy back its own shares.

(1A) A liquidator cannot disclaim a contract (other than an unprofitable contract or a lease of land) except with the leave of the Court.

(1B) On an application for leave under subsection (1A), the Court may:

- (a) grant leave subject to such conditions; and
- (b) make such orders in connection with matters arising under, or relating to, the contract;

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as the Court considers just and equitable.

- (8) Where:
- (a) an application in writing has been made to the liquidator by a person interested in property requiring the liquidator to decide whether he or she will disclaim the property; and
 - (b) the liquidator has, for the period of 28 days after the receipt of the application, or for such extended period as is allowed by the Court, declined or neglected to disclaim the property;
- the liquidator is not entitled to disclaim the property under this section and, in the case of a contract, he or she shall be deemed to have adopted it.
- (9) The Court may, on the application of a person who is, as against the company, entitled to the benefit or subject to the burden of a contract made with the company, make an order:
- (a) discharging the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as the Court thinks proper; or
 - (b) rescinding the contract on such terms as to restitution by or to either party, or otherwise, as the Court thinks proper.
- (10) Amounts payable pursuant to an order under subsection (9) may be proved as a debt in the winding up.
- (13) For the purpose of determining whether property of a company is of a kind to which subsection (1) applies, the liquidator may, by notice served on a person claiming to have an interest in the property, require the person to furnish to the liquidator within such period, not being less than 14 days, as is specified in the notice, a statement of the interest claimed by the person and the person shall comply with the requirement.

568A Liquidator must give notice of disclaimer

- (1) As soon as practicable after disclaiming property, a liquidator must:
- (a) lodge a written notice of the disclaimer; and

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- (b) give written notice of the disclaimer to each person who appears to the liquidator to have, or to claim to have, an interest in the property; and
 - (c) if the liquidator has reason to suspect that some person or persons may have, or may claim to have, an interest or interests in the property, but either does not know who, or does not know where, the person is or the persons are—comply with subsection (2); and
 - (d) if a law of the Commonwealth or of a State or Territory requires the transfer or transmission of the property to be registered—give written notice of the disclaimer to the registrar or other person who has the function under that law of registering the transfer or transmission of the property.
- (2) If paragraph (1)(c) applies, the liquidator must cause notice of the disclaimer to be published:
- (a) if the property is situated in a jurisdiction and a daily newspaper circulates generally in that jurisdiction—in a daily newspaper that so circulates; and
 - (b) in each jurisdiction in which:
 - (i) the company has carried on business during or after the period of 6 months ending when the winding up began; and
 - (ii) a daily newspaper circulates generally; in a daily newspaper that circulates generally in that jurisdiction; whether on the same or different days.

568B Application to set aside disclaimer before it takes effect

- (1) A person who has, or claims to have, an interest in disclaimed property may apply to the Court for an order setting aside the disclaimer before it takes effect, but may only do so within 14 days after:
- (a) if the liquidator gives to the person notice of the disclaimer, because of paragraph 568A(1)(b), before the end of 14 days after the liquidator lodges such notice—the liquidator gives such notice to the person; or

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- (b) if paragraph (a) does not apply but notice of the disclaimer is published under subsection 568A(2) before the end of the 14 days referred to in that paragraph—the last such notice to be so published is so published; or
 - (c) otherwise—the liquidator lodges notice of the disclaimer.
- (2) On an application under subsection (1), the Court:
- (a) may by order set aside the disclaimer; and
 - (b) if it does so—may make such further orders as it thinks appropriate.
- (3) However, the Court may set aside a disclaimer under this section only if satisfied that the disclaimer would cause, to persons who have, or claim to have, interests in the property, prejudice that is grossly out of proportion to the prejudice that setting aside the disclaimer would cause to the company's creditors.

568C When disclaimer takes effect

- (1) A disclaimer takes effect if, and only if:
- (a) in a case where only one application under section 568B for an order setting aside the disclaimer, or each of 2 or more such applications, is made within the period that that section prescribes for making the application—the application, or each of the applications, is unsuccessful; or
 - (b) no such application is so made.
- (2) For the purposes of subsection (1), an application under section 568B is successful if, and only if, the result of the application, and all appeals (if any) arising out of the application, being finally determined or otherwise disposed of is an order setting aside the disclaimer (whether or not further orders are also made).
- (3) A disclaimer that takes effect because of subsection (1) is taken to have taken effect on the day after:
- (a) if:

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- (i) the liquidator gave to a person notice of the disclaimer because of paragraph 568A(1)(b); or
 - (ii) notice of the disclaimer was published under subsection 568A(2);
- before the end of 14 days after the liquidator lodged notice of the disclaimer—the last day when the liquidator so gave such notice or such notice was so published; or
- (b) otherwise—the day when the liquidator lodged notice of the disclaimer.

568D Effect of disclaimer

- (1) A disclaimer is taken to have terminated, as from the day on which it is taken because of subsection 568C(3) to take effect, the company's rights, interests, liabilities and property in or in respect of the disclaimed property, but does not affect any other person's rights or liabilities except so far as necessary in order to release the company and its property from liability.
- (2) A person aggrieved by the operation of a disclaimer is taken to be a creditor of the company to the extent of any loss suffered by the person because of the disclaimer and may prove such a loss as a debt in the winding up.

568E Application to set aside disclaimer after it has taken effect

- (1) With the leave of the Court, a person who has, or claims to have, an interest in disclaimed property may apply to the Court for an order setting aside the disclaimer after it has taken effect.
- (2) The Court may give leave only if it is satisfied that it is unreasonable in all the circumstances to expect the person to have applied for an order setting aside the disclaimer before it took effect.
- (3) The Court may give leave subject to conditions.
- (4) On an application under subsection (1), the Court:

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- (a) may by order set aside the disclaimer; and
 - (b) if it does so—may make such further orders as it thinks appropriate, including orders necessary to put the company, the liquidator or anyone else in the same position, as nearly as practicable, as if the disclaimer had never taken effect.
- (5) However, the Court may set aside a disclaimer only if satisfied that the disclaimer has caused, or would cause, to persons who have, or claim to have, interests in the property, prejudice that is grossly out of proportion to the prejudice that setting aside the disclaimer (and making any further orders) would cause to:
- (a) the company's creditors; and
 - (b) persons who have changed their position in reliance on the disclaimer taking effect.

568F Court may dispose of disclaimed property

- (1) The Court may order that disclaimed property vest in, or be delivered to:
- (a) a person entitled to the property; or
 - (b) a person in or to whom it seems to the Court appropriate that the property be vested or delivered; or
 - (c) a person as trustee for a person of a kind referred to in paragraph (a) or (b).
- (2) The Court may make an order under subsection (1):
- (a) on the application of a person who claims an interest in the property, or is under a liability in respect of the property that this Law has not discharged; and
 - (b) after hearing such persons as it thinks appropriate.
- (3) Subject to subsection (4), where an order is made under subsection (1) vesting property, the property vests immediately, for the purposes of the order, without any conveyance, transfer or assignment.
- (4) Where:

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- (a) a law of the Commonwealth or of a State or Territory requires the transfer of property vested by an order under subsection (1) to be registered; and
 - (b) that law enables the order to be registered;
- the property vests in equity because of the order but does not vest at law until that law has been complied with.

Division 7B—Effect on enforcement process against company's property

569 Executions, attachments etc. before winding up

(1) Where:

- (a) a creditor has issued execution against property of a company, or instituted proceedings to attach a debt due to a company or to enforce a charge or a charging order against property of a company, within 6 months immediately before the commencement of the winding up; and

- (b) the company commences to be wound up;

the creditor shall pay to the liquidator an amount equal to the amount (if any) received by the creditor as a result of the execution, attachment or enforcement of the charge or the charging order, less an amount in respect of the costs of the execution, attachment or enforcement of the charge or the charging order, being an amount agreed between the creditor and the liquidator or, if no agreement is reached, an amount equal to the taxed cost of that execution, attachment or enforcement.

- (2) Where the creditor has paid to the liquidator an amount in accordance with subsection (1), the creditor may prove in the winding up for the creditor's debt as an unsecured creditor as if the execution or attachment or the enforcement of the charge or the charging order, as the case may be, had not taken place.

- (3) Subject to subsections (4) and (5), where a creditor of a company receives:

- (a) notice in writing of an application to the Court for the winding up of the company; or
- (b) notice in writing of the convening of a meeting of the company to consider a resolution that the company be wound up voluntarily;

it is not competent for the creditor to take any action, or any further action, as the case may be, to attach a debt due to the company or

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to enforce a charge or a charging order against property of the company.

- (4) Subsection (3) does not affect the right of a creditor to take action or further action if:
 - (a) in a case to which paragraph (3)(a) applies—the application has been withdrawn or dismissed; or
 - (b) in a case to which paragraph (3)(b) applies—the meeting of the company has refused to pass the resolution.
- (5) Subsection (3) does not prevent a creditor from performing a binding contract for the sale of property entered into before the creditor received a notice referred to in that subsection.
- (6) Notwithstanding anything contained in this Division, a person who purchases property in good faith:
 - (a) under a sale by the sheriff in consequence of the issue of execution against property of a company that, after the sale, commences to be wound up; or
 - (b) under a sale in consequence of the enforcement by a creditor of a charge or a charging order against property of a company that, after the sale, commences to be wound up;acquires a good title to it as against the liquidator and the company.
- (7) In this section:

charge means a charge created by a law upon registration of a judgment in a registry;

charging order means a charging order made by a court in respect of a judgment.

570 Duties of sheriff after receiving notice of application

- (1) Subject to this section, where a sheriff:
 - (a) receives notice in writing of an application to the Court for the winding up of a company; or

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- (b) receives notice in writing of the convening of a meeting of a company to consider a resolution that the company be wound up voluntarily;
- it is not competent for the sheriff to:
- (c) take any action to sell property of the company pursuant to any process of execution issued by or on behalf of a creditor; or
- (d) pay to the creditor by whom or on whose behalf the process of execution was issued or to any person on the creditor's behalf the proceeds of the sale of property of the company that has been sold pursuant to such a process or any moneys seized, or paid to avoid seizure or sale of property of the company, under such a process.
- (2) Subsection (1) does not affect the power of the sheriff to take any action or make any payment if:
- (a) in a case to which paragraph (1)(a) applies—the application has been withdrawn or dismissed; or
- (b) in a case to which paragraph (1)(b) applies—the meeting of the company has refused to pass the resolution.
- (3) Subject to this section, where the registrar or other appropriate officer of a court to which proceeds of the sale of property of a company or other moneys have been paid by a sheriff pursuant to a process of execution issued by or on behalf of a creditor of the company:
- (a) receives notice in writing of an application to the Court for the winding up of the company; or
- (b) receives notice in writing of the convening of a meeting of the company to consider a resolution that the company be wound up voluntarily;
- any of those proceeds or moneys not paid out of court shall not be paid to the creditor or to any person on behalf of the creditor.
- (4) Subsection (3) does not prevent the making of a payment if:
- (a) in a case to which paragraph (3)(a) applies—the application has been withdrawn or dismissed; or

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- (b) in a case to which paragraph (3)(b) applies—the meeting of the company has refused to pass the resolution.
- (5) Where a company is being wound up, the liquidator may serve notice in writing of that fact on a sheriff or the registrar or other appropriate officer of a court.
- (6) Upon such a notice being so served:
- (a) the sheriff shall deliver or pay to the liquidator:
 - (i) any property of the company in the sheriff's possession under a process of execution issued by or on behalf of a creditor; and
 - (ii) any proceeds of the sale of property of the company or other money in the sheriff's possession, being proceeds of the sale of property sold, whether before or after the commencement of the winding up, pursuant to such a process or money seized, or paid to avoid seizure or sale of property of the company, whether before or after the commencement of the winding up, under such a process; or
 - (b) the registrar or other officer of the court shall pay to the liquidator any proceeds of the sale of property of the company or other money in court, being proceeds of sale or other moneys paid into court, whether before or after the commencement of the winding up, by a sheriff pursuant to a process of execution issued by or on behalf of a creditor; as the case requires.
- (7) Where:
- (a) property is, or proceeds of the sale of property or other money are, required by subsection (6) to be delivered or paid to a liquidator; or
 - (b) a sheriff has, pursuant to subsection (1), refrained from taking action to sell property of a company, being land, and that company is being wound up under an order made on the application referred to in that subsection;

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the costs of the execution are a first charge on that property or on those proceeds of sale or other money.

- (8) For the purpose of giving effect to the charge referred to in subsection (7), the sheriff, registrar or other officer may retain, on behalf of the creditor entitled to the benefit of the charge, such amount from the proceeds of sale or other money referred to in that subsection as he or she thinks necessary for the purpose.
- (9) The Court may, if in a particular case it considers it is proper to do so:
 - (a) permit a sheriff to take action to sell property or make a payment that the sheriff could not, by reason of subsection (1), otherwise validly take; or
 - (b) permit the making of a payment the making of which would, by reason of subsection (3), otherwise be prohibited.

Division 9—Co-operation between Australian and foreign courts in external administration matters

580 Interpretation

In this Division:

external administration matter means a matter relating to:

- (a) winding up, under this Chapter, a company or a Part 5.7 body;
- (b) winding up, outside Australia, a body corporate or a Part 5.7 body; or
- (c) the insolvency of a body corporate or of a Part 5.7 body;

prescribed country means:

- (a) a country prescribed for the purposes of this definition; or
- (b) a colony, overseas territory or protectorate of a country so prescribed.

581 Courts to act in aid of each other

- (1) All courts having jurisdiction in matters arising under the Corporations Law of this jurisdiction, the Judges of those courts and the officers of, or under the control of, those courts must severally act in aid of, and be auxiliary to:
 - (a) each other; and
 - (b) all courts having jurisdiction in matters arising under corresponding laws, the Judges of those courts and the officers of, or under the control of, those courts;in all external administration matters.
- (2) In all external administration matters, the Court:
 - (a) shall act in aid of, and be auxiliary to, the courts of the excluded Territories, and of prescribed countries, that have jurisdiction in external administration matters; and

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- (b) may act in aid of, and be auxiliary to, the courts of other countries that have jurisdiction in external administration matters.
- (3) Where a letter of request from a court of an excluded Territory, or of a country other than Australia, requesting aid in an external administration matter is filed in the Court, the Court may exercise such powers with respect to the matter as it could exercise if the matter had arisen within its own jurisdiction.
- (4) The Court may request a court of an excluded Territory, or of a country other than Australia, that has jurisdiction in external administration matters to act in aid of, and be auxiliary to, it in an external administration matter.

Part 5.7—Winding up bodies other than companies

582 Application of Part

- (1) This Part has effect in addition to, and not in derogation of, sections 601CC and 601CL and any provisions contained in this Law or any other law with respect to the winding up of bodies, and the liquidator or Court may exercise any powers or do any act in the case of Part 5.7 bodies that might be exercised or done by him, her or it in the winding up of companies.
- (2) Nothing in this Part affects the operation of the *Bankruptcy Act 1966*.
- (3) A Part 5.7 body may be wound up under this Part notwithstanding that it is being wound up or has been dissolved, deregistered or has otherwise ceased to exist as a body corporate under or by virtue of the laws of the place under which it was incorporated.

583 Winding up Part 5.7 bodies

Subject to this Part, a Part 5.7 body may be wound up under this Chapter and this Chapter applies accordingly to a Part 5.7 body with such adaptations as are necessary, including the following adaptations:

- (a) the principal place of business of a Part 5.7 body in Australia is taken, for all the purposes of the winding up, to be the registered office of the Part 5.7 body;
- (b) a Part 5.7 body is not to be wound up voluntarily under this Chapter;
- (c) the circumstances in which a Part 5.7 body may be wound up are as follows:
 - (i) if the Part 5.7 body is unable to pay its debts, has been dissolved or deregistered, has ceased to carry on business in Australia or has a place of business in Australia only for the purpose of winding up its affairs;

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- (ii) if the Court is of opinion that it is just and equitable that the Part 5.7 body should be wound up;
- (iii) if the Commission has stated in a report prepared under Division 1 of Part 3 of the ASC Law that, in its opinion:
 - (A) the Part 5.7 body cannot pay its debts and should be wound up; or
 - (B) it is in the interests of the public, of the members, or of the creditors, that the Part 5.7 body should be wound up.

585 Insolvency of Part 5.7 body

For the purposes of this Part, a Part 5.7 body shall be deemed to be unable to pay its debts if:

- (a) a creditor, by assignment or otherwise, to whom the Part 5.7 body is indebted in a sum exceeding the statutory minimum then due has served on the Part 5.7 body, by leaving at its principal place of business in Australia or by delivering to the secretary or a director or executive officer of the Part 5.7 body or by otherwise serving in such manner as the Court approves or directs, a demand, signed by or on behalf of the creditor, requiring the body to pay the sum so due and the body has, for 3 weeks after the service of the demand, failed to pay the sum or to secure or compound for it to the satisfaction of the creditor;
- (b) an action or other proceeding has been instituted against any member for any debt or demand due or claimed to be due from the Part 5.7 body or from the member as such and, notice in writing of the institution of the action or proceeding having been served on the body by leaving it at its principal place of business in Australia or by delivering it to the secretary or a director or executive officer of the Part 5.7 body or by otherwise serving it in such manner as the Court approves or directs, the Part 5.7 body has not, within 10 days after service of the notice, paid, secured or compounded for the debt or demand or procured the action or proceeding to be stayed or indemnified the defendant to his, her or its

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reasonable satisfaction against the action or proceeding and against all costs, damages and expenses to be incurred by him, her or it by reason of the action or proceeding;

- (c) execution or other process issued on a judgment, decree or order obtained in a court (whether an Australian court or not) in favour of a creditor against the Part 5.7 body or a member of the Part 5.7 body as such, or a person authorised to be sued as nominal defendant on behalf of the Part 5.7 body, is returned unsatisfied; or
- (d) it is otherwise proved to the satisfaction of the Court that the Part 5.7 body is unable to pay its debts.

586 Contributories in winding up of Part 5.7 body

- (1) On a Part 5.7 body being wound up, every person who:
 - (a) in any case—is liable to pay or contribute to the payment of:
 - (i) a debt or liability of the Part 5.7 body;
 - (ii) any sum for the adjustment of the rights of the members among themselves; or
 - (iii) the costs and expenses of winding up; or
 - (b) if the Part 5.7 body has been dissolved or deregistered in its place of origin—was so liable immediately before the dissolution or deregistration;

is a contributory and every contributory is liable to contribute to the property of the Part 5.7 body all sums due from the contributory in respect of any such liability.

- (2) On the death or bankruptcy of a contributory, the provisions of this Law with respect to the personal representatives of deceased contributories or the assignees and trustees of bankrupt contributories, as the case may be, apply.

587 Power of Court to stay or restrain proceedings

- (1) The provisions of this Law with respect to staying and restraining actions and other civil proceedings against a company at any time after the filing of an application for winding up and before the

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making of a winding up order extend, in the case of a Part 5.7 body where the application to stay or restrain is by a creditor, to actions and other civil proceedings against a contributory of the Part 5.7 body.

- (2) Where an order has been made for winding up a Part 5.7 body, no action or other civil proceeding shall be proceeded with or commenced against a contributory of the Part 5.7 body in respect of a debt of the Part 5.7 body except by leave of the Court and subject to such terms as the Court imposes.

588 Outstanding property of defunct registrable body

- (1) This section applies where, after the dissolution or deregistration of a registrable body, there remains in this jurisdiction outstanding property of the body.
- (2) The estate and interest in the property, at law or in equity, of the body or its liquidator at that time, together with all claims, rights and remedies that the body or its liquidator then had in respect of the property, vests by force of this section in:
 - (a) if the body was incorporated in Australia or an external Territory—the person entitled to the property under the law of the body’s place of origin; or
 - (b) otherwise—the Commission.
- (3) Where any claim, right or remedy of a liquidator may under this Law be made, exercised or availed of only with the approval or concurrence of the Court or some other person, the Commission may, for the purposes of this section, make, exercise or avail itself of the claim, right or remedy without such approval or concurrence.
- (4) Section 601AE applies to property that vests in ASIC under this section as if the property were vested in ASIC under subsection 601AD(2).

Part 5.7A—Reciprocity with other jurisdictions

Division 1—Application of Part 5.3A to matters arising under corresponding laws

588AA Application in this jurisdiction

- (1) This section has effect for the purposes of:
 - (a) the administration of a recognised company; or
 - (b) a deed of company arrangement executed by a recognised company;in so far as those purposes concern this jurisdiction.
- (2) Part 5.3A applies in relation to the recognised company in the same way, as nearly as practicable, as it applies in relation to a company.
- (3) Without limiting subsection (2), the administrator of the recognised company, or of the deed, as the case may be, may perform or exercise any function or power under Part 5.3A of a kind that an administrator of a company, or of a deed of company arrangement executed by a company, may perform or exercise under that Part.

588AB Enforcement of orders

- (1) This section applies if:
 - (a) the Federal Court makes under Part 5.3A of the Corporations Law of another jurisdiction; or
 - (b) the Supreme Court of another jurisdiction makes under Part 5.3A of the Corporations Law of any jurisdiction; or
 - (c) the Supreme Court of this jurisdiction makes under Part 5.3A of the Corporations Law of another jurisdiction;an order in connection with the administration of, or a deed of company arrangement executed by, a company within the meaning of that Part of that Law.

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- (2) The order has effect, and may be enforced in all respects, in this jurisdiction as if it were an order made under Part 5.3A, in relation to a company, by:
- (a) if paragraph (1)(a) applies—the Federal Court; or
 - (b) if paragraph (1)(b) or (c) applies—the Supreme Court of this jurisdiction.

Division 2—Winding up recognised companies

588A Enforcement of winding up orders made in other jurisdictions

This section applies where:

- (a) the Federal Court makes under Chapter 5 of the Corporations Law of another jurisdiction; or
- (b) the Supreme Court of another jurisdiction makes under Chapter 5 of the Corporations Law of any jurisdiction; or
- (c) the Supreme Court of this jurisdiction makes under Chapter 5 of the Corporations Law of another jurisdiction;

an order for or in connection with the winding up of a body that is a company or Part 5.7 body within the meaning of that Chapter of that Law.

- (2) The order has effect, and may be enforced in all respects, in this jurisdiction as if it were an order made under this Chapter, in relation to a company or Part 5.7 body, as the case may be, by:
 - (a) if paragraph (1)(a) applies—the Federal Court; or
 - (b) if paragraph (1)(b) or (c) applies—the Supreme Court of this jurisdiction.

588B Functions and powers in this jurisdiction of liquidators from other jurisdictions

The liquidator of a body that is a recognised company and is being wound up under Chapter 5 of the Corporations Law of another jurisdiction may, for the purposes of winding up the body's affairs in this jurisdiction, perform or exercise any function or power under this Chapter of a kind that a liquidator of a company may perform or exercise under this Chapter.

588C Outstanding property of defunct recognised company

Where, after the dissolution or deregistration of a body that was a company or Part 5.7 body within the meaning of Chapter 5 of the

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Corporations Law of another jurisdiction, there remains in this jurisdiction outstanding property of the body, the estate and interest in the property, at law or in equity, of the body or its liquidator at the time of dissolution or deregistration, together with all claims, rights and remedies that the body or its liquidator then had in respect of the property, vests in the person entitled to the property under the law of the body's place of origin.

Part 5.7B—Recovering property or compensation for the benefit of creditors of insolvent company

Division 1—Preliminary

588D Secured debt may become unsecured

For the purposes of this Part, a secured debt becomes an unsecured debt to the extent that the creditor proves for the debt as an unsecured creditor.

588E Presumptions to be made in recovery proceedings

(1) In this section:

recovery proceeding, in relation to a company, means:

- (a) an application under section 588FF by the company's liquidator; or
- (b) proceedings begun under subsection 588FH(2) by the company's liquidator; or
- (c) proceedings, in so far as they relate to the question whether a charge created by the company is void to any extent, as against the company's liquidator, because of subsection 588FJ(2); or
- (d) proceedings begun under subsection 588FJ(6) by the company's liquidator; or
- (e) proceedings for a contravention of section 588G in relation to the incurring of a debt by the company (including proceedings under section 588M in relation to the incurring of the debt but not including proceedings for an offence); or
- (f) proceedings under section 588W in relation to the incurring of a debt by the company.

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- (2) Subsections (3) to (9), inclusive, have effect for the purposes of a recovery proceeding in relation to a company.
- (3) If:
 - (a) the company is being wound up; and
 - (b) it is proved, or because of subsection (4) or (8) it must be presumed, that the company was insolvent at a particular time during the 12 months ending on the relation-back day; it must be presumed that the company was insolvent throughout the period beginning at that time and ending on that day.
- (4) Subject to subsections (5) to (7), if it is proved that the company:
 - (a) has failed to keep financial records in relation to a period as required by subsection 286(1); or
 - (b) has failed to retain financial records in relation to a period for the 7 years required by subsection 286(2);the company is to be presumed to have been insolvent throughout the period.
- (5) Paragraph (4)(a) does not apply in relation to a contravention of subsection 286(1) that is only minor or technical.
- (6) Subsection (4) does not have effect, in so far as it would prejudice a right or interest of a person for the company to be presumed insolvent because of a contravention of subsection 286(2), if it is proved that:
 - (a) the contravention was due solely to someone destroying, concealing or removing financial records of the company; and
 - (b) none of those financial records was destroyed, concealed or removed by the first-mentioned person; and
 - (c) the person was not in any way, by act or omission, directly or indirectly, knowingly or recklessly, concerned in, or party to, destroying, concealing or removing any of those financial records.

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- (7) If the recovery proceeding is an application under section 588FF, subsection (4) of this section does not have effect for the purposes of proving, for the purposes of the application, that an unfair preference given by the company to a creditor of the company is an insolvent transaction, unless it is proved, for the purposes of the application, that a related entity of the company was a party to the unfair preference.
- (8) If, for the purposes of another recovery proceeding in relation to the company, there has been proved:
- (a) if the other proceeding is of the kind referred to in paragraph (1)(a) of this section—a matter of the kind referred to in a paragraph of section 588FC or of subsection 588FG(2); or
 - (b) if the other proceeding is of the kind referred to in paragraph (1)(b) of this section—a matter of the kind referred to in a paragraph of section 588FC or of subsection 588FG(2) or 588FH(1), or a defence under subsection 588FH(3); or
 - (c) if the other proceeding is of the kind referred to in paragraph (1)(c) or (d) of this section—a matter of the kind referred to in subsection 588FJ(3); or
 - (d) if the other proceeding is of the kind referred to in paragraph (1)(e) of this section—a matter of the kind referred to in a paragraph of section 588G, or a defence under section 588H; or
 - (e) if the other proceeding is of the kind referred to in paragraph (1)(f) of this section—a matter of the kind referred to in a paragraph of subsection 588V(1), or a defence under section 588X;
- it must be presumed that that matter was the case, or that the matters constituting that defence were the case.
- (9) A presumption for which this section provides operates except so far as the contrary is proved for the purposes of the proceeding concerned.

588F Certain taxation liabilities taken to be debts

- (1) For the purposes of this Part, a company's liability under a remittance provision to pay to the Commissioner of Taxation an amount equal to a deduction made by the company, after the commencement of this section, from a payment:
 - (a) is taken to be a debt; and
 - (b) is taken to have been incurred when the deduction was made.
- (2) In this section:

remittance provision means any of the following provisions of the *Income Tax Assessment Act 1936*:

 - (a) section 221F (except subsection 221F(12)) or section 221G (except subsection 221G(4A));
 - (b) subsection 221YHDC(2);
 - (c) subsection 221YHZD(1) or (1A);
 - (d) subsection 221YN(1).
- (3) This section is not intended to limit the generality of a reference in this Law to a debt or to incurring a debt.

Division 2—Voidable transactions

588FA Unfair preferences

- (1) A transaction is an unfair preference given by a company to a creditor of the company if, and only if:
 - (a) the company and the creditor are parties to the transaction (even if someone else is also a party); and
 - (b) the transaction results in the creditor receiving from the company, in respect of an unsecured debt that the company owes to the creditor, more than the creditor would receive from the company in respect of the debt if the transaction were set aside and the creditor were to prove for the debt in a winding up of the company;
even if the transaction is entered into, is given effect to, or is required to be given effect to, because of an order of an Australian court or a direction by an agency.
- (2) For the purposes of subsection (1), a secured debt is taken to be unsecured to the extent of so much of it (if any) as is not reflected in the value of the security.
- (3) Where:
 - (a) a transaction is, for commercial purposes, an integral part of a continuing business relationship (for example, a running account) between a company and a creditor of the company (including such a relationship to which other persons are parties); and
 - (b) in the course of the relationship, the level of the company's net indebtedness to the creditor is increased and reduced from time to time as the result of a series of transactions forming part of the relationship;then:

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- (c) subsection (1) applies in relation to all the transactions forming part of the relationship as if they together constituted a single transaction; and
- (d) the transaction referred to in paragraph (a) may only be taken to be an unfair preference given by the company to the creditor if, because of subsection (1) as applying because of paragraph (c) of this subsection, the single transaction referred to in the last-mentioned paragraph is taken to be such an unfair preference.

588FB Uncommercial transactions

- (1) A transaction of a company is an uncommercial transaction of the company if, and only if, it may be expected that a reasonable person in the company's circumstances would not have entered into the transaction, having regard to:
 - (a) the benefits (if any) to the company of entering into the transaction; and
 - (b) the detriment to the company of entering into the transaction; and
 - (c) the respective benefits to other parties to the transaction of entering into it; and
 - (d) any other relevant matter.
- (2) A transaction may be an uncommercial transaction of a company because of subsection (1):
 - (a) whether or not a creditor of the company is a party to the transaction; and
 - (b) even if the transaction is given effect to, or is required to be given effect to, because of an order of an Australian court or a direction by an agency.

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588FC Insolvent transactions

A transaction of a company is an insolvent transaction of the company if, and only if, it is an unfair preference given by the company, or an uncommercial transaction of the company, and:

- (a) any of the following happens at a time when the company is insolvent:
 - (i) the transaction is entered into;
 - (ii) an act is done, or an omission is made, for the purpose of giving effect to the transaction; or
- (b) the company becomes insolvent because of, or because of matters including:
 - (i) entering into the transaction; or
 - (ii) a person doing an act, or making an omission, for the purpose of giving effect to the transaction.

588FD Unfair loans to a company

- (1) A loan to a company is unfair if, and only if:
 - (a) the interest on the loan was extortionate when the loan was made, or has since become extortionate because of a variation; or
 - (b) the charges in relation to the loan were extortionate when the loan was made, or have since become extortionate because of a variation;even if the interest is, or the charges are, no longer extortionate.
- (2) In determining:
 - (a) whether interest on a loan was or became extortionate at a particular time as mentioned in paragraph (1)(a); or
 - (b) whether charges in relation to a loan were or became extortionate at a particular time as mentioned in paragraph (1)(b);regard is to be had to the following matters as at that time:
 - (c) the risk to which the lender was exposed; and

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- (d) the value of any security in respect of the loan; and
- (e) the term of the loan; and
- (f) the schedule for payments of interest and charges and for repayments of principal; and
- (g) the amount of the loan; and
- (h) any other relevant matter.

588FE Voidable transactions

- (1) Where a company is being wound up, a transaction of the company that was entered into at or after the commencement of this Part may be voidable because of any one or more of the following subsections.
- (2) The transaction is voidable if:
 - (a) it is an insolvent transaction of the company; and
 - (b) it was entered into, or an act was done for the purpose of giving effect to it:
 - (i) during the 6 months ending on the relation-back day; or
 - (ii) after that day but on or before the day when the winding up began.
- (3) The transaction is voidable if:
 - (a) it is an insolvent transaction, and also an uncommercial transaction, of the company; and
 - (b) it was entered into, or an act was done for the purpose of giving effect to it, during the 2 years ending on the relation-back day.
- (4) The transaction is voidable if:
 - (a) it is an insolvent transaction of the company; and
 - (b) a related entity of the company is a party to it; and
 - (c) it was entered into, or an act was done for the purpose of giving effect to it, during the 4 years ending on the relation-back day.

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- (5) The transaction is voidable if:
 - (a) it is an insolvent transaction of the company; and
 - (b) the company became a party to the transaction for the purpose, or for purposes including the purpose, of defeating, delaying, or interfering with, the rights of any or all of its creditors on a winding up of the company; and
 - (c) the transaction was entered into, or an act done was for the purpose of giving effect to the transaction, during the 10 years ending on the relation-back day.
- (6) The transaction is voidable if it is an unfair loan to the company made at any time on or before the day when the winding up began.
- (7) A reference in this section to doing an act includes a reference to making an omission.

588FF Courts may make orders about voidable transactions

- (1) Where, on the application of a company's liquidator, a court is satisfied that a transaction of the company is voidable because of section 588FE, the court may make one or more of the following orders:
 - (a) an order directing a person to pay to the company an amount equal to some or all of the money that the company has paid under the transaction;
 - (b) an order directing a person to transfer to the company property that the company has transferred under the transaction;
 - (c) an order requiring a person to pay to the company an amount that, in the court's opinion, fairly represents some or all of the benefits that the person has received because of the transaction;
 - (d) an order requiring a person to transfer to the company property that, in the court's opinion, fairly represents the application of either or both of the following:
 - (i) money that the company has paid under the transaction;

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- (ii) proceeds of property that the company has transferred under the transaction;
 - (e) an order releasing or discharging, wholly or partly, a debt incurred, or a security or guarantee given, by the company under or in connection with the transaction;
 - (f) if the transaction is an unfair loan and such a debt, security or guarantee has been assigned—an order directing a person to indemnify the company in respect of some or all of its liability to the assignee;
 - (g) an order providing for the extent to which, and the terms on which, a debt that arose under, or was released or discharged to any extent by or under, the transaction may be proved in a winding up of the company;
 - (h) an order declaring an agreement constituting, forming part of, or relating to, the transaction, or specified provisions of such an agreement, to have been void at and after the time when the agreement was made, or at and after a specified later time;
 - (i) an order varying such an agreement as specified in the order and, if the Court thinks fit, declaring the agreement to have had effect, as so varied, at and after the time when the agreement was made, or at and after a specified later time;
 - (j) an order declaring such an agreement, or specified provisions of such an agreement, to be unenforceable.
- (2) Nothing in subsection (1) limits the generality of anything else in it.
- (3) An application under subsection (1) may only be made:
- (a) within 3 years after the relation-back day; or
 - (b) within such longer period as the Court orders on an application under this paragraph made by the liquidator within those 3 years.

588FG Transaction not voidable as against certain persons

- (1) A court is not to make under section 588FF an order materially prejudicing a right or interest of a person other than a party to the transaction if it is proved that:
 - (a) the person received no benefit because of the transaction; or
 - (b) in relation to each benefit that the person received because of the transaction:
 - (i) the person received the benefit in good faith; and
 - (ii) at the time when the person received the benefit:
 - (A) the person had no reasonable grounds for suspecting that the company was insolvent at that time or would become insolvent as mentioned in paragraph 588FC(b); and
 - (B) a reasonable person in the person's circumstances would have had no such grounds for so suspecting.
- (2) A court is not to make under section 588FF an order materially prejudicing a right or interest of a person if the transaction is not an unfair loan to the company and it is proved that:
 - (a) the person became a party to the transaction in good faith; and
 - (b) at the time when the person became such a party:
 - (i) the person had no reasonable grounds for suspecting that the company was insolvent at that time or would become insolvent as mentioned in paragraph 588FC(b); and
 - (ii) a reasonable person in the person's circumstances would have had no such grounds for so suspecting; and
 - (c) the person has provided valuable consideration under the transaction or has changed his, her or its position in reliance on the transaction.

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- (3) For the purposes of paragraph (2)(c), if an amount has been paid or applied towards discharging to a particular extent a liability to pay tax, the discharge is valuable consideration provided:
- (a) by the person to whom the tax is payable; and
 - (b) under any transaction that consists of, or involves, the payment or application.
- (4) In subsection (3):
- tax* means tax (however described) payable under a law of the Commonwealth or of a State or Territory, and includes, for example, a levy, a charge, and municipal or other rates.
- (5) For the purposes of paragraph (2)(c), if an amount has been paid or applied towards discharging to a particular extent a liability to the Commonwealth, or to the Commissioner of Taxation, that arose under or because of an Act of which the Commissioner has the general administration, the discharge is valuable consideration provided by the Commonwealth, or by the Commissioner, as the case requires, under any transaction that consists of, or involves, the payment or application.
- (6) Subsections (3) and (5):
- (a) are to avoid doubt and are not intended to limit the cases where a person may be taken to have provided valuable consideration under a transaction; and
 - (b) apply to an amount even if it was paid or applied before the commencement of this subsection.

588FGA Directors to indemnify Commissioner of Taxation if certain payments set aside

- (1) This section applies if the Court makes an order under section 588FF against the Commissioner of Taxation because of the payment of an amount in respect of a liability under any of the following provisions of the *Income Tax Assessment Act 1936*:

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- (a) section 221F (except subsection 221F(12)), section 221G (except subsection 221G(4A)) or section 221P;
 - (b) subsection 221YHDC(2);
 - (c) subsection 221YHZD(1) or (1A);
 - (d) subsection 221YN(1);
 - (e) section 222AHA.
- (2) Each person who was a director of the company when the payment was made is liable to indemnify the Commissioner in respect of any loss or damage resulting from the order.
- (3) An amount payable to the Commissioner under subsection (2):
- (a) is a debt due to the Commonwealth and payable to the Commissioner; and
 - (b) may be recovered in a court of competent jurisdiction by the Commissioner, or a Deputy Commissioner of Taxation, suing in his or her official name.
- (4) The Court may, in the proceedings in which it made the order against the Commissioner, order a person to pay to the Commissioner an amount payable by the person under subsection (2).
- (5) A person who pays an amount under subsection (2) has the same rights:
- (a) whether by way of indemnity, subrogation, contribution or otherwise; and
 - (b) against the company or anyone else;
- as if the payment had been made under a guarantee:
- (c) of the liability referred to in subsection (1); and
 - (d) under which the person and every other person who was a director of the company as mentioned in subsection (2) were jointly and severally liable as guarantors.

588FGB Defences in proceedings under section 588FGA

- (1) This section has effect for the purposes of:
 - (a) proceedings to recover from a person an amount payable under subsection 588FGA(2); and
 - (b) proceedings under subsection 588FGA(5) against a person of the kind referred to in paragraph 588FGA(5)(d).
- (2) The time when the payment referred to in subsection 588FGA(1) was made is called the payment time.
- (3) It is a defence if it is proved that, at the payment time, the person had reasonable grounds to expect, and did expect, that the company was solvent at that time and would remain solvent even if it made the payment.
- (4) Without limiting the generality of subsection (3), it is a defence if it is proved that, at the payment time, the person:
 - (a) had reasonable grounds to believe, and did believe:
 - (i) that a competent and reliable person (*the other person*) was responsible for providing to the first-mentioned person adequate information about whether the company was solvent; and
 - (ii) that the other person was fulfilling that responsibility; and
 - (b) expected, on the basis of information provided to the first-mentioned person by the other person, that the company was solvent at that time and would remain solvent even if it made the payment.
- (5) It is a defence if it is proved that, because of illness or for some other good reason, the person did not take part in the management of the company at the payment time.
- (6) It is a defence if it is proved that:
 - (a) the person took all reasonable steps to prevent the company from making the payment; or

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- (b) there were no such steps the person could have taken.
- (7) In determining whether a defence under subsection (6) has been proved, the matters to which regard is to be had include, but are not limited to:
 - (a) any action the person took with a view to appointing an administrator of the company; and
 - (b) when that action was taken; and
 - (c) the results of that action.

588FH Liquidator may recover from related entity benefit resulting from insolvent transaction

- (1) This section applies where a company is being wound up and a transaction of the company:
 - (a) is an insolvent transaction of the company; and
 - (b) is voidable under section 588FE; and
 - (c) has had the effect of discharging, to the extent of a particular amount, a liability (whether under a guarantee or otherwise and whether contingent or otherwise) of a related entity of the company.
- (2) The company's liquidator may recover from the related entity, as a debt due to the company, an amount equal to the amount referred to in paragraph (1)(c).
- (3) In deciding what orders (if any) to make under section 588FF on an application relating to the transaction, a court must take into account any amount recovered under subsection (2) of this section.
- (4) If the liquidator recovers an amount under subsection (2) from the related entity, the related entity has the same rights:
 - (a) whether by way of indemnity, subrogation, contribution or otherwise; and
 - (b) against the company or anyone else;

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as if the related entity had paid the amount in discharging, to the extent of that amount, the liability referred to in paragraph (1)(c).

588FI Creditor who gives up benefit of unfair preference may prove for preferred debt

- (1) This section applies where:
 - (a) a transaction is an unfair preference given by a company to a creditor of the company after the commencement of this Part; and
 - (b) at the request of the company's liquidator, because of an order under section 588FF, or for any other reason, the creditor has put the company in the same position as if the transaction had not been entered into.
- (2) A court must not make under section 588FF, on an application relating to the transaction, an order prejudicing a right or interest of the creditor.
- (3) The creditor may prove in the winding up as if the transaction had not been entered into.

588FJ Floating charge created within 6 months before relation-back day

- (1) This section applies if:
 - (a) a company is being wound up in insolvency; and
 - (b) the company created a floating charge on property of the company at a particular time that is at or after the commencement of this Part and:
 - (i) during the 6 months ending on the relation-back day; or
 - (ii) after that day but on or before the day when the winding up began.
- (2) The charge is void, as against the company's liquidator, except so far as it secures:

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- (a) an advance paid to the company, or at its direction, at or after that time and as consideration for the charge; or
 - (b) interest on such an advance; or
 - (c) the amount of a liability under a guarantee or other obligation undertaken at or after that time on behalf of, or for the benefit of, the company; or
 - (d) an amount payable for property or services supplied to the company at or after that time; or
 - (e) interest on an amount so payable.
- (3) Subsection (2) does not apply if it is proved that the company was solvent immediately after that time.
- (4) Paragraphs (2)(a) and (b) do not apply in relation to an advance so far as it was applied to discharge, directly or indirectly, an unsecured debt, whether contingent or otherwise, that the company owed to:
- (a) the chargee; or
 - (b) if the chargee was a body corporate—a related entity of the body.
- (5) Paragraphs (2)(d) and (e) do not apply in relation to an amount payable as mentioned in paragraph (2)(d) in so far as the amount exceeds the market value of the property or services when supplied to the company.
- (6) If, during the 6 months ending on the relation-back day, or after that day but on or before the day when the winding up began, a debt secured by the charge was discharged, out of the company's money or property, to the extent of a particular amount (in this subsection called the *realised amount*), the liquidator may, by proceedings in a court of competent jurisdiction, recover from the chargee, as a debt due to the company, the amount worked out in accordance with the formula:

Unsecured amount – Realisation costs

where:

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Unsecured amount means so much of the realised amount as does not exceed so much of the debt as would, if the debt had not been so discharged, have been unsecured, as against the liquidator, because of subsection (2);

Realisation costs means so much (if any) of the costs and expenses of enforcing the charge as is attributable to realising the realised amount.

Division 3—Director's duty to prevent insolvent trading

588G Director's duty to prevent insolvent trading by company

- (1) This section applies if:
- (a) a person is a director of a company at the time when the company incurs a debt; and
 - (b) the company is insolvent at that time, or becomes insolvent by incurring that debt, or by incurring at that time debts including that debt; and
 - (c) at that time, there are reasonable grounds for suspecting that the company is insolvent, or would so become insolvent, as the case may be; and
 - (d) that time is at or after the commencement of this Part.

- (1A) For the purposes of this section, if a company takes action set out in column 2 of the following table, it incurs a debt at the time set out in column 3.

When debts are incurred		[operative table]
Action of company	When debt is incurred	
1 paying a dividend	when the dividend is paid or, if the company has a constitution that provides for the declaration of dividends, when the dividend is declared	
2 making a reduction of share capital to which Division 1 of Part 2J.1 applies (other than a reduction that consists only of the cancellation of a share or shares for no consideration)	when the reduction takes effect	

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When debts are incurred		[operative table]
	Action of company	When debt is incurred
3	buying back shares (even if the consideration is not a sum certain in money)	when the buy-back agreement is entered into
4	redeeming redeemable preference shares that are redeemable at its option	when the company exercises the option
5	issuing redeemable preference shares that are redeemable otherwise than at its option	when the shares are issued
6	financially assisting a person to acquire shares (or units of shares) in itself or a holding company	when the agreement to provide the assistance is entered into or, if there is no agreement, when the assistance is provided

- (2) By failing to prevent the company from incurring the debt, the person contravenes this section if:
- (a) the person is aware at that time that there are such grounds for so suspecting; or
 - (b) a reasonable person in a like position in a company in the company's circumstances would be so aware.
- (3) This section is a civil penalty provision as defined by section 1317DA, so Part 9.4B provides for civil and criminal consequences of contravening it, or of being involved in a contravention of it.
- (4) The provisions of Division 4 of this Part are additional to, and do not derogate from, Part 9.4B as it applies in relation to a contravention of this section.

588H Defences

- (1) This section has effect for the purposes of proceedings for a contravention of section 588G in relation to the incurring of a debt

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(including proceedings under section 588M in relation to the incurring of the debt).

- (2) It is a defence if it is proved that, at the time when the debt was incurred, the person had reasonable grounds to expect, and did expect, that the company was solvent at that time and would remain solvent even if it incurred that debt and any other debts that it incurred at that time.
- (3) Without limiting the generality of subsection (2), it is a defence if it is proved that, at the time when the debt was incurred, the person:
 - (a) had reasonable grounds to believe, and did believe:
 - (i) that a competent and reliable person (*the other person*) was responsible for providing to the first-mentioned person adequate information about whether the company was solvent; and
 - (ii) that the other person was fulfilling that responsibility; and
 - (b) expected, on the basis of information provided to the first-mentioned person by the other person, that the company was solvent at that time and would remain solvent even if it incurred that debt and any other debts that it incurred at that time.
- (4) If the person was a director of the company at the time when the debt was incurred, it is a defence if it is proved that, because of illness or for some other good reason, he or she did not take part at that time in the management of the company.
- (5) It is a defence if it is proved that the person took all reasonable steps to prevent the company from incurring the debt.
- (6) In determining whether a defence under subsection (5) has been proved, the matters to which regard is to be had include, but are not limited to:

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- (a) any action the person took with a view to appointing an administrator of the company; and
- (b) when that action was taken; and
- (c) the results of that action.

Division 4—Director liable to compensate company

Subdivision A—Proceedings against director

588J On application for civil penalty order, Court may order compensation

- (1) Where, on an application for a civil penalty order against a person in relation to a contravention of section 588G, the Court is satisfied that:
 - (a) the person committed the contravention in relation to the incurring of a debt by a company; and
 - (b) the debt is wholly or partly unsecured; and
 - (c) the person to whom the debt is owed has suffered loss or damage in relation to the debt because of the company's insolvency;the Court may (whether or not it makes an order under subsection 1317EA(3)) order the first-mentioned person to pay to the company compensation equal to the amount of that loss or damage.
- (2) A company's liquidator may intervene in an application for a civil penalty order against a person in relation to a contravention of section 588G, unless the application was made under Division 4 of Part 9.4B.
- (3) A company's liquidator who so intervenes is entitled to be heard:
 - (a) only if the Court is satisfied that the person committed the contravention in relation to the incurring of a debt by that company; and
 - (b) only on the question whether the Court should order the person to pay compensation to the company.

588K Criminal court may order compensation

(1) If:

- (a) a court finds a person guilty of an offence constituted by a contravention of section 588G in relation to the incurring of a debt by a company; and
- (b) the court is satisfied that:
 - (i) the debt is wholly or partly unsecured; and
 - (ii) the person to whom the debt is owed has suffered loss or damage in relation to the debt because of the company's insolvency;

the court may (whether or not it imposes a penalty) order the first-mentioned person to pay to the company compensation equal to the amount of that loss or damage.

Note: Section 73A defines when a court is taken to find a person guilty of an offence.

(2) If:

- (a) a court declares under Division 4 of Part 9.4B that a person has, by failing to prevent a company from incurring a debt, contravened section 588G in relation to the company; and
- (b) the court is satisfied that:
 - (i) the debt is wholly or partly unsecured; and
 - (ii) the person to whom the debt is owed has suffered loss or damage in relation to the debt because of the company's insolvency;

the court may (whether or not it makes an order under subsection 1317EA(3)) order the first-mentioned person to pay to the company compensation equal to the amount of that loss or damage.

588L Enforcement of order under section 588J or 588K

An order to pay compensation that a court makes under section 588J or 588K may be enforced as if it were a judgment of the court.

588M Recovery of compensation for loss resulting from insolvent trading

- (1) This section applies where:
 - (a) a person (in this section called the *director*) has contravened section 588G in relation to the incurring of a debt by a company; and
 - (b) the person (in this section called the *creditor*) to whom the debt is owed has suffered loss or damage in relation to the debt because of the company's insolvency; and
 - (c) the debt was wholly or partly unsecured when the loss or damage was suffered; and
 - (d) the company is being wound up;
whether or not:
 - (e) the director has been convicted of an offence in relation to the contravention; or
 - (f) a civil penalty order has been made against the director in relation to the contravention.
- (2) The company's liquidator may recover from the director, as a debt due to the company, an amount equal to the amount of the loss or damage.
- (3) The creditor may, as provided in Subdivision B but not otherwise, recover from the director, as a debt due to the creditor, an amount equal to the amount of the loss or damage.
- (4) Proceedings under this section may only be begun within 6 years after the beginning of the winding up.

588N Avoiding double recovery

An amount recovered in proceedings under section 588M in relation to the incurring of a debt by a company is to be taken into account in working out the amount (if any) recoverable in any other proceedings under that section in relation to the incurring of the debt.

588P Effect of sections 588J, 588K and 588M

Sections 588J, 588K and 588M:

- (a) have effect in addition to, and not in derogation of, any rule of law about the duty or liability of a person because of the person's office or employment in relation to a company; and
- (b) do not prevent proceedings from being instituted in respect of a breach of such a duty or in respect of such a liability.

588Q Certificates evidencing contravention

For the purposes of this Part, a certificate that:

- (a) purports to be signed by the Registrar or other proper officer of an Australian court; and
- (b) states:
 - (i) that that court has declared that a specified person has, by failing to prevent a specified company from incurring a specified debt, contravened section 588G in relation to the company; or
 - (ii) that a specified person was convicted by that court for an offence constituted by a contravention of section 588G in relation to the incurring of a specified debt by a specified company; or
 - (iii) that a specified person charged before that court with such an offence was found in that court to have committed the offence but that the court did not proceed to convict the person of the offence;

is, unless it is proved that the declaration, conviction or finding was set aside, quashed or reversed, conclusive evidence:

- (c) that the declaration was made, that the person was convicted of the offence, or that the person was so found, as the case may be; and
- (d) that the person committed the contravention.

Subdivision B—Proceedings by creditor

588R Creditor may sue for compensation with liquidator's consent

- (1) A creditor of a company that is being wound up may, with the written consent of the company's liquidator, begin proceedings under section 588M in relation to the incurring by the company of a debt that is owed to the creditor.
- (2) Subsection (1) has effect despite section 588T, but subject to section 588U.

588S Creditor may give liquidator notice of intention to sue for compensation

After the end of 6 months beginning when a company begins to be wound up, a creditor of the company may give to the company's liquidator a written notice:

- (a) stating that the creditor intends to begin proceedings under section 588M in relation to the incurring by the company of a specified debt that is owed to the creditor; and
- (b) asking the liquidator to give to the creditor, within 3 months after receiving the notice:
 - (i) a written consent to the creditor beginning the proceedings; or
 - (ii) a written statement of the reasons why the liquidator thinks that proceedings under section 588M in relation to the incurring of that debt should not be begun.

588T When creditor may sue for compensation without liquidator's consent

- (1) This section applies where a notice is given under section 588S.

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- (2) The creditor may begin proceedings in a court under section 588M in relation to the incurring by the company of the debt specified in the notice if:
- (a) as at the end of 3 months after the liquidator receives the notice, he or she has not consented to the creditor beginning such proceedings; and
 - (b) on an application made after those 3 months, the court has given leave for the proceedings to begin.
- (3) If:
- (a) during those 3 months, the liquidator gives to the creditor a written statement of the reasons why the liquidator thinks that such proceedings should not be begun; and
 - (b) the creditor applies for leave under paragraph (2)(b);
- then:
- (c) the creditor must file the statement with the court when so applying; and
 - (d) in determining the application, the court is to have regard to the reasons set out in the statement.

588U Events preventing creditor from suing

- (1) A creditor of a company that is being wound up cannot begin proceedings under section 588M in relation to the incurring of a debt by the company if:
- (a) the company's liquidator has applied under section 588FF in relation to the debt, or in relation to a transaction under which the debt was incurred; or
 - (b) the company's liquidator has begun proceedings under section 588M in relation to the incurring of the debt; or
 - (c) the company's liquidator has intervened in an application for a civil penalty order against a person in relation to a contravention of section 588G in relation to the incurring of the debt.
- (2) Subsection (1) has effect despite sections 588R and 588T.

Division 5—Liability of holding company for insolvent trading by subsidiary

588V When holding company liable

- (1) A corporation contravenes this section if:
 - (a) the corporation is the holding company of a company at the time when the company incurs a debt; and
 - (b) the company is insolvent at that time, or becomes insolvent by incurring that debt, or by incurring at that time debts including that debt; and
 - (c) at that time, there are reasonable grounds for suspecting that the company is insolvent, or would so become insolvent, as the case may be; and
 - (d) one or both of the following subparagraphs applies:
 - (i) the corporation, or one or more of its directors, is or are aware at that time that there are such grounds for so suspecting;
 - (ii) having regard to the nature and extent of the corporation's control over the company's affairs and to any other relevant circumstances, it is reasonable to expect that:
 - (A) a holding company in the corporation's circumstances would be so aware; or
 - (B) one or more of such a holding company's directors would be so aware; and
 - (e) that time is at or after the commencement of this Part.
- (2) A corporation that contravenes this section is not guilty of an offence.

588W Recovery of compensation for loss resulting from insolvent trading

- (1) Where:
 - (a) a corporation has contravened section 588V in relation to the incurring of a debt by a company; and
 - (b) the person to whom the debt is owed has suffered loss or damage in relation to the debt because of the company's insolvency; and
 - (c) the debt was wholly or partly unsecured when the loss or damage was suffered; and
 - (d) the company is being wound up;the company's liquidator may recover from the corporation, as a debt due to the company, an amount equal to the amount of the loss or damage.
- (2) Proceedings under this section may only be begun within 6 years after the beginning of the winding up.

588X Defences

- (1) This section has effect for the purposes of proceedings under section 588W.
- (2) It is a defence if it is proved that, at the time when the debt was incurred, the corporation, and each relevant director (if any), had reasonable grounds to expect, and did expect, that the company was solvent at that time and would remain solvent even if it incurred that debt and any other debts that it incurred at that time.
- (3) Without limiting the generality of subsection (2), it is a defence if it is proved that, at the time when the debt was incurred, the corporation, and each relevant director (if any):
 - (a) had reasonable grounds to believe, and did believe:
 - (i) that a competent and reliable person was responsible for providing to the corporation adequate information about whether the company was solvent; and

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- (ii) that the person was fulfilling that responsibility; and
 - (b) expected, on the basis of the information provided to the corporation by the person, that the company was solvent at that time and would remain solvent even if it incurred that debt and any other debts that it incurred at that time.
- (4) If it is proved that, because of illness or for some other good reason, a particular relevant director did not take part in the management of the corporation at the time when the company incurred the debt, the fact that the director was aware as mentioned in subparagraph 588V(1)(d)(i) is to be disregarded.
- (5) It is a defence if it is proved that the corporation took all reasonable steps to prevent the company from incurring the debt.
- (6) In subsections (2), (3) and (4):

relevant director means a director of the corporation who was aware as mentioned in subparagraph 588V(1)(d)(i).

Division 6—Application of compensation under Division 4 or 5

588Y Application of amount paid as compensation

- (1) An amount paid to a company under section 588J, 588K, 588M or 588W is not available to pay a secured debt of the company unless all the company's unsecured debts have been paid in full.
- (2) Where:
 - (a) under section 588J or 588K, or in proceedings under section 588M or 588W, a court orders a person to pay to the company compensation, or an amount, equal to the amount of loss or damage suffered by a person in relation to a debt because of the company's insolvency; and
 - (b) the court is satisfied that, at the time when the company incurred the debt, the person who suffered the loss or damage knew that the company was insolvent at that time or would become insolvent by incurring the debt, or by incurring at that time debts including the debt, as the case requires;the court may order that the compensation or amount paid to the company is not available to pay that debt unless all the company's unsecured debts (other than debts to which orders under this subsection relate) have been paid in full.
- (3) Subsection (2) does not apply in relation to proceedings under section 588M in relation to the incurring of a debt by a company if the proceedings are begun by a creditor of the company (as provided for in Subdivision B of Division 4).
- (4) Subsection (2) does not apply in relation to a liability that is taken to be a debt because of section 588F.

**Division 7—Person managing company while disqualified
may become liable for company's debts**

588Z Court may make order imposing liability

Where:

- (a) a company is being wound up; and
- (b) at or after the commencement of this Part and within 4 years before the relation-back day, a person contravened:
 - (i) section 229, 230, 599, 600 or 1317EF; or
 - (ii) a previous law corresponding to a section referred to in subparagraph (i);

by managing the company (as defined by section 91A);
the Court may, on the application of the company's liquidator,
order that the person is personally liable for so much of the
company's debts and liabilities as does not exceed an amount
specified in the order.

Part 5.8—Offences

589 Interpretation and application

- (1) Sections 590 to 593 (inclusive) apply to a company:
 - (a) that has been wound up or is in the course of being wound up;
 - (b) that has been in the course of being wound up, where the winding up has been stayed or terminated by an order under section 482;
 - (ba) of which a provisional liquidator has been appointed;
 - (c) that is or has been under administration;
 - (ca) that has executed a deed of company arrangement, even if the deed has since terminated;
 - (d) affairs of which are or have been under investigation;
 - (e) in respect of property of which a receiver, or a receiver and manager, has at any time been appointed, whether by the Court or under a power contained in an instrument, whether or not the appointment has been terminated;
 - (f) that has ceased to carry on business or is unable to pay its debts; or
 - (g) that has entered into a compromise or arrangement with its creditors.

- (2) For the purposes of this Part, affairs of a company are or have been under investigation if, and only if:
 - (a) the Commission is investigating, or has at any time investigated, under Division 1 of Part 3 of the ASC Law:
 - (i) matters being, or connected with, affairs of the company; or
 - (ii) matters including such matters; or
 - (b) affairs of the company have at any time been under investigation under Part VII of the *Companies Act 1981* or

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the provisions of a previous law of this or any other jurisdiction that correspond to that Part.

- (3) For the purposes of this Part, a company is taken to have ceased to carry on business only if:
- (a) ASIC has published in the *Gazette* a notice of the proposed deregistration of the company under subsection 601AA(4) or 601AB(3); and
 - (b) if the notice was published under subsection 601AA(4) or under subsection 601AB(3) because of a decision under subsection 601AB(1)—2 months have passed since the notice was published and ASIC has not been informed that the company is carrying on business.
- (4) For the purposes of this Part, a company shall be deemed to be unable to pay its debts if, and only if, execution or other process issued on a judgment, decree or order of a court (whether or not an Australian court) in favour of a creditor of the company is returned unsatisfied in whole or in part.
- (5) In this Part:

appropriate officer means:

- (a) in relation to a company that has been, has been being or is being wound up—the liquidator;
- (aa) in relation to a company of which a provisional liquidator has been appointed—the provisional liquidator;
- (b) in relation to a company that is or has been under administration—the administrator;
- (ba) in relation to a company that has executed a deed of company arrangement—the deed’s administrator;
- (c) in relation to a company affairs of which are or have been under investigation—the Commission or the NCSC, as the case requires;
- (d) in relation to a company in respect of property of which a receiver, or a receiver and manager, has been appointed—the receiver or the receiver and manager;

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- (e) in relation to a company that has ceased to carry on business or is unable to pay its debts—the Commission or the NCSC, as the case requires; and
- (f) in relation to a company that has entered into a compromise or arrangement with its creditors—the person appointed by the Court to administer the compromise or arrangement;

relevant day means the day on which:

- (a) in relation to a company that has been wound up, has been in the course of being wound up, or is being wound up:
 - (i) if, because of Division 1A of Part 5.6, the winding up is taken to have begun on the day when an order that the company be wound up was made—the application for the order was filed; or
 - (ii) otherwise—the winding up is taken because of Division 1A of Part 5.6 to have begun;
- (aa) in relation to a company of which a provisional liquidator has been appointed—the provisional liquidator was appointed;
- (b) in relation to a company that is or has been under administration—the administration began;
- (ba) in relation to a company that has executed a deed of company arrangement—the deed was executed;
- (c) in relation to a company affairs of which are or have been under investigation:
 - (i) if paragraph (2)(a) applies—the investigation began; or
 - (ii) if paragraph (2)(b) applies—a direction was given to the NCSC to arrange for the investigation;
- (d) in relation to a company in respect of property of which a receiver, or a receiver and manager, has been appointed—the receiver, or the receiver and manager, was appointed;
- (e) in relation to a company that is unable to pay its debts—the execution or other process was returned unsatisfied in whole or in part;
- (f) in relation to a company that has ceased to carry on business—a notice was first published in relation to the company under subsection 601AA(4) or 601AB(3);

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- (g) in relation to a company that has entered into a compromise or arrangement with its creditors—the compromise or arrangement was approved by the Court.
- (6) This Part applies in relation to a Division 2, 3 or 4 company:
 - (a) as if, in this Part (other than section 595) as so applying:
 - (i) a reference to the company included a reference to the company as it existed at a time before its registration day (including a time before the commencement of this subsection);
 - (ii) a reference to a provision of this Law included a reference to a previous law corresponding to that provision; and
 - (iii) a reference, in relation to a provision of this Law, to the Commission included a reference to the NCSC; and
 - (b) with such other modifications as the circumstances require.

590 Offences by officers of certain companies

- (1) A person who, being a past or present officer of a company to which this section applies:
 - (a) does not, so far as the person is capable of doing so, disclose to the appropriate officer all the property of the company, and how and to whom and for what consideration and when any part of the property of the company was disposed of within 10 years next before the relevant day, except such part as has been disposed of in the ordinary course of the business of the company;
 - (b) does not deliver up to, or in accordance with the directions of, the appropriate officer:
 - (i) all the property of the company in the person's possession; or
 - (ii) all books in the person's possession belonging to the company (except books of which the person is entitled, as against the company and the appropriate officer, to retain possession);

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- (c) has, within 10 years next before the relevant day or at a time on or after that day:
 - (i) fraudulently concealed or removed any part of the property of the company to the value of \$100 or more;
 - (ii) concealed any debt due to or by the company;
 - (iii) fraudulently parted with, altered or made any omission in, or been privy to fraudulent parting with, altering or making any omission in, any book affecting or relating to affairs of the company;
 - (iv) by any false representation or other fraud, obtained on credit, for or on behalf of the company, any property that the company has not subsequently paid for; or
 - (v) fraudulently pawned, pledged or disposed of, otherwise than in the ordinary course of the business of the company, property of the company that has been obtained on credit and has not been paid for;
- (d) fraudulently makes any material omission in any statement or report relating to affairs of the company;
- (e) knowing or believing that a false debt has been proved by a person, fails for a period of one month to inform the appropriate officer of his or her knowledge or belief;
- (f) prevents the production to the appropriate officer of any book affecting or relating to affairs of the company;
- (g) has, within 10 years next before the relevant day or at a time on or after that day, attempted to account for any part of the property of the company by making entries in the books of the company showing fictitious transactions, losses or expenses; or
- (h) has, within 10 years next before the relevant day or at a time on or after that day, been guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to affairs of the company or to the winding up; contravenes this subsection.

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- (5) Where a person pawns, pledges or disposes of any property in circumstances that amount to a contravention by virtue of subparagraph (1)(c)(v), a person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in those circumstances contravenes this subsection.
- (6) A person who takes in pawn or pledge or otherwise receives property in circumstances mentioned in subsection (5) and with the knowledge mentioned in that subsection shall be deemed to hold the property as trustee for the company concerned and is liable to account to the company for the property.
- (7) Where, in proceedings under subsection (6), it is necessary to establish that a person has taken property in pawn or pledge, or otherwise received property:
 - (a) in circumstances mentioned in subsection (5); and
 - (b) with the knowledge mentioned in that subsection;the matter referred to in paragraph (b) of this subsection may be established on the balance of probabilities.

592 Incurring of certain debts; fraudulent conduct

- (1) Where:
 - (a) a company has incurred a debt before the commencement of Part 5.7B;
 - (b) immediately before the time when the debt was incurred:
 - (i) there were reasonable grounds to expect that the company will not be able to pay all its debts as and when they become due; or
 - (ii) there were reasonable grounds to expect that, if the company incurs the debt, it will not be able to pay all its debts as and when they become due; and
 - (c) the company was, at the time when the debt was incurred, or becomes at a later time, a company to which this section applies;any person who was a director of the company, or took part in the management of the company, at the time when the debt was

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incurred contravenes this subsection and the company and that person or, if there are 2 or more such persons, those persons are jointly and severally liable for the payment of the debt.

- (2) In any proceedings against a person under subsection (1), it is a defence if it is proved:
 - (a) that the debt was incurred without the person's express or implied authority or consent; or
 - (b) that at the time when the debt was incurred, the person did not have reasonable cause to expect:
 - (i) that the company would not be able to pay all its debts as and when they became due; or
 - (ii) that, if the company incurred that debt, it would not be able to pay all its debts as and when they became due.
- (3) Proceedings may be brought under subsection (1) for the recovery of a debt whether or not the person against whom the proceedings are brought, or any other person, has been convicted of an offence under subsection (1) in respect of the incurring of that debt.
- (4) In proceedings brought under subsection (1) for the recovery of a debt, the liability of a person under that subsection in respect of the debt may be established on the balance of probabilities.
- (5) Where subsection (1) renders a person or persons liable to pay a debt incurred by a company, the payment by that person or either or any of those persons of the whole or any part of that debt does not render the company liable to the person concerned in respect of the amount so paid.
- (6) Where:
 - (a) a company has done an act (including the making of a contract or the entering into of a transaction) with intent to defraud creditors of the company or of any other person or for any other fraudulent purpose; and
 - (b) the company was at the time when it does the act, or becomes at a later time, a company to which this section applies;

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any person who was knowingly concerned in the doing of the act with that intent or for that purpose contravenes this subsection.

- (7) A certificate issued by the proper officer of an Australian court stating that a person specified in the certificate:
- (a) was convicted of an offence under subsection (1) in relation to a debt specified in the certificate incurred by a company so specified; or
 - (b) was convicted of an offence under subsection (6) in relation to a company specified in the certificate;
- is, in any proceedings, *prima facie* evidence of the matters stated in the certificate.
- (8) A document purporting to be a certificate issued under subsection (7) shall, unless the contrary is established, be deemed to be such a certificate and to have been duly issued.

593 Powers of Court

- (1) Where a person has been convicted of an offence under subsection 592(1) in respect of the incurring of a debt, the Court, on the application of the Commission or the person to whom the debt is payable, may, if it thinks it proper to do so, declare that the first-mentioned person shall be personally responsible without any limitation of liability for the payment to the person to whom the debt is payable of an amount equal to the whole of the debt or such part of it as the Court thinks proper.
- (2) Where a person has been convicted of an offence under subsection 592(6), the Court, on the application of the Commission or of a prescribed person, may, if it thinks it proper to do so, declare that the first-mentioned person shall be personally responsible without any limitation of liability for the payment to the company of the amount required to satisfy so much of the debts of the company as the Court thinks proper.
- (3) In relation to a company in respect of which a conviction referred to in subsection (2) relates:

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- (a) the appropriate officer;
 - (b) a creditor or contributory of the company authorised by the Commission to make an application under that subsection; and
 - (c) if the company was a company to which section 592 applied by reason of paragraph 589(1)(c)—a member of the company;
- are prescribed persons for the purposes of that subsection.
- (4) Where the Court makes a declaration under subsection (1) in relation to a person, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration.
 - (5) In particular, the Court may order that the liability of the person under the declaration shall be a charge:
 - (a) on a debt or obligation due from the company to the person; or
 - (b) on a right or interest under a charge on any property of the company held by or vested in the person or a person on the person's behalf, or a person claiming as assignee from or through the person liable or a person acting on the person's behalf.
 - (6) The Court may, from time to time, make such further order as it thinks proper for the purpose of enforcing a charge imposed under subsection (5).
 - (7) For the purpose of subsection (5), *assignee* includes a person to whom or in whose favour, by the directions of the person liable, the debt, obligation or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration, not including consideration by way of marriage, given in good faith and without actual knowledge of any of the matters upon which the conviction or declaration was made.
 - (8) On the hearing of an application under subsection (1) or (2), the appropriate officer or other applicant may give evidence or call witnesses.

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594 Certain rights not affected

Except as provided by subsection 592(4) nothing in subsection 592(1) or 593(1) or (2) affects any rights of a person to indemnity, subrogation or contribution.

595 Inducement to be appointed liquidator etc. of company

A person shall not give, or agree or offer to give, to a member or creditor of a company any valuable consideration with a view to securing the person's own appointment or nomination, or to securing or preventing the appointment or nomination of some other person as:

- (a) a liquidator or provisional liquidator of the company; or
- (b) an administrator of the company; or
- (c) an administrator of a deed of company arrangement executed, or to be executed, by the company; or
- (d) a receiver, or a receiver and manager, of property of the company; or
- (e) a trustee or other person to administer a compromise or arrangement made between the company and any other person or persons.

596 Frauds by officers

A person who, while an officer of a company:

- (a) by false pretences or by means of any other fraud, induces a person to give credit to the company or to a related body corporate;
- (b) with intent to defraud the company or a related body corporate, or members or creditors of the company or of a related body corporate, makes or purports to make, or causes to be made or to be purported to be made, any gift or transfer of, or charge on, or causes or connives at the levying of any execution against, property of the company or of a related body corporate; or

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- (c) with intent to defraud the company or a related body corporate, or members or creditors of the company or of a related body corporate, conceals or removes any part of the property of the company or of a related body corporate after, or within 2 months before, the date of any unsatisfied judgment or order for payment of money obtained against the company or a related body corporate;
contravenes this section.

Part 5.9—Miscellaneous

Division 1—Examining a person about a corporation

596A Mandatory examination

The Court is to summon a person for examination about a corporation's examinable affairs if:

- (a) an eligible applicant applies for the summons; and
- (b) the Court is satisfied that the person is an examinable officer of the corporation or was such an officer during or after the 2 years ending:
 - (i) if the corporation is under administration—on the section 513C day in relation to the administration; or
 - (ii) if the corporation has executed a deed of company arrangement that has not yet terminated—on the section 513C day in relation to the administration that ended when the deed was executed; or
 - (iii) if the corporation is being, or has been, wound up—when the winding up began; or
 - (iv) otherwise—when the application is made.

596B Discretionary examination

- (1) The Court may summon a person for examination about a corporation's examinable affairs if:
 - (a) an eligible applicant applies for the summons; and
 - (b) the Court is satisfied that the person:
 - (i) has taken part or been concerned in examinable affairs of the corporation and has been, or may have been, guilty of misconduct in relation to the corporation; or
 - (ii) may be able to give information about examinable affairs of the corporation.
- (2) This section has effect subject to section 596A.

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596C Affidavit in support of application under section 596B

- (1) A person who applies under section 596B must file an affidavit that supports the application and complies with the rules.
- (2) The affidavit is not available for inspection except so far as the Court orders.

596D Content of summons

- (1) A summons to a person under section 596A or 596B is to require the person to attend before the Court:
 - (a) at a specified place and at a specified time on a specified day, being a place, time and day that are reasonable in the circumstances; and
 - (b) to be examined on oath about the corporation's examinable affairs.
- (2) A summons to a person under section 596A or 596B may require the person to produce at the examination specified books that:
 - (a) are in the person's possession; and
 - (b) relate to the corporation or to any of its examinable affairs.
- (3) A summons under section 596A is to require under subsection (2) of this section the production of such of the books requested in the application for the summons as the summons may so require.

596E Notice of examination

If the Court summons a person for examination, the person who applied for the summons must give written notice of the examination to:

- (a) as many of the corporation's creditors as reasonably practicable; and
- (b) each eligible applicant in relation to the corporation, except:
 - (i) the person who applied for the examination; and
 - (ii) if a person authorised by the Commission applied for the examination—the Commission; and

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- (iii) a person who is such an eligible applicant only because the person is authorised by the Commission.

596F Court may give directions about examination

- (1) Subject to section 597, the Court may at any time give one or more of the following:
 - (a) a direction about the matters to be inquired into at an examination;
 - (b) a direction about the procedure to be followed at an examination;
 - (c) a direction about who may be present at an examination while it is being held in private;
 - (d) a direction that a person be excluded from an examination, even while it is being held in public;
 - (e) a direction about access to records of the examination;
 - (f) a direction prohibiting publication or communication of information about the examination (including questions asked, and answers given, at the examination);
 - (g) a direction that a document that relates to the examination and was created at the examination be destroyed.
- (2) The Court may give a direction under paragraph (1)(e), (f) or (g) in relation to all or part of an examination even if the examination, or that part, was held in public.
- (3) A person must not contravene a direction under subsection (1).

597 Conduct of examination

- (4) An examination is to be held in public except to such extent (if any) as the Court considers that, by reason of special circumstances, it is desirable to hold the examination in private.
- (5A) Any of the following may take part in an examination:
 - (a) the Commission;
 - (b) any other eligible applicant in relation to the corporation;

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and for that purpose may be represented by a lawyer or by an agent authorised in writing for the purpose.

- (5B) The Court may put, or allow to be put, to a person being examined such questions about the corporation or any of its examinable affairs as the Court thinks appropriate.
- (6) A person who is summoned under section 596A or 596B to attend before the Court shall not, without reasonable excuse:
- (a) fail to attend as required by the summons; or
 - (b) fail to attend from day to day until the conclusion of the examination.
- (7) A person who attends before the Court for examination must not:
- (a) without reasonable excuse, refuse or fail to take an oath or make an affirmation; or
 - (b) without reasonable excuse, refuse or fail to answer a question that the Court directs him or her to answer; or
 - (c) make a statement that is false or misleading in a material particular; or
 - (d) without reasonable excuse, refuse or fail to produce books that the summons requires him or her to produce.
- (9) The Court may direct a person to produce, at an examination of that or any other person, books that are in the first-mentioned person's possession and are relevant to matters to which the examination relates or will relate.
- (9A) A person may comply with a direction under subsection (9) by causing the books to be produced at the examination.
- (10) Where the Court so directs a person to produce any books and the person has a lien on the books, the production of the books does not prejudice the lien.
- (10A) A person must not, without reasonable excuse, refuse or fail to comply with a direction under subsection (9).

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- (12) A person is not excused from answering a question put to the person at an examination on the ground that the answer might tend to incriminate the person or make the person liable to a penalty.
- (12A) Where:
- (a) before answering a question put to a person (other than a body corporate) at an examination, the person claims that the answer might tend to incriminate the person or make the person liable to a penalty; and
 - (b) the answer might in fact tend to incriminate the person or make the person so liable;
- the answer is not admissible in evidence against the person in:
- (c) a criminal proceeding; or
 - (d) a proceeding for the imposition of a penalty;
- other than a proceeding under this section, or any other proceeding in respect of the falsity of the answer.
- (13) The Court may order the questions put to a person and the answers given by him or her at an examination to be recorded in writing and may require him or her to sign that written record.
- (14) Subject to subsection (12A), any written record of an examination so signed by a person, or any transcript of an examination of a person that is authenticated as provided by the rules, may be used in evidence in any legal proceedings against the person.
- (14A) A written record made under subsection (13):
- (a) is to be open for inspection, without fee, by:
 - (i) the person who applied for the examination; or
 - (ii) an officer of the corporation; or
 - (iii) a creditor of the corporation; and
 - (b) is to be open for inspection by anyone else on paying the prescribed fee.
- (15) An examination under this Division may, if the Court so directs and subject to the rules, be held before such other court as is

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specified by the Court and the powers of the Court under this Division may be exercised by that other court.

- (16) A person ordered to attend before the Court or another court for examination under this Division may, at his or her own expense, employ a solicitor, or a solicitor and counsel, and the solicitor or counsel, as the case may be, may put to the person such questions as the Court, or the other court, as the case may be, considers just for the purpose of enabling the person to explain or qualify any answers or evidence given by the person.
- (17) The Court or another court before which an examination under this Division takes place may, if it thinks fit, adjourn the examination from time to time.

597A When Court is to require affidavit about corporation's examinable affairs

- (1) The Court is to require a person to file an affidavit about a corporation's examinable affairs if:
 - (a) an eligible applicant applies for the requirement to be made; and
 - (b) the Court is satisfied that the person is an examinable officer of the corporation or was such an officer during or after the 2 years ending:
 - (i) if the corporation is under administration—on the section 513C day in relation to the administration; or
 - (ii) if the corporation has executed a deed of company arrangement that has not yet terminated—on the section 513C day in relation to the administration that ended when the deed was executed; or
 - (iii) if the corporation is being, or has been, wound up—when the winding up began; or
 - (iv) otherwise—when the application is made;
- even if the person has been summoned under section 596A or 596B for examination about those affairs.

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- (2) The requirement is to:
 - (a) specify such of the information requested in the application as relates to examinable affairs of the corporation; and
 - (b) require the affidavit to set out the specified information; and
 - (c) require the affidavit to be filed on or before a specified day that is reasonable in the circumstances.
- (3) A person must not, without reasonable excuse, refuse or fail to comply with a requirement made of the person under subsection (1).
- (4) The Court may excuse a person from answering a question at an examination about a corporation's examinable affairs if the person has already filed an affidavit under this section about that corporation's examinable affairs that sets out information that answers the question.

597B Costs of unnecessary examination or affidavit

Where the Court is satisfied that a summons to a person under section 596A or 596B, or a requirement made of a person under section 597A, was obtained without reasonable cause, the Court may order some or all of the costs incurred by the person because of the summons or requirement to be paid by:

- (a) in any case—the applicant for the summons or requirement; or
- (b) in the case of a summons—any person who took part in the examination.

Division 2—Orders against a person in relation to a corporation

598 Order against person concerned with corporation

- (2) Subject to subsection (3), where, on application by an eligible applicant, the Court is satisfied that:
- (a) a person is guilty of fraud, negligence, default, breach of trust or breach of duty in relation to a corporation; and
 - (b) the corporation has suffered, or is likely to suffer, loss or damage as a result of the fraud, negligence, default, breach of trust or breach of duty;

the Court may make such order or orders as it thinks appropriate against or in relation to the person (including either or both of the orders specified in subsection (4)) and may so make an order against or in relation to a person even though the person may have committed an offence in respect of the matter to which the order relates.

- (3) The Court shall not make an order against a person under subsection (2) unless the Court has given the person the opportunity:
- (a) to give evidence;
 - (b) to call witnesses to give evidence;
 - (c) to bring other evidence in relation to the matters to which the application relates; and
 - (d) to employ, at the person's own expense, a solicitor, or a solicitor and counsel, to put to the person, or to any other witness, such questions as the Court considers just for the purpose of enabling the person to explain or qualify any answers or evidence given by the person.
- (4) The orders that may be made under subsection (2) against a person include:
- (a) an order directing the person to pay money or transfer property to the corporation; and

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- (b) an order directing the person to pay to the corporation the amount of the loss or damage.
- (5) Nothing in this section prevents any person from instituting any other proceedings in relation to matters in respect of which an application may be made under this section.

599 Court may order persons not to manage certain corporations

- (1) This section applies to a relevant body:
 - (a) that has been wound up, or is in the course of being wound up, because of inability to pay its debts as and when they became due;
 - (b) that has been in the course of being wound up because of inability to pay its debts as and when they became due, where the winding up has been stayed or terminated by an order under section 482;
 - (c) that has been or is under administration;
 - (ca) that has executed a deed of company arrangement, even if the deed has terminated;
 - (d) that has ceased to carry on business because it was unable to pay its debts as and when they became due;
 - (e) in respect of which a levy of execution was not satisfied;
 - (f) in respect of property of which a receiver, or a receiver and manager, has been appointed, whether by a court or pursuant to the powers contained in an instrument, whether or not the appointment has been terminated; or
 - (g) that has entered into a compromise or arrangement with its creditors.
- (2) Unless cause to the contrary is shown, the Court may, on an application by the Commission and on being satisfied as to the matters referred to in subsection (3), make an order prohibiting a person specified in the order from managing a corporation during such period not exceeding 5 years after the date of the order as is specified in the order.

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- (3) The Court shall not make an order under subsection (2) unless it is satisfied:
- (a) that the person to whom the application for an order relates was given notice of the application;
 - (b) that, within the period of 7 years before notice of the application was given to the person referred to in paragraph (a), whether that period commenced before or after the commencement of this section, that person was a director of, or was concerned or took part in the management of, 2 or more relevant bodies to which this section applies; and
 - (c) that:
 - (i) in the case of each of those 2 relevant bodies; or
 - (ii) where the person was a director of, or was concerned or took part in the management of, more than 2 relevant bodies to which this section applies—in the case of each of 2 or more of those bodies;
the manner in which affairs of the body had been managed was wholly or partly responsible for the body being wound up, being under administration, having executed a deed of company arrangement, ceasing to carry on business, being unable to satisfy a levy of execution, being subject to the appointment of a receiver, or a receiver and manager, or entering into a compromise or arrangement with its creditors.
- (4) A person who is subject to a section 599 order (whether made before or after the commencement of this section) must not manage a corporation.
- (5) Section 91A defines what, for the purposes of this section, constitutes managing a corporation.

600 Commission may order persons not to manage corporations

- (1) For the purposes of this section:
- (b) a relevant body is a section 600 body at a particular time if, and only if, within the period of 7 years ending at that time, a liquidator of the body has, under:

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- (i) subsection 533(1); or
 - (ii) a previous law corresponding to subsection 533(1); reported, or lodged a report with respect to, a matter relating to the ability of the body to pay its unsecured creditors; and
 - (c) a person shall be taken to be a relevant person in relation to a relevant body that is or was a section 600 body if, and only if, the person was a director of the body at any time during the period of 12 months ending on the day of the beginning of the winding up of the body.
- (2) The Commission may give to a person who is a relevant person in relation to 2 or more relevant bodies that are, at the time of service, section 600 bodies a notice in writing requiring the person to show cause why the Commission should not serve on the person a notice under subsection (3).
- (3) Where the Commission:
- (a) has served on a person a notice under subsection (2); and
 - (b) has given the person an opportunity of being heard in relation to the matter;
- the Commission shall, unless it is satisfied that it is not appropriate to do so, serve on the person a notice in writing prohibiting the person, for such period not exceeding 5 years as is specified in the notice, from managing a corporation.
- (4) Where:
- (a) the Commission has served a notice under subsection (2) on a person who is a relevant person in relation to 2 or more relevant bodies that were, at the time of service, section 600 bodies; and
 - (b) those 2 bodies have at any time been related to each other, or any of those bodies has at any time been related to any other of those bodies, as the case may be;
- the Commission shall have regard to that fact in considering whether or not it is appropriate to serve on the person a notice under subsection (3).

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- (5) A person who is subject to a section 600 notice (whether served before or after the commencement of this section) must not, without the leave of the Court, manage a corporation.
- (6) Section 91A defines what, for the purposes of this section, constitutes managing a corporation.

Division 3—Provisions applying to various kinds of external administration

600A Powers of Court where outcome of voting at creditors' meeting determined by related entity

- (1) Subsection (2) applies where, on the application of a creditor of a company or Part 5.1 body, the Court is satisfied:
 - (a) that a proposed resolution has been voted on at:
 - (i) in the case of a company—a meeting of creditors of the company held:
 - (A) under Part 5.3A or a deed of company arrangement executed by the company; or
 - (B) in connection with winding up the company; or
 - (ii) in the case of a Part 5.1 body—a meeting of creditors, or of a class of creditors, of the body held under Part 5.1; and
 - (b) that, if the vote or votes that a particular related creditor, or particular related creditors, of the company or body cast on the proposed resolution had been disregarded for the purposes of determining whether or not the proposed resolution was passed, the proposed resolution:
 - (i) if it was in fact passed—would not have been passed; or
 - (ii) if in fact it was not passed—would have been passed; or the question would have had to be decided on a casting vote; and
 - (c) that the passing of the proposed resolution, or the failure to pass it, as the case requires:
 - (i) is contrary to the interests of the creditors as a whole or of that class of creditors as a whole, as the case may be; or
 - (ii) has prejudiced, or is reasonably likely to prejudice, the interests of the creditors who voted against the proposed

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resolution, or for it, as the case may be, to an extent that is unreasonable having regard to:

- (A) the benefits resulting to the related creditor, or to some or all of the related creditors, from the resolution, or from the failure to pass the proposed resolution, as the case may be; and
 - (B) the nature of the relationship between the related creditor and the company or body, or of the respective relationships between the related creditors and the company or body; and
 - (C) any other relevant matter.
- (2) The Court may make one or more of the following:
- (a) if the proposed resolution was passed—an order setting aside the resolution;
 - (b) an order that the proposed resolution be considered and voted on at a meeting of the creditors of the company or body, or of that class of creditors, as the case may be, convened and held as specified in the order;
 - (c) an order directing that the related creditor is not, or such of the related creditors as the order specifies are not, entitled to vote on:
 - (i) the proposed resolution; or
 - (ii) a resolution to amend or vary the proposed resolution;
 - (d) such other orders as the Court thinks necessary.
- (3) In this section:

related creditor, in relation to a company or Part 5.1 body, in relation to a vote, means a person who, when the vote was cast, was a related entity, and a creditor, of the company or body.

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600B Review by Court of resolution of creditors passed on casting vote of person presiding at meeting

- (1) This section applies if, because the person presiding at the meeting exercises a casting vote, a resolution is passed at a meeting of creditors of a company held:
 - (a) under Part 5.3A or a deed of company arrangement executed by the company; or
 - (b) in connection with winding up the company.
- (2) A person may apply to the Court for an order setting aside or varying the resolution, but only if:
 - (a) the person voted against the resolution in some capacity (even if the person voted for the resolution in another capacity); or
 - (b) a person voted against the resolution on the first-mentioned person's behalf.
- (3) On an application, the Court may:
 - (a) by order set aside or vary the resolution; and
 - (b) if it does so—make such further orders, and give such directions, as it thinks necessary.
- (4) On and after the making of an order varying the resolution, the resolution has effect as varied by the order.

600C Court's powers where proposed resolution of creditors lost as casting vote of person presiding at meeting

- (1) This section applies if, because the person presiding at the meeting exercises a casting vote, or refuses or fails to exercise such a vote, a proposed resolution is not passed at a meeting of creditors of a company held:
 - (a) under Part 5.3A or a deed of company arrangement executed by the company; or
 - (b) in connection with winding up the company.

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- (2) A person may apply to the Court for an order under subsection (3), but only if:
 - (a) the person voted for the proposed resolution in some capacity (even if the person voted against the proposed resolution in another capacity); or
 - (b) a person voted for the proposed resolution on the first-mentioned person's behalf.
- (3) On an application, the Court may:
 - (a) order that the proposed resolution is taken to have been passed at the meeting; and
 - (b) if it does so—make such further orders, and give such directions, as it thinks necessary.
- (4) If an order is made under paragraph (3)(a), the proposed resolution:
 - (a) is taken for all purposes (other than those of subsection (1)) to have been passed at the meeting; and
 - (b) is taken to have taken effect:
 - (i) if the order specifies a time when the proposed resolution is to be taken to have taken effect—at that time, even if it is earlier than the making of the order; or
 - (ii) otherwise—on the making of the order.

600D Interim order on application under section 600A, 600B or 600C

- (1) Where:
 - (a) an application under subsection 600A(1), 600B(2) or 600C(2) has not yet been determined; and
 - (b) the Court is of the opinion that it is desirable to do so;the Court may make such interim orders as it thinks appropriate.
- (2) An interim order must be expressed to apply until the application is determined, but may be varied or discharged.

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600E Order under section 600A or 600B does not affect act already done pursuant to resolution

An act done pursuant to a resolution as in force before the making under section 600A or 600B of an order setting aside or varying the resolution is as valid and binding on and after the making of the order as if the order had not been made.

600F Limitation on right of suppliers of essential services to insist on payment as condition of supply

(1) If:

- (a) a relevant authority of an eligible company requests, or authorises someone else to request, a person or authority (*the supplier*) to supply an essential service to the company in this jurisdiction; and
- (b) the company owes an amount to the supplier in respect of the supply of the essential service before the effective day;

the supplier must not:

- (c) refuse to comply with the request for the reason only that the amount is owing; or
- (d) make it a condition of the supply of the essential service pursuant to the request that the amount is to be paid.

(2) In this section:

effective day, in relation to a relevant authority of an eligible company, means the day when the relevant authority became a relevant authority of the company, even if that day began before this section commenced;

eligible company means a company:

- (a) that is being wound up; or
- (b) a provisional liquidator of which is acting; or
- (c) that is under administration; or
- (d) that has executed a deed of company arrangement that has not yet terminated; or

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- (e) a receiver, or receiver and manager, of property of which is acting;

essential service means:

- (a) electricity; or
(b) gas; or
(c) water; or
(d) a carriage service (within the meaning of the *Telecommunications Act 1997*);

relevant authority, in relation to an eligible company, means:

- (a) the liquidator; or
(b) the provisional liquidator; or
(c) the administrator of the company; or
(d) the administrator of the deed of company arrangement; or
(e) the receiver, or receiver and manager;
as the case requires.

Division 4—Transitional

601 Winding up started before commencement of this Chapter

The provisions of this Law with respect to winding up do not apply to any body corporate the winding up of which was started before the commencement of this Chapter and:

- (a) any such company is to be wound up in the same manner, and with the same incidents, as if this Law had not been enacted; and
- (b) for the purposes of the winding up, the previous law of this jurisdiction corresponding to this Chapter is taken to remain in force and to apply, with such modifications as the circumstances require, as if a reference in that previous law to the NCSC were, except in relation to a time before the commencement of section 254 of the ASC Law, a reference to the Commission.

Chapter 5A—Deregistration of companies

601AA Deregistration—voluntary

Who may apply for deregistration

- (1) An application to deregister a company may be lodged with ASIC by:
 - (a) the company; or
 - (b) a director or member of the company; or
 - (c) a liquidator of the company.

If the company lodges the application, it must nominate a person to be given notice of the deregistration.

Circumstances in which application can be made

- (2) A person may apply only if:
 - (a) all the members of the company agree to the deregistration; and
 - (b) the company is not carrying on business; and
 - (c) the company's assets are worth less than \$1,000; and
 - (d) the company has paid all fees and penalties payable under this Law; and
 - (e) the company has no outstanding liabilities; and
 - (f) the company is not a party to any legal proceedings.

ASIC may ask for information about officers

- (3) The applicant must give ASIC any information that ASIC requests about the current and former officers of the company.

Deregistration procedure

- (4) If ASIC is not aware of any failure to comply with subsections (1) to (3), it must give notice of the proposed deregistration:

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- (a) on ASIC database; and
- (b) in the *Gazette*.

When 2 months have passed since the *Gazette* notice, ASIC may deregister the company.

- (5) ASIC must give notice of the deregistration to:
 - (a) the applicant; or
 - (b) the person nominated in the application to be given the notice.

601AB Deregistration—ASIC initiated

Circumstances in which the ASIC may deregister

- (1) ASIC may decide to deregister a company if:
 - (a) the company's annual return is at least 6 months late; and
 - (b) the company has not lodged any other documents under this Law in the last 18 months; and
 - (c) ASIC has no reason to believe that the company is carrying on business.
- (2) ASIC may also decide to deregister a company if the company is being wound up and ASIC has reason to believe that:
 - (a) the liquidator is no longer acting; or
 - (b) the company's affairs have been fully wound up and a return that the liquidator should have lodged is at least 6 months late; or
 - (c) the company's affairs have been fully wound up under Part 5.4 and the company has no property or not enough property to cover the costs of obtaining a Court order for the company's deregistration.

Deregistration procedure

- (3) If ASIC decides to deregister a company under this section, it must give notice of the proposed deregistration:
 - (a) to the company; and

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- (b) to the company’s liquidator (if any); and
- (c) to the company’s directors; and
- (d) on ASIC database; and
- (e) in the *Gazette*.

When 2 months have passed since the *Gazette* notice, ASIC may deregister the company.

- (4) ASIC does not have to give a person notice under subsection (3) if ASIC does not have the necessary information about the person’s identity or address.
- (5) ASIC must give notice of the deregistration to everyone who was notified of the proposed deregistration under paragraph (3)(b) or (c).

601AC Deregistration—following amalgamation or winding up

- (1) ASIC must deregister a company if the Court orders the deregistration of the company under:
 - (a) paragraph 413(1)(d) (reconstruction and amalgamation of Part 5.1 bodies); or
 - (b) paragraph 481(5)(b) (release of liquidator); or
 - (c) subsection 509(6) (liquidator’s return following winding up).
- (2) ASIC must deregister a company if:
 - (a) 3 months have passed since the company’s liquidator lodged a return under section 509; and
 - (b) no order under subsection 509(6) has been made during that period.

601AD Effect of deregistration

Company ceases to exist

- (1) A company ceases to exist on deregistration.

Note: Despite the deregistration, officers of the company may still be liable for things done before the company was deregistered.

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Company's property vests in ASIC

- (2) On deregistration, all the company's property vests in ASIC. If company property is vested in a liquidator immediately before deregistration, that property vests in ASIC. This subsection extends to property situated outside this jurisdiction.
- (3) Under subsection (2), ASIC takes only the same property rights that the company itself held. If the company held particular property subject to a security or other interest or claim, ASIC takes the property subject to that interest or claim.

Note: See also subsection 601AE(3)—which deals with liabilities that a law imposes on the property (particularly liabilities such as rates, taxes and other charges).

- (4) ASIC has all the powers of an owner over property vested in it under subsection (2).

Note: Section 601AF confers additional powers on ASIC to fulfil outstanding obligations of the deregistered company.

Company books to be kept by former directors

- (5) The directors of the company immediately before deregistration must keep the company's books for 3 years after the deregistration. This does not apply to books that a liquidator has to keep under subsection 542(2).

601AE What ASIC does with the property

- (1) If property vested in ASIC under subsection 601AD(2) was held by the company on trust, ASIC may:
 - (a) continue to act as trustee; or
 - (b) apply to a court for the appointment of a new trustee.

Note: Under paragraph (a), ASIC may be able to transfer the property to a new trustee chosen in accordance with the trust instrument.

- (2) If the company did not hold the property on trust, ASIC may:
 - (a) dispose of or deal with the property as it sees fit; and

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- (b) apply any money it receives to:
 - (i) defray expenses incurred by ASIC in exercising its powers in relation to the company under this Chapter; and
 - (ii) make payments authorised by subsection (3).
- ASIC must deal with the rest (if any) under Part 9.7.

Obligations attaching to property

- (3) The property remains subject to all liabilities imposed on the property under a law and does not have the benefit of any exemption that the property might otherwise have because it is vested in ASIC. These liabilities include a liability that:
 - (a) is a charge or claim on the property; and
 - (b) arises under a law that imposes rates, taxes or other charges.
- (4) ASIC's obligation under subsection (3) is limited to satisfying the liabilities out of the company's property to the extent that the property is properly available to satisfy those liabilities.

Accounts

- (5) ASIC must keep:
 - (a) a record of property that it knows is vested in it under this Chapter; and
 - (b) a record of its dealings with that property; and
 - (c) accounts of all money received from those dealings; and
 - (d) all accounts, vouchers, receipts and papers relating to the property and that money.

601AF ASIC's power to fulfil outstanding obligations of deregistered company

ASIC may do an act on behalf of the company or its liquidator if ASIC is satisfied that the company or liquidator would be bound to do the act if the company still existed.

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Note: This power is a general one and is not limited to acts in relation to property vested in ASIC under subsection 601AD(2). ASIC has all the powers that automatically flow from the vesting of property in ASIC under that subsection (see subsection 601AD(4)) and may exercise *those* powers whether or not the company was bound to do so.

601AG Claims against insurers of deregistered company

A person may recover from the insurer of a company that is deregistered an amount that was payable to the company under the insurance contract if:

- (a) the company had a liability to the person; and
- (b) the insurance contract covered that liability immediately before deregistration.

601AH Reinstatement

Reinstatement by ASIC

- (1) ASIC may reinstate the registration of a company if ASIC is satisfied that the company should not have been deregistered.

Reinstatement by Court

- (2) The Court may make an order that ASIC reinstate the registration of a company if:
 - (a) an application for reinstatement is made to the Court by:
 - (i) a person aggrieved by the deregistration; or
 - (ii) a former liquidator of the company; and
 - (b) the Court is satisfied that it is just that the company's registration be reinstated.
- (3) If the Court makes an order under subsection (2), it may:
 - (a) validate anything done between the deregistration of the company and its reinstatement; and
 - (b) make any other order it considers appropriate.

Note: For example, the Court may direct ASIC to transfer to another person property vested in ASIC under subsection 601AD(2).

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ASIC to give notice of reinstatement

- (4) ASIC must give notice of a reinstatement in the *Gazette*. If ASIC exercises its power under subsection (1) in response to an application by a person, ASIC must also give notice of the reinstatement to the applicant.

Effect of reinstatement

- (5) If a company is reinstated, the company is taken to have continued in existence as if it had not been deregistered. A person who was a director of the company immediately before deregistration becomes a director again as from the time when ASIC or the Court reinstates the company. Any property of the company that is still vested in ASIC reverts in the company. If the company held particular property subject to a security or other interest or claim, the company takes the property subject to that interest or claim.

Chapter 5B—Bodies corporate registered as companies, and registrable bodies

Part 5B.1—Registering a body corporate as a company

Division 1—Registration

601BA Bodies corporate may be registered as certain types of companies

- (1) A body corporate that is not a company, recognised company or corporation sole may be registered under this Law as a company of one of the following types:
 - (a) a proprietary company limited by shares
 - (b) an unlimited proprietary company with share capital
 - (c) a public company limited by shares
 - (d) a company limited by guarantee
 - (e) an unlimited public company with share capital
 - (f) a no liability company.
- (2) A body corporate may be registered as a no liability company only if:
 - (a) the body has a share capital; and
 - (b) the body's constitution states that its sole objects are mining purposes; and
 - (c) under the constitution the body has no contractual right to recover calls made on its shares from a member who fails to pay them.

Note: Section 9 defines *mining purposes* and *minerals*.

The Corporations Law—Section 601BB

601BB Bodies registered as proprietary companies

- (1) The body must have no more than 50 non-employee shareholders if it is to be registered as a proprietary company under this Part.
- (2) In applying subsection (1):
 - (a) count joint holders of a particular parcel of shares as 1 person; and
 - (b) an employee shareholder is:
 - (i) a shareholder who is an employee of the body or of a subsidiary of the body; or
 - (ii) a shareholder who was an employee of the body, or of a subsidiary of the body, when they became a shareholder.

601BC Applying for registration under this Part

- (1) To register the body as a company under this Part, a person must lodge an application with ASIC.
 - Note 1: For the types of companies that can be registered under this Part, see section 601BA.
 - Note 2: A name may be reserved for a company to be registered under this Part before the application is lodged (see Part 2B.6).
- (2) The application must state the following:
 - (a) the type of company that the body is proposed to be registered as under the Corporations Law of this jurisdiction
 - (b) the name of the body
 - (c) if the body is a registered body under the Corporations Law of any jurisdiction—its ARBN
 - (d) the proposed name under which the body is to be registered (unless the ACN is to be used)
 - (e) the name and address of each member of the body
 - (f) the present given and family name, all former given and family names and the date and place of birth of each person who consents in writing to become a director

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- (g) the present given and family name, all former given and family names and the date and place of birth of each person who consents in writing to become a company secretary
- (h) the address of each person who consents in writing to become a director or company secretary
- (i) the address of the body's proposed registered office
- (j) for a body proposed to be registered as a public company—the proposed opening hours of its registered office (if they are not the standard opening hours)
- (k) the address of the body's proposed principal place of business (if it is not the address of the proposed registered office)
- (l) for a body proposed to be registered as a company limited by shares or an unlimited company—the following:
 - (i) the number and class of shares each member already holds or has agreed, in writing, to take up
 - (ii) the amount each member has already paid or agreed, in writing, to pay for each share
 - (iii) the amount unpaid on each share
- (m) for a body proposed to be registered as a public company, if shares have been issued for non-cash consideration—the prescribed particulars about the issue of the shares, unless the shares were issued under a written contract and a copy of the contract is lodged with the application
- (n) for a body proposed to be registered as a company limited by guarantee—the amount of the guarantee that each member has agreed to in writing.

Note 1: Paragraph (h)—the address that must be stated is usually the residential address, although an alternative address can sometimes be stated instead (see section 242AA).

Note 2: Paragraph (i)—if the body when it is registered under this Part is not to be the occupier of premises at the address of its registered office, the application must state that the occupier has consented to the address being specified in the application and has not withdrawn that consent (see section 100).

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- (3) If the body is proposed to be registered as a public company, the application must be accompanied by a copy of each document (including an agreement or consent) or resolution that is necessary to ascertain the rights attached to issued or unissued shares of the body.
- (4) The application must be in the prescribed form.
- (5) An applicant must have the consents and agreements referred to in subsection (2) when the application is lodged. After the body is registered as a company, the applicant must give the consents and agreements to the company. The company must keep the consents and agreements.
- (6) The following documents must be lodged with the application:
 - (a) a certified copy of a current certificate of the body's incorporation in its place of origin, or of a document that has a similar effect
 - (b) a certified printed copy of the body's constitution (if any)
 - (c) for a body that is not a registered body under the Corporations Law of any jurisdiction—the documents required by subsection 263(3)—in relation to existing charges on the property of the body
 - (d) any other documents that are prescribed
 - (e) any other documents that ASIC requires by written notice given to the body.

A document need not be lodged if ASIC already has the document and agrees not to require its lodgment.

Note: Subsection 263(3) requires documents relating to charges on the property of the body to be lodged with the application.

- (7) The application must be accompanied by evidence that:
 - (a) the body is not an externally-administered body corporate; and
 - (b) no application to wind up the body has been made to a court (in Australia or elsewhere) that has not been dealt with; and

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- (c) no application to approve a compromise or arrangement between the body and another person has been made to a court (in Australia or elsewhere) that has not been dealt with.
- (8) The application must be accompanied by evidence that under the law of the body's place of origin:
 - (a) the body's type is the same or substantially the same as the proposed type specified in the application; and
 - (b) if the members of the body have limited liability—the body's constitution defines how and to what extent that liability is limited; and
 - (d) the transfer of the body's incorporation is authorised; and
 - (e) the body has complied with the requirements (if any) of that law for the transfer of its incorporation; and
 - (f) if those requirements do not include consent to the transfer by the members of the body—the members:
 - (i) have consented to the transfer by a resolution that has been passed at a meeting by at least 75% of the votes cast by members entitled to vote on the resolution; and
 - (ii) were given at least 21 days notice of the meeting and the proposed resolution.
- (9) The evidence lodged in accordance with subsections (7) and (8) must be satisfactory proof to ASIC of the matters referred to in those subsections.

Note: Section 1304 requires documents that are not in English to be translated into English.

601BD ASIC gives body ACN, registers as company and issues certificate

Registration

- (1) If an application is lodged under section 601BC, ASIC may:
 - (a) give the body an ACN; and

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- (b) register the body as a company of the proposed type specified in the application; and
- (c) issue a certificate that states:
 - (i) the company’s name; and
 - (ii) the company’s ACN; and
 - (iii) the company’s type; and
 - (iv) that the company is registered as a company under the Corporations Law of this jurisdiction; and
 - (v) the date of registration.

Note: For the evidentiary value of a certificate of registration, see subsection 1274(7A).

ASIC must keep record of registration

- (2) ASIC must keep a record of the registration. Subsections 1274(2) and (5) apply to the record as if it were a document lodged with ASIC.

601BE Registered office

The address specified in the application as the body’s proposed registered office becomes the address of its registered office as a company on registration.

601BF Name

A company registered under this Part has a name on registration that is:

- (a) an available name; or
- (b) the expression “Australian Company Number” followed by the company’s ACN.

The name must also include the words required by subsection 148(2) or 148(3).

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601BG Constitution

- (1) The constitution on registration (if any) of a company registered under this Part is the constitution lodged with the application.
- (2) If any text in a constitution lodged with the application is not in English, the English translation of that text lodged with the application for registration is taken to be the relevant text in the constitution on registration.

601BH Modifications of constitution

- (1) A company registered under this Part must modify its constitution within 3 months after registration to give effect to this Part.
- (2) If the constitution specifies amounts of money expressed in foreign currency, the company must:
 - (a) fix a single rate of conversion by resolution; and
 - (b) modify its constitution by special resolution to convert those amounts into Australian currency using that rate.The modification must be made within 3 months after registration.
- (3) An amendment of a company's constitution under this section does not affect the number and class of shares held by each member.

601BJ ASIC may direct company to apply for Court approval for modifications of constitution

- (1) ASIC may give the company a written direction to apply to the Court within a specified period for an order approving the modified constitution.
- (2) The Court may make an order:
 - (a) declaring that the company has complied with section 601BH; or

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- (b) declaring that the company will comply with section 601BH if it makes further modifications of its constitution as specified in the order.
- (3) The company must lodge a copy of the order with ASIC within 14 days after the order is made.

601BK Establishing registers and minute books

- (1) A company registered under this Part must, within 14 days after registration:
 - (a) set up the registers required by sections 168 and 271; and
 - (b) include in those registers the information that is required to be included in those registers and that is available to the company on registration; and
 - (c) set up the minute books required by section 251A.
- (2) During the 14 days the company need not comply with a person's request to inspect or obtain a copy of:
 - (a) information in a register; or
 - (b) a minute of a general meeting.

However, the period within which the company must comply with the request begins at the end of the 14 days.

601BL Registration of registered bodies

- (1) If a registered body becomes registered as a company under this Part or a corresponding law, it ceases to be a registered body. ASIC must remove the body's name from the appropriate register kept for the purposes of Division 1 or 2 of Part 5B.2.
- (2) ASIC may keep any of the documents relating to the company that were lodged because the company used to be a registered body.

Division 2—Operation of the Corporations Law

601BM Effect of registration under this Part

- (1) Registration under this Part does not:
 - (a) create a new legal entity; or
 - (b) affect the body's existing property, rights or obligations (except as against the members of the body in their capacity as members); or
 - (c) render defective any legal proceedings by or against the body or its members.
- (2) This Part and sections 263, 266 and 276 set out special provisions for companies registered under this Part.

601BN Liability of members on winding up

A person who stopped being a member of the body before it was registered as a company under this Part is to be treated as a past member of the company in applying Division 2 of Part 5.6 to a winding up of the company. However, the person's liability to contribute to the company's property is further limited by this section to an amount sufficient for the following:

- (a) payment of debts and liabilities contracted by the company before the day on which the company was registered under this Part
- (b) payment of the costs, charges and expenses of winding up the company, so far as those costs, charges and expenses relate to those debts and liabilities
- (c) the adjustment of the rights between the contributories, so far as the adjustment relates to those debts and liabilities.

601BP Bearer shares

- (1) A bearer of a bearer share in a company registered under this Part may surrender the share to the company. The company must:
 - (a) cancel the share; and
 - (b) include the bearer's name in the company's register of members.
- (2) The company is liable to compensate anyone who suffers a loss because the company includes the bearer's name in the company's register of members despite the fact that:
 - (a) the share was not surrendered to the company; or
 - (b) the company failed to cancel the share.
- (3) Subject to this section, the constitution of a company registered under this Part may provide that the bearer of a bearer share in the company is taken to be a member of the company for all purposes or for specified purposes.

Note: A body must not issue bearer shares after it is registered as a company under this Part (see paragraph 254F(a)).

601BQ References in pre-registration contracts and other documents to par value in existing contracts and documents

- (1) This section applies in relation to a company registered under this Part for the purpose of interpreting and applying after registration:
 - (a) a contract entered into before the registration; or
 - (b) a trust deed or other document executed before the registration.
- (2) A reference to the par value of a share is taken to be a reference to the par value of the share immediately before the registration, or the par value that the share would have had if it had been issued then.

Corporations Law Chapter 5B Bodies corporate registered as companies, and registrable bodies

Part 5B.1 Registering a body corporate as a company

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- (3) A reference to a right to a return of capital on a share is taken to be a reference to a right to a return of capital of a value equal to the amount paid before the registration in respect of the share's par value, or the par value that the share would have had if it had been issued then.
- (4) A reference to the aggregate par value of the company's issued share capital is taken to be a reference to that aggregate as it existed immediately before the registration.

601BR First AGM

Despite subsection 250N(1), a public company registered under this Part must hold its first AGM after registration in the calendar year of its registration.

601BS Modification by regulations

The regulations may modify the operation of this Part in relation to a company registered under this Part.

Part 5B.2—Registrable bodies

Division 1—Registrable Australian bodies

601CA When a registrable Australian body may carry on business in this jurisdiction

A registrable Australian body must not carry on business in this jurisdiction unless:

- (a) it is incorporated in this jurisdiction; or
- (b) it is unincorporated but is formed, or has its head office or principal place of business, in this jurisdiction; or
- (c) it is registered under this Division or a corresponding law; or
- (d) it has applied to be so registered and the application has not been dealt with.

601CB Application for registration

Subject to section 102A and this Part, where a registrable Australian body lodges an application for registration under this Division that is in the prescribed form and is accompanied by:

- (a) a certified copy of a current certificate of its incorporation or registration in its place of origin, or a document of similar effect;
- (b) a certified copy of its constitution;
- (c) a list of its directors containing personal details of those directors that are equivalent to the personal details of directors referred to in subsection 242(2);
- (d) unless the body is a registrable local body—in relation to each existing charge on property of the body that would be a registrable charge within the meaning of Chapter 2K if the body were a registered Australian body, the documents that subsection 263(3) requires to be lodged;
- (e) notice of the address of:

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- (i) if it has in its place of origin a registered office for the purposes of a law (other than this Law or a corresponding law) there in force—that office; or
 - (ii) otherwise—its principal place of business in its place of origin; and
- (f) notice of the address of its registered office under section 601CT;
- the Commission shall:
- (g) grant the application and register the body under this Division by entering the body's name in a register kept for the purposes of this Division and of each corresponding law; and
 - (h) allot to the body an ARBN distinct from the ARBN or ACN of each body corporate (other than the body) already registered as a company or registered body under the Corporations Law of any jurisdiction.

601CC Cessation of business etc.

- (1) Within 7 days after ceasing to carry on business, a registered Australian body shall lodge written notice that it has so ceased.
- (1A) For the purposes of this section, a body carries on business if, and only if, the body carries on business in this jurisdiction or elsewhere.
- (2) Where the Commission has reasonable cause to believe that a registered Australian body does not carry on business, the Commission may send to the body in the prescribed manner a letter to that effect and stating that, if no answer showing cause to the contrary is received within one month from the date of the letter, a notice will be published in the *Gazette* with a view to striking the body's name off the register.
- (3) Unless the Commission receives, within one month after the date of the letter, an answer to the effect that the body is still carrying on business, it may publish in the *Gazette*, and send to the body in

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the prescribed manner, a notice that, at the end of 3 months after the date of the notice, the body's name will, unless cause to the contrary is shown, be struck off the register.

- (4) At the end of the period specified in a notice sent under subsection (3), the Commission may, unless cause to the contrary has been shown, strike the body's name off the register and shall publish in the *Gazette* notice of the striking off.
- (5) Nothing in subsection (4) affects the power of the Court to wind up a body whose name has been struck off the register.
- (6) Where a body's name is struck off the register under subsection (4), the body ceases to be registered under this Division.
- (7) If the Commission is satisfied that a body's name was struck off the register as a result of an error on the Commission's part, the Commission may restore the body's name to the register, and thereupon the body's name shall be deemed never to have been struck off and the body shall be deemed never to have ceased to be registered under this Division.
- (8) A person who is aggrieved by a body's name having been struck off the register may, within 15 years after the striking off, apply to the Court for the body's name to be restored to the register.
- (9) If, on an application under subsection (8), the Court is satisfied that:
 - (a) at the time of the striking off, the body was carrying on business; or
 - (b) it is otherwise just for the body's name to be restored to the register;the Court may, by order:
 - (c) direct the body's name to be restored to the register; and
 - (d) give such directions, and make such provisions, as it thinks just for placing the body and all other persons in the same position, as nearly as practicable, as if the body's name had never been struck off.

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- (10) On the lodging of an office copy of an order under subsection (9), the body's name shall be deemed never to have been struck off.
- (11) Where a body's name is restored to the register under subsection (7) or (9), the Commission shall cause notice of that fact to be published in the *Gazette*.
- (12) Where a body ceases to be registered under this Division, an obligation to lodge a document that this Law imposes on the body by virtue of the doing of an act or thing, or the occurrence of an event, at or before the time when the body so ceased, being an obligation not discharged at or before that time, continues to apply in relation to the body even if the period prescribed for lodging the document has not ended at or before that time.
- (13) Where a registered Australian body commences to be wound up, or is dissolved or deregistered, in its place of origin, the Court shall, on application by the person who is the liquidator for the body's place of origin, or by the Commission, appoint a liquidator of the body.
- (14) A liquidator of a registered Australian body who is appointed by the Court:
 - (a) shall, before any distribution of the body's property is made, by advertisement in a daily newspaper circulating generally in each State or Territory where the body carried on business at any time during the 6 years before the liquidation, invite all creditors to make their claims against the body within a reasonable time before the distribution;
 - (b) shall not, without obtaining an order of the Court, pay out a creditor of the body to the exclusion of another creditor of the body; and
 - (c) shall, unless the Court otherwise orders, recover and realise the property of the body in Australia outside the body's place of origin and shall pay the net amount so recovered and realised to the liquidator of the body for its place of origin.

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- (15) Where a registered Australian body has been wound up so far as its property in Australia outside its place of origin is concerned and there is no liquidator for its place of origin, the liquidator may apply to the Court for directions about the disposal of the net amount recovered under subsection (14).

Division 2—Foreign companies

601CD When a foreign company may carry on business in this jurisdiction

A foreign company must not carry on business in this jurisdiction unless:

- (a) it is registered under this Division or a corresponding law; or
- (b) it has applied to be so registered and the application has not been dealt with.

601CE Application for registration

Subject to section 102A and this Part, where a foreign company lodges an application for registration under this Division that is in the prescribed form and is accompanied by:

- (a) a certified copy of a current certificate of its incorporation or registration in its place of origin, or a document of similar effect;
- (b) a certified copy of its constitution;
- (c) a list of its directors containing personal details of those directors that are equivalent to the personal details of directors referred to in subsection 242(3);
- (d) if that list includes directors who are:
 - (i) resident in Australia; and
 - (ii) members of a local board of directors;a memorandum that is duly executed by or on behalf of the foreign company and states the powers of those directors;
- (e) in relation to each existing charge on property of the foreign company that would be a registrable charge within the meaning of Chapter 2K if the foreign company were a registered foreign company, the documents that subsection 263(3) requires to be lodged;
- (f) notice of the address of:

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- (i) if it has in its place of origin a registered office for the purposes of a law there in force—that office; or
 - (ii) otherwise—its principal place of business in its place of origin; and
- (g) notice of the address of its registered office under section 601CT;
- the Commission shall:
- (h) grant the application and register the foreign company under this Division by entering the foreign company's name in a register kept for the purposes of this Division and of each corresponding law; and
 - (j) allot to the foreign company a registration number distinct from the registration number of each body corporate (other than the foreign company) already registered under Part 2.2, this Part or a law corresponding to Part 2.2 or to this Part.

601CF Appointment of local agent

- (1) A foreign company may at any time appoint a person as a local agent.
- (2) The Commission shall not register a foreign company under this Division unless the foreign company has at least one local agent in relation to whom the foreign company has complied with section 601CG.
- (3) Where:
 - (a) because a person ceased on a particular day to be a local agent of the foreign company, a registered foreign company has no local agent; and
 - (b) the foreign company carries on business, or has a place of business, in Australia;the foreign company shall, within 21 days after that day, appoint a person as a local agent.

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601CG Local agent: how appointed

- (1) A foreign company that lodges a memorandum of appointment, or a power of attorney, that is duly executed by or on behalf of the foreign company and states the name and address of a person who is:
 - (a) a natural person or a company;
 - (b) resident in Australia; and
 - (c) authorised to accept on the foreign company’s behalf service of process and notices;shall be taken to appoint that person as a local agent.
- (2) Where a memorandum of appointment, or a power of attorney, lodged under subsection (1) is executed on the foreign company’s behalf, the foreign company shall, unless it has already done so, lodge a copy, verified in writing in the prescribed form to be a true copy, of the document authorising the execution.
- (3) A copy lodged under subsection (2) shall be deemed for all purposes to be the original of the document.
- (4) A foreign company that appoints a local agent shall lodge a written statement that is in the prescribed form and is made by the local agent.
- (5) A person whom a foreign company appoints as a local agent is a local agent of the foreign company until the person:
 - (a) ceases by virtue of section 601CH to be such a local agent; or
 - (b) dies or ceases to exist.

601CH Local agent: how removed

- (1) Where a person is a local agent of a foreign company, the foreign company or the person may lodge a written notice stating that the person’s appointment as a local agent has terminated, or will terminate, on a specified day.

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- (2) Where a notice is lodged under subsection (1), the person ceases to be a local agent of the foreign company at the end of:
- (a) the period of 21 days beginning on the day of lodgment; or
 - (b) the day specified in the notice;
- whichever is the later.

601CJ Liability of local agent

A local agent of a registered foreign company:

- (a) is answerable for the doing of all acts, matters and things that the foreign company is required by or under this Law to do; and
- (b) is personally liable to a penalty imposed on the foreign company for a contravention of this Law if the court or tribunal hearing the matter is satisfied that the local agent should be so liable.

601CK Balance-sheets and other documents

- (1) Subject to this section, a registered foreign company shall, at least once in every calendar year and at intervals of not more than 15 months, lodge a copy of its balance-sheet made up to the end of its last financial year, made a copy of its cash flow statement for its last financial year and a copy of its profit and loss statement for its last financial year, in such form and containing such particulars and including copies of such documents as the company is required to prepare by the law for the time being applicable to that company in its place of origin, together with a statement in writing in the prescribed form verifying that the copies are true copies of the documents so required.
- (2) The Commission may extend the period within which subsection (1) requires a balance-sheet, profit and loss statement, cash flow statement or other document to be lodged.
- (3) The Commission may, if it is of the opinion that the balance sheet, cash flow statement, the profit and loss statement and the other

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documents referred to in subsection (1) do not sufficiently disclose the company's financial position:

- (a) require the company to lodge a balance-sheet;
- (b) require the company to lodge an audited balance-sheet;
- (ba) require the company to lodge a cash flow statement;
- (bb) require the company to lodge an audited cash flow statement;
- (c) require the company to lodge a profit and loss statement; or
- (d) require the company to lodge an audited profit and loss statement;

within such period, in such form, containing such particulars and including such documents as the Commission by notice in writing to the company requires, but this subsection does not authorise the Commission to require a balance-sheet or a profit and loss statement to contain any particulars or include any documents that would not be required to be furnished if the company were a public company within the meaning of this Law.

- (4) The registered foreign company shall comply with the requirements set out in the notice.
- (5) Where a registered foreign company is not required by the law of the place of its incorporation or formation to prepare a balance-sheet, the company shall prepare and lodge a balance-sheet, or, if the Commission so requires, an audited balance-sheet, within such period, in such form and containing such particulars and including such documents as the company would have been required to prepare if the company were a public company incorporated under this Law.
- (5A) If a registered foreign company is not required by the law of the place of its incorporation or formation to prepare a cash flow statement, the company must prepare and lodge a cash flow statement, or, if the Commission so requires, an audited cash flow statement, within the period, in the form, containing the particulars and including the documents that the company would have been

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required to prepare if the company were a public company registered under this Law.

- (6) Where a registered foreign company is not required by the law of its place of origin to prepare a profit and loss statement, the company shall prepare and lodge a profit and loss statement or, if the Commission so requires, an audited profit and loss statement, within such period, in such form, containing such particulars and including such documents as the company would have been required to prepare if the company were a public company incorporated under this Law.
- (7) The Commission may, by *Gazette* notice, declare that this section does not apply to specified foreign companies.
- (8) Subsections (1) to (6), inclusive, do not apply in relation to a foreign company in relation to which a notice is in force under subsection (7) or a corresponding law.
- (9) A registered foreign company in relation to which a notice is in force under subsection (7) must, at least once in every calendar year, lodge with the Commission a return in the prescribed form made up to the date of its annual general meeting.
- (10) The return must be lodged within 1 month after the date to which it is made up, or within such further period as the Commission, in special circumstances, allows.

601CL Cessation of business, etc

- (1) Within 7 days after ceasing to carry on business in Australia, a registered foreign company shall lodge written notice that it has so ceased.
- (2) Where the Commission receives notice from a local agent of a registered foreign company that the foreign company has been dissolved or deregistered, the Commission shall remove the foreign company's name from the register.

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- (3) Where the Commission has reasonable cause to believe that a registered foreign company does not carry on business in Australia, the Commission may send to the foreign company in the prescribed manner a letter to that effect and stating that, if no answer showing cause to the contrary is received within one month from the date of the letter, a notice will be published in the *Gazette* with a view to striking the foreign company's name off the register.
- (4) Unless the Commission receives, within one month after the date of the letter, an answer to the effect that the foreign company is still carrying on business in Australia, it may publish in the *Gazette*, and send to the foreign company in the prescribed manner, a notice that, at the end of 3 months after the date of the notice, the foreign company's name will, unless cause to the contrary is shown, be struck off the register.
- (5) At the end of the period specified in a notice sent under subsection (4), the Commission may, unless cause to the contrary has been shown, strike the foreign company's name off the register and shall publish in the *Gazette* notice of the striking off.
- (6) Nothing in subsection (5) affects the power of the Court to wind up a foreign company whose name has been struck off the register.
- (7) Where a foreign company's name is struck off the register under subsection (5), the foreign company ceases to be registered under this Division.
- (8) If the Commission is satisfied that a foreign company's name was struck off the register as a result of an error on the Commission's part, the Commission may restore the foreign company's name to the register, and thereupon the foreign company's name shall be deemed never to have been struck off and the foreign company shall be deemed never to have ceased to be registered under this Division.
- (9) A person who is aggrieved by a foreign company's name having been struck off the register may, within 15 years after the striking

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off, apply to the Court for the foreign company's name to be restored to the register.

- (10) If, on an application under subsection (9), the Court is satisfied that:
- (a) at the time of the striking off, the foreign company was carrying on business in Australia; or
 - (b) it is otherwise just for the foreign company's name to be restored to the register;
- the Court may, by order:
- (c) direct the foreign company's name to be restored to the register; and
 - (d) give such directions, and make such provision, as it thinks just for placing the foreign company and all other persons in the same position, as nearly as practicable, as if the foreign company's name had never been struck off.
- (11) On the lodging of an office copy of an order under subsection (10), the foreign company's name shall be deemed never to have been struck off.
- (12) Where a foreign company's name is restored to the register under subsection (8) or (10), the Commission shall cause notice of that fact to be published in the *Gazette*.
- (13) Where a foreign company ceases to be registered under this Division, an obligation to lodge a document that this Law imposes on the foreign company by virtue of the doing of an act or thing, or the occurrence of an event, at or before the time when the foreign company so ceased, being an obligation not discharged at or before that time, continues to apply in relation to the foreign company even if the period prescribed for lodging the document has not ended at or before that time.
- (14) Where a registered foreign company commences to be wound up, or is dissolved or deregistered, in its place of origin:

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- (a) each person who, on the day when the winding up proceedings began, was a local agent of the foreign company shall, within the period of 1 month after that day or within that period as extended by the Commission in special circumstances, lodge or cause to be lodged notice of that fact and, when a liquidator is appointed, notice of the appointment; and
 - (b) the Court shall, on application by the person who is the liquidator for the foreign company's place of origin, or by the Commission, appoint a liquidator of the foreign company.
- (15) A liquidator of a registered foreign company who is appointed by the Court:
 - (a) shall, before any distribution of the foreign company's property is made, by advertisement in a daily newspaper circulating generally in each State or Territory where the foreign company carried on business at any time during the 6 years before the liquidation, invite all creditors to make their claims against the foreign company within a reasonable time before the distribution;
 - (b) shall not, without obtaining an order of the Court, pay out a creditor of the foreign company to the exclusion of another creditor of the foreign company; and
 - (c) shall, unless the Court otherwise orders, recover and realise the property of the foreign company in Australia and shall pay the net amount so recovered and realised to the liquidator of the foreign company for its place of origin.
- (16) Where a registered foreign company has been wound up so far as its property in Australia is concerned and there is no liquidator for its place of origin, the liquidator may apply to the Court for directions about the disposal of the net amount recovered under subsection (15).

601CM Register of members of foreign company

- (1) A registered foreign company that has a share capital may cause a branch register of members to be kept in Australia.
- (2) Where a member of a registered foreign company is resident in Australia and requests the foreign company in writing to register in a branch register in Australia shares held by the member, then:
 - (a) if the foreign company already keeps an Australian register—the foreign company shall register in that register the shares held by the member; or
 - (b) otherwise—the foreign company shall, within 1 month after receiving the request:
 - (i) keep at its registered office or at some other place in Australia a branch register of members; and
 - (ii) register in that register the shares held by the member.
- (3) Subsection (2) does not apply in relation to a foreign company whose constitution prohibits any invitation to the public to subscribe for, and any offer to the public to accept subscriptions for, shares in the foreign company.
- (4) Subject to this section, a registered foreign company may discontinue its Australian register and shall, if it does so, transfer all entries in that register to a register of members kept outside Australia.
- (5) Where shares held by a member of a registered foreign company who is resident in Australia are registered in the foreign company's Australian register, the foreign company shall not discontinue that register without that member's written consent.

601CN Register kept under section 601CM

- (1) This section has effect where a registered foreign company keeps a register under section 601CM.

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- (2) The foreign company shall keep the register in the same manner as this Act requires a company to keep its register of members.
- (3) Subject to subsection (2), the foreign company shall register a transaction in the register in the same way, and at the same charge, as it would have registered the transaction in the register of members that the foreign company keeps in its place of origin.
- (4) A transfer of shares in the foreign company that is lodged at the foreign company's registered office, or at the place where the register is kept, is binding on the foreign company.
- (5) The Court has the same powers in relation to correction of the register as it has in relation to correction of a company's register of members.
- (6) The register shall be deemed to be part of the foreign company's register of members.
- (7) At the written request of a member who holds shares registered in the register, the foreign company shall remove the shares from the register and register them in such other register as is specified in the request.
- (8) The register is *prima facie* evidence of matters that this Law requires or authorises to be entered in the register.

601CP Notifying Commission about register kept under section 601CM

Within 14 days after:

- (a) beginning to keep a register under section 601CM;
- (b) changing the place where a register is so kept; or
- (c) discontinuing a register under section 601CM;

a registered foreign company shall lodge a written notice of that fact specifying, if paragraph (a) or (b) applies, the address or new address, as the case may be, where the register is kept.

601CQ Effect of right to acquire shares compulsorily

Where:

- (a) a law of the place of origin of a foreign company that corresponds to section 414 or 701 entitles a person to give notice to another person that the first-mentioned person wishes to acquire shares in the foreign company that the other person holds; and
- (b) some or all of those shares are registered in a register kept under section 601CM;

sections 601CM, 601CN and 601CP cease to apply in relation to the foreign company until the first-mentioned person acquires, or ceases to be entitled to acquire, the shares so registered.

601CR Index of members and inspection of registers

Subsection 169(2) and sections 173, 174 and 177 apply in relation to a register kept under section 601CM.

601CS Certificate as to shareholding

A certificate under the seal of a foreign company specifying shares held by a member of that company and registered in a register kept under section 601CM is *prima facie* evidence of the title of the member to the shares and of the fact that the shares are registered in the register.

Division 3—Bodies registered under this Part

601CT Registered office

- (1) A registered body shall have a registered office in Australia to which all communications and notices may be addressed and that shall be open:
 - (a) if the body has:
 - (i) lodged a notice under subsection (2); or
 - (ii) lodged a notice under subsection (2) and a notice or notices under subsection (4);for such hours (being not fewer than 3) between 9 a.m. and 5 p.m. on each business day as are specified in that notice, or in the later or last of those notices, as the case may be; or
 - (b) otherwise—each business day from at least 10 am to 12 noon and from at least 2 pm to 4 pm;and at which a representative of the body is present at all times when the office is open.
- (2A) A registered body must ensure that its registered office under this section and its registered offices under the laws corresponding to this section are all at the same place.
- (2) A registered body may lodge written notice of the hours (being not fewer than 3) between 9 a.m. and 5 p.m. on each business day during which the body's registered office is open.
- (3) Within 7 days after a change in the situation of its registered office, a registered body shall lodge a written notice of the change and of the new address of that office.
- (4A) Where:
 - (a) a registered body has a registered office under a law corresponding to this section; and
 - (b) the situation of that office changes;

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the situation of the body's registered office under this section is taken to change to the new situation of the office referred to in paragraph (a).

- (4) A registered body that has lodged a notice under subsection (2) shall, within 7 days after a change in the hours during which its registered office is open, lodge a notice, in the prescribed form, of the change.

601CU Certificate of registration

- (1) On registering a body corporate under Division 1 or 2 or registering under section 601DH or 601DJ a change in a registered body's name, the Commission shall issue to the body a certificate, under the Commission's common seal and in the prescribed form, of the body's registration under that Division.
- (2) A certificate under subsection (1) or a corresponding law is *prima facie* evidence of the matters stated in it.

601CV Notice of certain changes

- (1) A registered body shall, within 1 month after a change in:
- (b) its constitution or any other document lodged in relation to the body;
 - (c) its directors;
 - (d) if the body is a foreign company;
 - (i) the powers of any directors who are resident in Australia and members of an Australian board of directors of the foreign company;
 - (ii) a local agent or local agents; or
 - (iii) the name or address of a local agent; or
 - (e) the situation of:
 - (i) if it has in its place of origin a registered office for the purposes of a law (other than this Law or a corresponding law) there in force—that office; or

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- (ii) otherwise—its principal place of business in its place of origin;
lodge a written notice of particulars of the change, together with such documents (if any) as the regulations require.
- (2) The Commission may in special circumstances extend the period within which subsection (1) requires a notice or document to be lodged.

601CW Body’s name etc. must be displayed at office and place of business

- (1) This section applies to a registrable body other than a registrable local body.
- (9) Unless the body is an Australian ADI, it shall paint or affix and keep painted or affixed, in a conspicuous position and in letters easily legible, on the outside of every office and place (including its registered office) that is in this jurisdiction, at which its business is carried on and that is open and accessible to the public:
 - (a) its name and the name of its place of origin;
 - (b) if the liability of its members is limited and the last word of its name is neither the word “Limited” nor the abbreviation “Ltd.”—notice of the fact that the liability of its members is limited; and
 - (c) in the case of its registered office—the expression “Registered Office”.
- (10) If the body is an Australian ADI, it shall paint or affix its name, and shall keep its name painted or affixed, in a conspicuous position and in letters easily legible, on the outside of every office or place (including its registered office) that is in this jurisdiction, at which its business is carried on and that is open and accessible to the public.

601CX Service of documents on registered body

- (1) A document may be served on a registered body:
- (a) by leaving it at, or by sending it by post to, the registered office of the body; or
 - (b) in the case of a registered foreign company—by leaving it at, or by sending it by post to, the address of a local agent of the foreign company, being:
 - (i) in a case to which subparagraph (ii) does not apply—an address notice of which has been lodged under subsection 601CG(1); or
 - (ii) if a notice or notices of a change or alteration in that address has or have been lodged under subsection 601CV(1)—the address shown in that last-mentioned notice or the later or latest of those last-mentioned notices.
- (2) For the purposes of subsection (1), the situation of the registered office of a registered body:
- (a) in a case to which neither paragraph (b) nor paragraph (c) applies—shall be deemed to be the place notice of the address of which has been lodged under paragraph 601CB(e) or 601CE(g);
 - (b) if only one notice of a change in the situation of the registered office has been lodged with the Commission under subsection 601CT(3)—shall, on and from:
 - (i) the day that is 7 days after the day on which the notice was lodged; or
 - (ii) the day that is specified in the notice as the day from which the change is to take effect;whichever is later, be deemed to be the place the address of which is specified in the notice; or
 - (c) if 2 or more notices of a change in the situation of the registered office have been lodged under subsection 601CT(3)—shall, on and from:

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- (i) the day that is 7 days after the day on which the later or latest of those notices was lodged; or
- (ii) the day that is specified in the later or latest of those notices as the day from which the change is to take effect;

whichever is later, be deemed to be the place the address of which is specified in the relevant notice;

and shall be so deemed to be that place irrespective of whether the address of a different place is shown as the address of the registered office of the registered body in a return or other document (not being a notice under subsection 601CT(3)) lodged after the notice referred to in paragraph (a) or (b), or the later or latest of the notices referred to in paragraph (c), was lodged.

- (3) Without limiting the operation of subsection (1), if 2 or more directors of a registered body reside in Australia or an external Territory, a document may be served on the body by delivering a copy of the document personally to each of 2 of those directors.
- (3A) Without limiting the operation of subsection (1), a document may be served on a registered body that is registered as a proprietary company and has only one director by delivering a copy personally to that director.
- (4) Where a liquidator of a registered body has been appointed, a document may be served on the body by leaving it at, or by sending it by post to, the last address of the office of the liquidator notice of which has been lodged.
- (5) Nothing in this section affects the power of the Court to authorise a document to be served on a registered body in a manner not provided for by this section.
- (6) Subject to subsection 8(4), subsection 8(3) applies in relation to a reference in this section.

601CY Power to hold land

A registered body has power to hold land in this jurisdiction.

Part 5B.3—Names of registrable Australian bodies and foreign companies

601DA Reserving a name

- (1) A person may lodge an application in the prescribed form with ASIC to reserve a name for a registrable Australian body or a foreign company. If the name is available, ASIC must reserve it.

Note: For available names, see section 601DC.

- (2) The reservation lasts for 2 months from the date when the application was lodged. An applicant may ask ASIC in writing for an extension of the reservation during a period that the name is reserved, and ASIC may extend the reservation for 2 months.
- (3) ASIC must cancel a reservation if the applicant asks ASIC in writing to do so.

601DB Acceptable abbreviations

- (1) The abbreviations set out in the following table may be used:
 - (a) instead of words that this Law requires to be part of a registrable Australian body's or foreign company's name or to be included in a document; and
 - (b) instead of words that are part of a registrable Australian body's or foreign company's name; and
 - (c) with or without full stops.

Acceptable abbreviations		[operative table]
	Word	Abbreviation
1	Company	Co or Coy
2	Proprietary	Pty
3	Limited	Ltd

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Acceptable abbreviations		[operative table]
Word	Abbreviation	
4 Australian	Aust	
5 Number	No	
6 and	&	
7 Australian Registered Body Number	ARBN	
8 Registered	Regd	

- (2) If a registrable Australian body's or foreign company's name includes any of these abbreviations, the word corresponding to the abbreviation may be used instead.

601DC When a name is available

Name is available unless identical or unacceptable

- (1) A name is available to a registrable Australian body or a foreign company unless the name is:
- (a) identical (under rules set out in the regulations) to a name that is reserved or registered under the Law for another body; or
 - (b) identical (under rules set out in the regulations) to a name that is included on the national business names register in respect of another individual or body who is not the person applying to have the name; or
 - (c) unacceptable for registration under the regulations.

Minister may consent to a name being available

- (2) The Minister may consent in writing to a name being available to a registrable Australian body or foreign company even if the name is:
- (a) identical to a name that is reserved or registered under this Law for another body; or
 - (b) unacceptable for registration under the regulations.

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- (3) The Minister’s consent may be given subject to conditions.

Note: If the body or company breaches a condition, ASIC may direct it to change its name under section 601DJ.

601DD Registered Australian bodies and registered foreign companies can carry on business with some names only

A registered Australian body or registered foreign company must not carry on business under a name in this jurisdiction unless:

- (a) it is registered under that name under Part 5B.2 or a corresponding law; or
- (b) the name is registered for it under the law of this jurisdiction dealing with business names.

601DE Using a name and ARBN

Requirements for bodies that are not Australian banks

- (1) Subject to sections 601DF and 601DG, a registered Australian body or registered foreign company must set out the following on all its public documents and negotiable instruments published or signed in this jurisdiction:
- (a) its name
 - (b) the expression “Australian Registered Body Number” followed by its ARBN
 - (c) its place of origin
 - (d) if the liability of its members is limited and this is not apparent from its name—notice of the limited liability of its members.

Paragraphs (c) and (d) do not apply to an Australian ADI.

Where information to be set out

- (2) Subject to sections 601DF and 601DG, the information required by paragraph (1)(b) must be set out with the company’s or body’s name, or 1 of the references to its name in the document or

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instrument. If the name appears on 2 or more pages of the document or instrument, this must be done on the first of those pages.

601DF Exception to requirement to have ARBN on receipts

A registered Australian body or a registered foreign company does not have to set out the expression “Australian Registered Body Number” followed by its ARBN on a receipt (for example, a cash register receipt) that sets out information recorded in the machine that produced the receipt.

601DG Regulations may exempt from requirement to set out information on documents

The regulations may exempt a specified registered Australian body or registered foreign company, or a class of those bodies or companies, from the requirement in paragraphs 601DE(1)(b), (c) and (d) to set out information on its public documents and negotiable instruments. The exemption may relate to specified documents or instruments, or a class of documents or instruments.

601DH Notice of name change must be given to ASIC

- (1) A registered Australian body or a registered foreign company must give ASIC written notice of a change to its name within 14 days after the date the change occurred.
- (2) If the proposed name is available, ASIC must alter the details of the body’s or foreign company’s registration to reflect the change. For the purposes of this Law (other than subsection (1)), the change of name takes effect when ASIC alters the details of the body’s or foreign company’s registration.

Note 1: For the reservation of names, see section 601DA.

Note 2: For available names, see section 601DC.

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Note 3: ASIC must issue a new certificate reflecting the name change (see section 601CU).

601DJ ASIC’s power to direct a registered name be changed

- (1) ASIC may direct a registered Australian body or registered foreign company in writing to change the name under which the body or company is registered within 2 months if:
 - (a) the name should not have been registered; or
 - (b) the body or company has breached a condition under subsection 601DC(3) on the availability of the name.
- (2) The body or company must comply with the direction within 2 months after being given it by doing everything necessary to change its name for the purposes of this Law under section 601DH.
- (3) If the body or company does not comply with subsection (2), ASIC may change the body’s or company’s name to a name that includes its ARBN by altering the details of the body’s or company’s registration to reflect the change.
- (4) For the purposes of this Law, a change of name under subsection (3) takes effect when ASIC alters the details of the body’s or foreign company’s registration.

Note: ASIC must issue a new certificate reflecting the name change (see section 601CU).

Chapter 5C—Managed investment schemes

Part 5C.1—Registration of managed investment schemes

601EA Applying for registration

- (1) To register a managed investment scheme, a person must lodge an application with ASIC.
- (2) The application must state:
 - (a) the name, and the address of the registered office, of the proposed responsible entity; and
 - (b) the name and address of a person who has consented to be the auditor of the compliance plan.
- (3) The applicant must have the consent referred to in paragraph (2)(b) when the application is lodged. After the scheme is registered, the applicant must give the consent to the responsible entity. The responsible entity must keep the consent.
- (4) The following must be lodged with the application:
 - (a) a copy of the scheme's constitution
 - (b) a copy of the scheme's compliance plan
 - (c) a statement signed by the directors of the proposed responsible entity that:
 - (i) the scheme's constitution complies with sections 601GA and 601GB; and
 - (ii) the scheme's compliance plan complies with section 601HA.

Note: Section 601HC requires that the copy of the compliance plan be signed by the directors of the responsible entity.

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601EB Registration of managed investment scheme

- (1) ASIC must register the scheme within:
 - (a) 28 days if the application is lodged within 2 years after commencement of this Chapter; or
 - (b) 14 days if the application is lodged later than that;
unless it appears to ASIC that:
 - (c) the application does not comply with section 601EA; or
 - (d) the proposed responsible entity does not meet the requirements of section 601FA; or
 - (e) the scheme's constitution does not meet the requirements of sections 601GA and 601GB; or
 - (f) the scheme's compliance plan does not meet the requirements of section 601HA; or
 - (g) the copy of the compliance plan lodged with the application is not signed as required by section 601HC; or
 - (h) arrangements are not in place that will satisfy the requirements of section 601HG in relation to audit of compliance with the plan.
- (2) If ASIC registers the scheme, ASIC must give it an ARSN.
- (3) ASIC must keep a record of the registration of the scheme.
- (4) For the purpose of determining whether subsection (1) is satisfied in relation to the scheme:
 - (a) references in Parts 5C.3, 5C.4 and 5C.5 to a registered scheme are taken to include a reference to the scheme; and
 - (b) references in those Parts to the responsible entity of a registered scheme are taken to include a reference to the proposed responsible entity of the scheme.

601EC All documents etc. lodged with ASIC to bear ARSN

After a managed investment scheme is registered, the scheme's ARSN must appear on all documents relating to the scheme that are lodged with ASIC.

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601ED When a managed investment scheme must be registered

- (1) Subject to subsection (2), a managed investment scheme must be registered under section 601EB if:
 - (a) it has more than 20 members; or
 - (b) it was promoted by a person, or an associate of a person, who was, when the scheme was promoted, in the business of promoting managed investment schemes; or
 - (c) a determination under subsection (3) is in force in relation to the scheme and the total number of members of all of the schemes to which the determination relates exceeds 20.
- (2) A managed investment scheme does not have to be registered if all the issues of interests in the scheme that have been made were excluded issues (disregarding paragraph 66(2)(da)) when they were made.
- (3) ASIC may, in writing, determine that a number of managed investment schemes are closely related and that each of them has to be registered at any time when the total number of members of all of the schemes exceeds 20. ASIC must give written notice of the determination to the operator of each of the schemes.
- (4) For the purpose of this section, when working out how many members a scheme has:
 - (a) joint holders of an interest in the scheme count as a single member; and
 - (b) an interest in the scheme held on trust for a beneficiary is taken to be held by the beneficiary (rather than the trustee) if:
 - (i) the beneficiary is presently entitled to a share of the trust estate or of the income of the trust estate; or
 - (ii) the beneficiary is, individually or together with other beneficiaries, in a position to control the trustee.
- (5) A person must not operate a managed investment scheme that this section requires to be registered under section 601EB unless the scheme is so registered.

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- (6) For the purpose of subsection (5), a person is not operating a scheme merely because:
 - (a) they are acting as an agent or employee of another person; or
 - (b) they are taking steps to wind up the scheme or remedy a defect that led to the scheme being deregistered.
- (7) A person who would otherwise contravene subsection (5) because an interest in a scheme is held in trust for 2 or more beneficiaries (see paragraph (4)(b)) does not contravene that subsection if they prove that they did not know, and had no reason to suspect, that the interest was held in that way.

601EE Unregistered schemes may be wound up

- (1) If a person operates a managed investment scheme in contravention of subsection 601ED(5), the following may apply to the Court to have the scheme wound up:
 - (a) ASIC
 - (b) the person operating the scheme
 - (c) a member of the scheme.
- (2) The Court may make any orders it considers appropriate for the winding up of the scheme.

Part 5C.2—The responsible entity

Division 1—Responsibilities and powers

601FA Responsible entity to be public company and hold dealers licence

The responsible entity of a registered scheme must be a public company that holds a dealers licence authorising it to operate a managed investment scheme.

601FB Responsible entity to operate scheme

- (1) The responsible entity of a registered scheme is to operate the scheme and perform the functions conferred on it by the scheme's constitution and this Law.
- (2) The responsible entity has power to appoint an agent, or otherwise engage a person, to do anything that it is authorised to do in connection with the scheme. For the purpose of determining whether:
 - (a) there is a liability to the members; or
 - (b) the responsible entity has properly performed its duties for the purposes of subsection 601GA(2);the responsible entity is taken to have done (or failed to do) anything that the agent or person has done (or failed to do) because of the appointment or engagement, even if they were acting fraudulently or outside the scope of their authority or engagement.

Note: A scheme's constitution may provide for the responsible entity to be indemnified for liabilities—see subsection 601GA(2).
- (3) An agent appointed, or a person otherwise engaged, by:
 - (a) the agent or person referred to in subsection (2); or
 - (b) a person who is taken under this subsection to be an agent of the responsible entity;

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to do anything that the responsible entity is authorised to do in connection with the scheme is taken to be an agent appointed by the responsible entity to do that thing for the purposes of subsection (2).

- (4) If:
- (a) an agent holds scheme property on behalf of the responsible entity; and
 - (b) the agent is liable to indemnify the responsible entity against any loss or damage that:
 - (i) the responsible entity suffers as a result of a wrongful or negligent act or omission of the agent; and
 - (ii) relates to a failure by the responsible entity to perform its duties in relation to the scheme;
- any amount recovered under the indemnity forms part of the scheme property.

601FC Duties of responsible entity

- (1) In exercising its powers and carrying out its duties, the responsible entity of a registered scheme must:
- (a) act honestly; and
 - (b) exercise the degree of care and diligence that a reasonable person would exercise if they were in the responsible entity's position; and
 - (c) act in the best interests of the members and, if there is a conflict between the members' interests and its own interests, give priority to the members' interests; and
 - (d) treat the members who hold interests of the same class equally and members who hold interests of different classes fairly; and
 - (e) not make use of information acquired through being the responsible entity in order to:
 - (i) gain an improper advantage for itself or another person; or
 - (ii) cause detriment to the members of the scheme; and

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- (f) ensure that the scheme’s constitution meets the requirements of sections 601GA and 601GB; and
- (g) ensure that the scheme’s compliance plan meets the requirements of section 601HA; and
- (h) comply with the scheme’s compliance plan; and
- (i) ensure that scheme property is:
 - (i) clearly identified as scheme property; and
 - (ii) held separately from property of the responsible entity and property of any other scheme; and
- (j) ensure that the scheme property is valued at regular intervals appropriate to the nature of the property; and
- (k) ensure that all payments out of the scheme property are made in accordance with the scheme’s constitution and this Law; and
- (l) report to ASIC any breach of this Law that:
 - (i) relates to the scheme; and
 - (ii) has had, or is likely to have, a materially adverse effect on the interests of members;as soon as practicable after it becomes aware of the breach; and
- (m) carry out or comply with any other duty, not inconsistent with this Law, that is conferred on the responsible entity by the scheme’s constitution.

Note: Subsection (1) is a civil penalty provision as defined by section 1317DA and Part 9.4B provides for civil and criminal consequences of contravening it.

- (2) The responsible entity holds scheme property on trust for scheme members.

Note: Under subsection 601FB(2), the responsible entity may appoint an agent to hold scheme property separately from other property.

- (3) A duty of the responsible entity under subsection (1) or (2) overrides any conflicting duty an officer or employee of the responsible entity has under section 232.

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Investment of scheme property in other managed investment schemes

- (4) The responsible entity may only invest scheme property, or keep scheme property invested, in another managed investment scheme if that other scheme is registered under this Chapter.

601FD Duties of officers of responsible entity

- (1) An officer of the responsible entity of a registered scheme must:
- (a) act honestly; and
 - (b) exercise the degree of care and diligence that a reasonable person would exercise if they were in the officer's position; and
 - (c) act in the best interests of the members and, if there is a conflict between the members' interests and the interests of the responsible entity, give priority to the members' interests; and
 - (d) not make use of information acquired through being an officer of the responsible entity in order to:
 - (i) gain an improper advantage for the officer or another person; or
 - (ii) cause detriment to the members of the scheme; and
 - (e) not make improper use of their position as an officer to gain, directly or indirectly, an advantage for themselves or for any other person or to cause detriment to the members of the scheme; and
 - (f) take all steps that a reasonable person would take, if they were in the officer's position, to ensure that the responsible entity complies with:
 - (i) this Law; and
 - (ii) any conditions imposed on the responsible entity's dealers licence; and
 - (iii) the scheme's constitution; and
 - (iv) the scheme's compliance plan.

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Note: Subsection (1) is a civil penalty provision as defined in section 1317DA and Part 9.4B provides for civil and criminal consequences of contravening it.

- (2) A duty of an officer of the responsible entity under subsection (1) overrides any conflicting duty the officer has under section 232.

601FE Duties of employees of responsible entity

- (1) An employee of the responsible entity of a registered scheme must not:
- (a) make use of information acquired through being an employee of the responsible entity in order to:
 - (i) gain an improper advantage for the employee or another person; or
 - (ii) cause detriment to members of the scheme; or
 - (b) make improper use of their position as an employee to gain, directly or indirectly, an advantage for themselves or for any other person or to cause detriment to the members of the scheme.

Note: Subsection (1) is a civil penalty provision as defined in section 1317DA and Part 9.4B provides for civil and criminal consequences of contravening it.

- (2) A duty of an employee of the responsible entity under subsection (1) overrides any conflicting duty the employee has under section 232.

601FF Surveillance checks by ASIC

- (1) ASIC may, from time to time, check whether the responsible entity of a registered scheme is complying with the scheme's constitution and compliance plan and with this Law.

Note: For this purpose ASIC may exercise the powers set out in Division 3 of Part 3 of the *Australian Securities and Investments Commission Act 1989*.

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- (2) The responsible entity and its officers must take all reasonable steps to assist ASIC in carrying out a check under subsection (1).

601FG Acquisition of interest in scheme by responsible entity

The responsible entity of a registered scheme may acquire and hold an interest in the scheme, but it must only do so:

- (a) for not less than the consideration that would be payable if the interest were acquired by another person; and
- (b) subject to terms and conditions that would not disadvantage other members.

Note 1: If the responsible entity holds an interest in the scheme, it does so subject to section 253E (certain members cannot vote or be counted).

Note 2: This section is a civil penalty provision as defined in section 1317DA and Part 9.4B provides for civil and criminal consequences of contravening it.

601FH Liquidator etc. of responsible entity entitled to exercise indemnity rights

If the company that is a registered scheme's responsible entity is being wound up, is under administration or has executed a deed of company arrangement that has not terminated:

- (a) a provision of the scheme's constitution, or of another instrument, is void against the liquidator, or the administrator of the company or the deed, if it purports to deny the company a right to be indemnified out of the scheme property that the company would have had if it were not being wound up, were not under administration, or had not executed a deed of company arrangement; and
- (b) a right of the company to be indemnified out of the scheme property may only be exercised by the liquidator or the administrator of the company or the deed.

Division 2—Changing the responsible entity

601FJ Changes only take effect when ASIC alters record of registration

- (1) Despite anything in this Division, the company named in ASIC's record of registration as the responsible entity or temporary responsible entity of a registered scheme remains the scheme's responsible entity until the record is altered to name another company as the scheme's responsible entity or temporary responsible entity.
- (2) A purported change of the scheme's responsible entity is ineffective unless it is in accordance with this Division.

601FK Requirements of section 601FA must be met

A company cannot be chosen or appointed as the responsible entity or temporary responsible entity of a registered scheme unless it meets the requirements of section 601FA.

601FL Retirement of responsible entity

- (1) If the responsible entity of a registered scheme wants to retire, it must call a members' meeting to explain its reason for wanting to retire and to enable the members to vote on an extraordinary resolution to choose a company to be the new responsible entity.
- (2) If the members choose a company to be the new responsible entity and that company has consented, in writing, to becoming the scheme's responsible entity:
 - (a) as soon as practicable and in any event within 2 business days after the resolution is passed, the current responsible entity must lodge a notice with ASIC asking it to alter the record of the scheme's registration to name the chosen company as the scheme's responsible entity; and

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- (b) if the current responsible entity does not lodge the notice required by paragraph (a), the company chosen by the members to be the new responsible entity may lodge that notice; and
 - (c) ASIC must comply with the notice when it is lodged.
- (3) If the members do not choose a company to be the new responsible entity, or the company they choose does not consent to becoming the scheme's responsible entity, the current responsible entity may apply to the Court for appointment of a temporary responsible entity under section 601FP.
- (4) A person must not lodge a notice under subsection (2) unless the consent referred to in that subsection has been given before the notice is lodged.

601FM Removal of responsible entity by members

- (1) If members of a registered scheme want to remove the responsible entity, they may take action under Division 1 of Part 2G.4 for the calling of a members' meeting to consider and vote on:
 - (a) an extraordinary resolution that the current responsible entity should be removed; and
 - (b) an extraordinary resolution choosing a company to be the new responsible entity.
- (2) If the members vote to remove the responsible entity and, at the same meeting, choose a company to be the new responsible entity that consents, in writing, to becoming the scheme's responsible entity:
 - (a) as soon as practicable and in any event within 2 business days after the resolution is passed, the current responsible entity must lodge a notice with ASIC asking it to alter the record of the scheme's registration to name the chosen company as the scheme's responsible entity; and
 - (b) if the current responsible entity does not lodge the notice required by paragraph (a), the company chosen by the

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members to be the new responsible entity may lodge that notice; and

(c) ASIC must comply with the notice when it is lodged.

- (3) A person must not lodge a notice under subsection (2) unless the consent referred to in that subsection has been given before the notice is lodged.

Note: If the members vote to remove the responsible entity but do not, at the same meeting, choose a company to be the new responsible entity, or the company they choose does not consent to becoming the scheme's responsible entity, the scheme must be wound up (see section 601NE).

601FN ASIC or scheme member may apply to Court for appointment of temporary responsible entity

ASIC or a member of the registered scheme may apply to the Court for the appointment of a temporary responsible entity of the scheme under section 601FP if the scheme does not have a responsible entity that meets the requirements of section 601FA.

601FP Appointment of temporary responsible entity by Court

- (1) On application under section 601FL or 601FN, the Court may, by order, appoint a company as the temporary responsible entity of a registered scheme if the Court is satisfied that the appointment is in the interest of the members.
- (2) The Court may make any further orders that it considers necessary.
- (3) If the application was made by the current responsible entity, it must, as soon as practicable after the Court's order appointing the temporary responsible entity, lodge a notice with ASIC informing ASIC of the appointment made by the Court.
- (4) As soon as practicable after the appointment, ASIC must alter the record of the scheme's registration to name the appointed company as the scheme's temporary responsible entity.

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601FQ Temporary responsible entity to take steps for appointment of new responsible entity

- (1) The temporary responsible entity of a registered scheme must call a members' meeting for the purpose of the members, by extraordinary resolution, choosing a company to be the new responsible entity. The temporary responsible entity must call the meeting as soon as practicable and, in any event, within 3 months of becoming the temporary responsible entity.
- (2) Within that 3 months, the temporary responsible entity may call further members' meetings for the purpose of choosing a company to be the new responsible entity. Before the end of the 3 months, it may apply to the Court for an extension of that period. If the Court grants the extension, the temporary responsible entity may, within the extended period, call further members' meetings for the purpose of choosing a company to be the new responsible entity.
- (3) Provided it still meets the requirements in section 601FA, nothing prevents the company that is the temporary responsible entity from being chosen as the new responsible entity.
- (4) If the members choose a company to be the new responsible entity and that company has consented, in writing, to becoming the scheme's responsible entity, the temporary responsible entity must, as soon as practicable, lodge a notice with ASIC asking it to alter the record of the scheme's registration to name the chosen company as the scheme's responsible entity. ASIC must comply with the notice when it is lodged.
- (5) The temporary responsible entity must apply to the Court for an order directing it to wind up the scheme, and the Court may make the order, if:
 - (a) no meeting is called within the 3 months or extended period for the purpose of choosing a new company to be the responsible entity; or
 - (b) the meeting or meetings called within that period for that purpose have not resulted in the members choosing a

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company to be the new responsible entity that consents to becoming the scheme's responsible entity.

ASIC or a member of the scheme may apply for the order if the temporary responsible entity does not do so.

- (6) The temporary responsible entity must not lodge a notice under subsection (4) unless the consent referred to in that subsection has been given before the notice is lodged.

Division 3—Consequences of change of responsible entity

601FR Former responsible entity to hand over books and provide reasonable assistance

If the responsible entity of a registered scheme changes, the former responsible entity must:

- (a) as soon as practicable give the new responsible entity any books in the former responsible entity's possession or control that this Law requires to be kept in relation to the scheme; and
- (b) give other reasonable assistance to the new responsible entity to facilitate the change of responsible entity.

601FS Rights, obligations and liabilities of former responsible entity

- (1) If the responsible entity of a registered scheme changes, the rights, obligations and liabilities of the former responsible entity in relation to the scheme become rights, obligations and liabilities of the new responsible entity.
- (2) Despite subsection (1), the following rights and liabilities remain rights and liabilities of the former responsible entity:
 - (a) any right of the former responsible entity to be paid fees for the performance of its functions before it ceased to be the responsible entity; and
 - (b) any right of the former responsible entity to be indemnified for expenses it incurred before it ceased to be the responsible entity; and
 - (c) any right, obligation or liability that the former responsible entity had as a member of the scheme; and
 - (d) any liability for which the former responsible entity could not have been indemnified out of the scheme property if it had remained the scheme's responsible entity.

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601FT Effect of change of responsible entity on documents etc. to which former responsible entity is party

- (1) If the responsible entity of a registered scheme changes, a document:
 - (a) to which the former responsible entity is a party, in which a reference is made to the former responsible entity, or under which the former responsible entity has acquired or incurred a right, obligation or liability, or might have acquired or incurred a right, obligation or liability if it had remained the responsible entity; and
 - (b) that is capable of having effect after the change; has effect as if the new responsible entity (and not the former responsible entity) were a party to it, were referred to in it or had or might have acquired or incurred the right, obligation or liability under it.
- (2) Subsection (1) does not apply to a right, obligation or liability that remains a right, obligation or liability of the former responsible entity because of subsection 601FS(2).

Part 5C.3—The constitution

601GA Contents of the constitution

- (1) The constitution of a registered scheme must make adequate provision for:
 - (a) the consideration that is to be paid to acquire an interest in the scheme; and
 - (b) the powers of the responsible entity in relation to making investments of, or otherwise dealing with, scheme property; and
 - (c) the method by which complaints made by members in relation to the scheme are to be dealt with; and
 - (d) winding up the scheme.
- (2) If the responsible entity is to have any rights to be paid fees out of scheme property, or to be indemnified out of scheme property for liabilities or expenses incurred in relation to the performance of its duties, those rights:
 - (a) must be specified in the scheme's constitution; and
 - (b) must be available only in relation to the proper performance of those duties;and any other agreement or arrangement has no effect to the extent that it purports to confer such a right.
- (3) If the responsible entity is to have any powers to borrow or raise money for the purposes of the scheme:
 - (a) those powers must be specified in the scheme's constitution; and
 - (b) any other agreement or arrangement has no effect to the extent that it purports to confer such a power.
- (4) If members are to have a right to withdraw from the scheme, the scheme's constitution must:
 - (a) specify the right; and

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- (b) if the right may be exercised while the scheme is liquid (as defined in section 601KA)—set out adequate procedures for making and dealing with withdrawal requests; and
- (c) if the right may be exercised while the scheme is not liquid (as defined in section 601KA)—provide for the right to be exercised in accordance with Part 5C.6 and set out any other adequate procedures (consistent with that Part) that are to apply to making and dealing with withdrawal requests.

The right to withdraw, and any provisions in the constitution setting out procedures for making and dealing with withdrawal requests, must be fair to all members.

601GB Constitution must be legally enforceable

The constitution of a registered scheme must be contained in a document that is legally enforceable as between the members and the responsible entity.

601GC Changing the constitution

- (1) The constitution of a registered scheme may be modified, or repealed and replaced with a new constitution:
 - (a) by special resolution of the members of the scheme; or
 - (b) by the responsible entity if the responsible entity reasonably considers the change will not adversely affect members' rights.
- (2) The responsible entity must lodge with ASIC a copy of the modification or the new constitution. The modification, or repeal and replacement, cannot take effect until the copy has been lodged.
- (3) The responsible entity must lodge with ASIC a consolidated copy of the scheme's constitution if ASIC directs it to do so.
- (4) The responsible entity must send a copy of the scheme's constitution to a member of the scheme within 7 days if the member:
 - (a) asks the responsible entity, in writing, for the copy; and

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- (b) pays any fee (up to the prescribed amount) required by the responsible entity.

Part 5C.4—The compliance plan

601HA Contents of the compliance plan

- (1) The compliance plan of a registered scheme must set out adequate measures that the responsible entity is to apply in operating the scheme to ensure compliance with this Law and the scheme's constitution, including the arrangements for:
 - (a) ensuring that all scheme property is clearly identified as scheme property and held separately from property of the responsible entity and property of any other scheme (see paragraph 601FC(1)(i)); and
 - (b) if the scheme is required to have a compliance committee (see section 601JA)—ensuring that the compliance committee functions properly, including adequate arrangements relating to:
 - (i) the membership of the committee; and
 - (ii) how often committee meetings are to be held; and
 - (iii) the committee's reports and recommendations to the responsible entity; and
 - (iv) the committee's access to the scheme's accounting records and to the auditor of the scheme's financial statements; and
 - (v) the committee's access to information that is relevant to the responsible entity's compliance with this Law; and
 - (c) ensuring that the scheme property is valued at regular intervals appropriate to the nature of the property; and
 - (d) ensuring that compliance with the plan is audited as required by section 601HG; and
 - (e) ensuring adequate records of the scheme's operations are kept; and
 - (f) any other matter prescribed by the regulations.
- (2) If:

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(a) a registration application is made as a result of a resolution passed under subparagraph 1457(1)(a)(i); and

(b) the resolution included a direction under subsection 1457(1A);

the compliance plan lodged with the application must provide for scheme property to be held by a person other than the responsible entity, or a person that is not related to the responsible entity, as the responsible entity's agent.

601HB Compliance plan may incorporate provisions from another scheme's plan

(1) The responsible entity of a registered scheme may lodge with ASIC a compliance plan for the scheme that is expressed to incorporate specified provisions, as in force at a specified time, of a compliance plan of another registered scheme of which it is also the responsible entity.

(2) The specified provisions, as in force at the specified time, are taken to be included in the plan.

601HC Directors must sign lodged copy of compliance plan

The copy of a scheme's compliance plan that is lodged with ASIC must be signed by all the directors of the responsible entity.

601HD ASIC may require further information about compliance plan

ASIC may direct the responsible entity of a registered scheme to give it information about the arrangements contained in the compliance plan. The direction is to be given by notice in writing to the responsible entity.

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601HE Changing the compliance plan

Responsible entity's powers

- (1) The responsible entity of a registered scheme may modify the scheme's compliance plan or repeal it and replace it with a new compliance plan.

ASIC may require modifications

- (2) ASIC may direct the responsible entity of a registered scheme to modify the scheme's compliance plan, as set out in the direction, to ensure that the plan is consistent with section 601HA. The direction is to be given by notice in writing to the responsible entity.

Lodgment of modification or new plan

- (3) The responsible entity must lodge with ASIC a copy of a modification of the scheme's compliance plan or of a new compliance plan within 14 days after the modification is made or the old plan is repealed. The copy must be signed by all the directors of the responsible entity.

601HF ASIC may require consolidation of compliance plan to be lodged

- (1) ASIC may direct the responsible entity of a registered scheme to lodge a consolidated copy of the scheme's compliance plan.
- (2) The consolidation must set out:
 - (a) the plan as modified to the time of lodgment; and
 - (b) if required by ASIC's direction—the full text of provisions taken to be included in the plan by subsection 601HB(2).

601HG Audit of compliance plan

- (1) The responsible entity of a registered scheme must ensure that at all times a registered company auditor is engaged to audit

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compliance with the scheme's compliance plan in accordance with this section. This auditor is referred to as the *auditor of the compliance plan*.

- (2) A person is not eligible to act as the auditor of the compliance plan if the person is:
- (a) an associate of the responsible entity; or
 - (b) an agent holding scheme property on behalf of the responsible entity or an associate of an agent of that kind; or
 - (c) the auditor of the responsible entity's financial statements.
- The auditor of the compliance plan and the auditor of the responsible entity's financial statements may, however, work for the same firm of auditors.
- (3) Within 3 months after the end of a financial year of the scheme, the auditor of the compliance plan must:
- (a) examine the scheme's compliance plan; and
 - (b) carry out:
 - (i) if the scheme has only had one responsible entity during the financial year—an audit of the responsible entity's compliance with the compliance plan during the financial year; or
 - (ii) if the scheme has had more than one responsible entity during the financial year—an audit of each responsible entity's compliance with the compliance plan during that part of the financial year when it was the scheme's responsible entity; and
 - (c) give to the scheme's current responsible entity a report that states whether, in the auditor's opinion:
 - (i) the responsible entity, or each responsible entity, complied with the scheme's compliance plan during the financial year or that part of the financial year when it was the scheme's responsible entity; and
 - (ii) the plan continues to meet the requirements of this Part.
- (4) The auditor of the compliance plan must, as soon as possible, notify ASIC in writing if the auditor:
-

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- (a) has reasonable grounds to suspect that a contravention of this Law has occurred; and
 - (b) believes that the contravention has not been or will not be adequately dealt with by commenting on it in the auditor's report under subsection (3) or bringing it to the attention of the responsible entity.
- (5) The auditor of the compliance plan:
- (a) has a right of access at all reasonable times to the books of the scheme; and
 - (b) may require an officer of the responsible entity to give the auditor information and explanations for the purposes of the audit.
- (6) An officer of the responsible entity must:
- (a) allow the auditor of the compliance plan to have access to the books of the scheme; and
 - (b) give the auditor information or an explanation required under subsection (5); and
 - (c) otherwise assist the conduct of the audit.
- (7) The responsible entity must lodge the auditor's report under subsection (3) with ASIC at the same time as the financial statements and reports in respect of the scheme are to be lodged with ASIC (see sections 292 and 321).
- (8) The auditor of the compliance plan has qualified privilege in respect of:
- (a) a statement made in a report under subsection (3); or
 - (b) a notification to ASIC under subsection (4).
- (9) This section does not prevent the responsible entity from arranging for the auditor of the compliance plan to carry out audits in addition to those required by this section.

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601HH Removal and resignation of auditors

Removal of auditor by responsible entity

- (1) The responsible entity:
 - (a) must remove the auditor of the compliance plan if the auditor becomes ineligible under subsection 601HG(2) to act as auditor of the compliance plan; and
 - (b) may, with ASIC's consent, remove the auditor of the compliance plan.

Resignation of auditor

- (2) The auditor of the compliance plan may resign by written notice to the responsible entity if:
 - (a) the auditor:
 - (i) applies to ASIC in writing for its consent to the resignation; and
 - (ii) gives the responsible entity written notice of the application at or about the same time as applying to ASIC; and
 - (b) ASIC consents to the resignation.
- (3) As soon as practicable after receiving the application, ASIC must notify the auditor and the responsible entity whether it consents to the resignation.
- (4) A statement by the auditor in the application or in answer to an inquiry by ASIC relating to the reasons for the application:
 - (a) is not admissible in evidence in any civil or criminal proceedings in a court of this jurisdiction against the auditor (other than proceedings for a contravention of section 1308); and
 - (b) may not be made the ground of a prosecution (other than a prosecution for a contravention of section 1308), action or suit against the auditor.

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A certificate by ASIC that the statement was made in the application, or in answer to an inquiry by ASIC, is conclusive evidence that the statement was so made.

- (5) The auditor's resignation takes effect on the later of:
- (a) the day (if any) specified in the notice of resignation; or
 - (b) the day ASIC consents to the resignation; or
 - (c) the day (if any) fixed by ASIC for the purpose.

601HI Action on change of auditor of compliance plan

If the auditor of the compliance plan of a registered scheme changes, the responsible entity must, as soon as practicable after the change and in writing, ask ASIC to alter the record of the scheme's registration to show the name of the new auditor as the auditor of the scheme's compliance plan. ASIC must comply with the request if the change complies with the Law.

Part 5C.5—The compliance committee

601JA When is a compliance committee required?

- (1) The responsible entity of a registered scheme must establish a compliance committee if less than half of the directors of the responsible entity are external directors.
- (2) A director of the responsible entity is an external director if they:
 - (a) are not, and have not been in the previous 2 years, an employee of the responsible entity or a related body corporate; and
 - (b) are not, and have not been in the previous 2 years, an executive officer of a related body corporate; and
 - (c) are not, and have not been in the previous 2 years, substantially involved in business dealings, or in a professional capacity, with the responsible entity or a related body corporate; and
 - (d) are not a member of a partnership that is, or has been in the previous 2 years, substantially involved in business dealings, or in a professional capacity, with the responsible entity or a related body corporate; and
 - (e) do not have a material interest in the responsible entity or a related body corporate; and
 - (f) are not a relative or de facto spouse of a person who has a material interest in the responsible entity or a related body corporate.
- (3) The responsible entity must establish the compliance committee within 14 days after it is required to do so by subsection (1) or within any longer period that ASIC has agreed to in writing.
- (4) In agreeing to a longer period under subsection (3), ASIC may impose conditions to be complied with and the responsible entity must comply with them.

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601JB Membership of compliance committee

- (1) A scheme's compliance committee must have at least 3 members, and a majority of them must be external members.
- (2) A member of the compliance committee is an external member if they:
 - (a) are not, and have not been in the previous 2 years, a non-external director, an executive officer or an employee of the responsible entity or a related body corporate; and
 - (b) are not, and have not been in the previous 2 years, substantially involved in business dealings, or in a professional capacity, with the responsible entity or a related body corporate; and
 - (c) are not a member of a partnership that is, or has been in the previous 2 years, substantially involved in business dealings, or in a professional capacity, with the responsible entity or a related body corporate; and
 - (d) do not have a material interest in the responsible entity or a related body corporate; and
 - (e) are not a relative or de facto spouse of a person who has a material interest in the responsible entity or a related body corporate.
- (3) For the purposes of paragraph (2)(a), a person who is a director of a related body corporate, but not of the responsible entity itself, is an external director of the related body corporate if they would have been an external director of the responsible entity under section 601JA(2) had they been a director of the responsible entity.
- (4) A person who is, or has been, either:
 - (a) an external director of the responsible entity; or
 - (b) a member of a compliance committee for the scheme or another registered managed investment scheme operated by the responsible entity;

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is not, merely because of that directorship or membership, taken to be, or to have been, substantially involved in business dealings, or in a professional capacity, with the responsible entity.

- (5) If the membership of the scheme's compliance committee ceases to satisfy subsection (1), the responsible entity must make appointments to the committee to satisfy that subsection within 14 days or within any longer period that ASIC has agreed to in writing.
- (6) In agreeing to a longer period under subsection (5), ASIC may impose conditions to be complied with and the responsible entity must comply with them.

601JC Functions of compliance committee

- (1) The functions of a scheme's compliance committee are:
 - (a) to monitor to what extent the responsible entity complies with the scheme's compliance plan and to report on its findings to the responsible entity; and
 - (b) to report to the responsible entity:
 - (i) any breach of this Law involving the scheme; or
 - (ii) any breach of the provisions included in the scheme's constitution in accordance with section 601GA;
of which the committee becomes aware or that it suspects;
and
 - (c) to report to ASIC if the committee is of the view that the responsible entity has not taken, or does not propose to take, appropriate action to deal with a matter reported under paragraph (b); and
 - (d) to assess at regular intervals whether the compliance plan is adequate, to report to the responsible entity on the assessment and to make recommendations to the responsible entity about any changes that it considers should be made to the plan.
- (2) In carrying out its functions, the compliance committee may commission independent legal, accounting or other professional

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advice or assistance, at the reasonable expense of the responsible entity.

601JD Duties of members

- (1) A member of a scheme's compliance committee must:
- (a) act honestly; and
 - (b) exercise the degree of care and diligence that a reasonable person would exercise if they were in the member's position; and
 - (c) not make use of information acquired through being a member of the committee in order to:
 - (i) gain an improper advantage for the member or another person; or
 - (ii) cause detriment to the members of the scheme; and
 - (d) not make improper use of their position as a member of the committee to gain, directly or indirectly, an advantage for themselves or for any other person or to cause detriment to the members of the scheme.

Note: Subsection (1) is a civil penalty provision as defined in section 1317DA and Part 9.4B provides for civil and criminal consequences of contravening it.

- (2) A member of the compliance committee is to take all reasonable steps to assist ASIC in carrying out a check under subsection 601FF(1).

601JE Compliance committee members have qualified privilege in certain cases

A member of a scheme's compliance committee has qualified privilege in respect of a statement concerning the operation of the scheme made by or on behalf of the committee, or a member of the committee, to the responsible entity or to ASIC.

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601JF When can responsible entity indemnify compliance committee members?

- (1) A scheme's responsible entity or a related body corporate must not:
 - (a) indemnify a person who is or has been a member of the scheme's compliance committee against a liability incurred by the person as a member; or
 - (b) exempt the person from such a liability.
- (2) A provision of the scheme's constitution or a body corporate's constitution is void in so far as it provides for the responsible entity or a related body corporate to do something that subsection (1) prohibits.
- (3) Subsection (1) does not prevent a person from being indemnified against a liability to another person (other than the responsible entity or a related body corporate) unless the liability arises out of conduct involving a lack of good faith.
- (4) Subsection (1) does not prevent a person from being indemnified against a liability for costs and expenses incurred by them:
 - (a) in defending proceedings, whether civil or criminal, in which judgment is given in favour of them or in which they are acquitted; or
 - (b) in connection with an application, in relation to such proceedings, in which the Court grants relief to them under this Law.
- (5) In this section:

indemnify includes indemnify indirectly through one or more interposed entities.

601JG When can responsible entity pay insurance premiums for compliance committee members?

- (1) A scheme's responsible entity or a related body corporate must not pay, or agree to pay, a premium in respect of a contract insuring a

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person who is or has been a member of the scheme's compliance committee against a liability:

- (a) incurred by the person as a member; and
 - (b) arising out of conduct involving a wilful breach of a duty referred to in section 601JD.
- (2) If subsection (1) is contravened, the contract is void in so far as it insures the person against the liability.
 - (3) Subsections (1) and (2) do not apply to a liability for costs and expenses incurred by a person in defending proceedings, whether civil or criminal and whatever their outcome.
 - (4) In this section:
pay includes pay indirectly through one or more interposed entities.

601JH Proceedings of compliance committee

- (1) Subject to the requirements of the compliance plan, a scheme's compliance committee may regulate its proceedings as it thinks appropriate.
- (2) The committee must keep:
 - (a) minutes of its meetings; and
 - (b) records of its reports and recommendations.
- (3) A committee meeting may be held using any technology agreed to by all the members.

601JJ Disclosure of interests

- (1) A member of a scheme's compliance committee must disclose to the committee a direct or indirect pecuniary interest that they have in a matter being considered, or about to be considered, by the committee if their interest could conflict with the proper performance of their duties in relation to the consideration of the matter.

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- (2) A disclosure under subsection (1) must occur at the first meeting of the committee after the relevant facts have come to the member's knowledge and must be recorded in the minutes of the meeting.

Part 5C.6—Members' rights to withdraw from a scheme

601KA Members' rights to withdraw

Withdrawal from schemes that are liquid

- (1) The constitution of a registered scheme may make provision for members to withdraw from the scheme, wholly or partly, at any time while the scheme is liquid (see subsection 601GA(4)).

Withdrawal from schemes that are not liquid

- (2) The constitution of a registered scheme may make provision for members to withdraw from the scheme, wholly or partly, in accordance with this Part while the scheme is not liquid (see subsection 601GA(4)).

Restrictions on withdrawal from schemes

- (3) The responsible entity must not allow a member to withdraw from the scheme:
 - (a) if the scheme is liquid—otherwise than in accordance with the scheme's constitution; or
 - (b) if the scheme is not liquid—otherwise than in accordance with the scheme's constitution and sections 601KB to 601KE.

Liquid schemes

- (4) A registered scheme is liquid if liquid assets account for at least 80% of the value of scheme property.

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Liquid assets

- (5) The following are liquid assets unless it is proved that the responsible entity cannot reasonably expect to realise them within the period specified in the constitution for satisfying withdrawal requests while the scheme is liquid:
 - (a) money in an account or on deposit with a bank, building society or other financial institution
 - (b) bank accepted bills
 - (c) marketable securities (as defined in section 9)
 - (d) property of a prescribed kind.
- (6) Any other property is a liquid asset if the responsible entity reasonably expects that the property can be realised for its market value within the period specified in the constitution for satisfying withdrawal requests while the scheme is liquid.

601KB Non-liquid schemes—offers

- (1) The responsible entity of a registered scheme that is not liquid may offer members an opportunity to withdraw, wholly or partly, from the scheme to the extent that particular assets are available and able to be converted to money in time to satisfy withdrawal requests that members may make in response to the offer.
- (2) The withdrawal offer must be in writing and be made:
 - (a) if the constitution specifies procedures for making the offer—in accordance with those procedures; or
 - (b) otherwise—by giving a copy of the offer to all members of the scheme or to all members of a particular class.
- (3) The withdrawal offer must specify:
 - (a) the period during which the offer will remain open (this period must last for at least 21 days after the offer is made);
and
 - (b) the assets that will be used to satisfy withdrawal requests;
and

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- (c) the amount of money that is expected to be available when those assets are converted to money; and
 - (d) the method for dealing with withdrawal requests if the money available is insufficient to satisfy all requests.
- The method specified under paragraph (d) must comply with section 601KD.
- (4) For joint members, a copy of the withdrawal offer need only be given to the joint member named first in the register of members.
 - (5) As soon as practicable after making the withdrawal offer, the responsible entity must lodge a copy of the offer with ASIC.

601KC Non-liquid schemes—only one withdrawal offer to be open at any time

Only one withdrawal offer may be open at any time in relation to a particular interest in a registered scheme that is not liquid.

601KD Non-liquid schemes—how payments are to be made

The responsible entity of a registered scheme that is not liquid must ensure that withdrawal requests made in response to a withdrawal offer are satisfied within 21 days after the offer closes. No request made under the withdrawal offer may be satisfied while the offer is still open. If an insufficient amount of money is available from the assets specified in the offer to satisfy all requests, the requests are to be satisfied proportionately in accordance with the formula:

$$\text{Amount of money available} \times \frac{\text{Amount member requests to withdraw}}{\text{Total of all amounts members request to withdraw}}$$

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601KE Non-liquid schemes—responsible entity may cancel withdrawal offer

- (1) The responsible entity of a registered scheme that is not liquid:
 - (a) may cancel a withdrawal offer before it closes if the offer contains a material error; or
 - (b) must cancel a withdrawal offer before it closes if it is in the best interests of members to do so.
- (2) The cancellation must be made:
 - (a) if the constitution specifies procedures for cancelling the withdrawal offer—in accordance with those procedures; or
 - (b) otherwise—by notice in writing to the members to whom the withdrawal offer was made.
- (3) The responsible entity must lodge written notice of the cancellation with ASIC.

Part 5C.7—Related party transactions

601LA Part 3.2A applies with modifications

Part 3.2A applies to a registered scheme with the modifications set out in sections 601LB to 601LE and as if:

- (a) references to a public company were instead references to the responsible entity of the scheme; and
- (b) references to a benefit being given to or received by a related party of a public company were instead references to a benefit being given to or received by the responsible entity or a related party; and
- (c) references to a resolution of a public company were instead references to a resolution of the members of the scheme; and
- (d) references to a general meeting were instead references to a members' meeting of the scheme; and
- (e) references to members of a public company were instead references to members of the scheme; and
- (f) references to the company's best interests were instead references to the best interests of the scheme's members.

601LB Replacement section 243A

Part 3.2A applies as if section 243A were replaced by the following section:

243A Object

The object of this Part as it applies to a registered scheme is to protect the scheme property and the interests of members in the scheme property by requiring that, in general, financial benefits to the responsible entity or its related parties that could diminish or endanger the scheme property, or that could adversely affect the interests of members, must be disclosed, and approved by a members' meeting, before they are given.

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601LC Replacement section 243H

Part 3.2A applies as if section 243H were replaced by the following section:

243H Prohibited financial benefits to responsible entity and related party

- (1) The responsible entity of a registered scheme must not give a financial benefit to itself, or to a related party:
 - (a) out of the scheme property; or
 - (b) that could diminish or endanger the scheme property;unless Division 4 or 5 permits the benefit to be given.
- (2) A child entity of the responsible entity must not give a financial benefit:
 - (a) to itself, to the responsible entity, or to a related party of the responsible entity, out of the scheme property; or
 - (b) that could diminish or endanger the scheme property;unless Division 4 or 5 permits the benefit to be given.
- (3) Subsections (1) and (2) do not prevent the responsible entity from paying itself fees, and exercising rights to an indemnity, as provided for in the scheme's constitution under subsection 601GA(2).

601LD Omission of sections 243L, 243M and 243ZF

Part 3.2A applies as if sections 243L, 243M and 243ZF were omitted.

Note: Instead of section 243ZF, the rule in section 253E will apply.

601LE Modification of section 243ZB

Part 3.2A applies as if subsection 243ZB(1) were amended by omitting "subsection 243ZF(1)" and substituting "section 253E" and by omitting the note at the end.

Part 5C.8—Effect of contraventions (civil liability and voidable contracts)

601MA Civil liability of responsible entity to members

- (1) A member of a registered scheme who suffers loss or damage because of conduct of the scheme's responsible entity that contravenes a provision of this Chapter may recover the amount of the loss or damage by action against the responsible entity whether or not the responsible entity has been convicted of an offence, or has had a civil penalty order made against it, in respect of the contravention.
- (2) An action under subsection (1) must be begun within 6 years after the cause of action arises.
- (3) This section does not affect any liability that a person has under other provisions of this Law or under other laws.

601MB Voidable contracts where subscription offers and invitations contravene this Law

- (1) If:
 - (a) a managed investment scheme is being operated in contravention of subsection 601ED(5) and a person (the *offeror*) offers an interest in the scheme for subscription, or issues an invitation to subscribe for an interest in the scheme; or
 - (b) a person (the *offeror*), in contravention of Part 7.12, offers an interest in a registered scheme for subscription, or issues an invitation to subscribe for an interest in a registered scheme;a contract entered into by a person (other than the offeror) to subscribe for the interest as a result of the person accepting the offer, or of the acceptance of an offer made by the person in

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response to the invitation, is voidable at the option of that person by notice in writing to the offeror.

- (2) If the person gives a notice under subsection (1), the obligations of the parties to the contract are suspended:
 - (a) during the period of 21 days after the notice is given; and
 - (b) during the period beginning when an application is made under subsection (4) in relation to the notice and ending when the application, and any appeals arising out of it, have been finally determined or otherwise disposed of.
- (3) Subject to subsection (6), the notice takes effect to void the contract:
 - (a) at the end of 21 days after the notice is given; or
 - (b) if, within that 21 days, the offeror applies under subsection (4)—at the end of the period when the obligations of the parties are suspended under paragraph (2)(b).
- (4) Within 21 days after the notice is given, the offeror may apply to the Court for an order declaring the notice to have had no effect.
- (5) The Court may extend the period within which the offeror may apply under subsection (4), even if the notice has taken effect.
- (6) On application under subsection (4), the Court may declare the notice to have had no effect if it is satisfied that, in all the circumstances, it is just and equitable to make the declaration.

Part 5C.9—Winding up

601NA Winding up required by scheme’s constitution

The constitution of a registered scheme may provide that the scheme is to be wound up:

- (a) at a specified time; or
- (b) in specified circumstances or on the happening of a specified event;

but a provision of the constitution that purports to provide that the scheme is to be wound up if a particular company ceases to be its responsible entity is of no effect (including for the purposes of paragraph 601NE(1)(a)).

601NB Winding up at direction of members

If members of a registered scheme want the scheme to be wound up, they may take action under Division 1 of Part 2G.4 for the calling of a members’ meeting to consider and vote on an extraordinary resolution directing the responsible entity to wind up the scheme.

601NC Winding up if scheme’s purpose accomplished or cannot be accomplished

- (1) If the responsible entity of a registered scheme considers that the purpose of the scheme:
 - (a) has been accomplished; or
 - (b) cannot be accomplished;it may, in accordance with this section, take steps to wind up the scheme.
- (2) The responsible entity must give to the members of the scheme and to ASIC a notice in writing:

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- (a) explaining the proposal to wind up the scheme, including explaining how the scheme's purpose has been accomplished or why that purpose cannot be accomplished; and
 - (b) informing the members of their rights to take action under Division 1 of Part 2G.4 for the calling of a members' meeting to consider the proposed winding up of the scheme and to vote on any extraordinary resolution members propose about the winding up of the scheme; and
 - (c) informing the members that the responsible entity is permitted to wind up the scheme unless a meeting is called to consider the proposed winding up of the scheme within 28 days of the responsible entity giving the notice to the members.
- (3) If no meeting is called within that 28 days to consider the proposed winding up, the responsible entity may wind up the scheme.

601ND Winding up ordered by Court

- (1) The Court may, by order, direct the responsible entity of a registered scheme to wind up the scheme if:
- (a) the Court thinks it is just and equitable to make the order; or
 - (b) within 3 months before the application for the order was made, execution or other process was issued on a judgment, decree or order obtained in a court (whether an Australian court or not) in favour of a creditor of, and against, the responsible entity in its capacity as the scheme's responsible entity and the execution or process has been returned unsatisfied.
- (2) An order based on paragraph (1)(a) may be made on the application of:
- (a) the responsible entity; or
 - (b) a director of the responsible entity; or
 - (c) a member of the scheme; or
 - (d) ASIC.

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- (3) An order based on paragraph (1)(b) may be made on the application of a creditor.

601NE The winding up of the scheme

- (1) The responsible entity of a registered scheme must ensure that the scheme is wound up in accordance with its constitution and any orders under subsection 601NF(2) if:
- (a) the scheme's constitution provides that the scheme is to be wound up at a specified time, in specified circumstances or on the happening of a specified event and that time is reached, those circumstances occur or that event occurs; or
 - (b) the members pass an extraordinary resolution directing the responsible entity to wind up the scheme; or
 - (c) the Court makes an order directing the responsible entity to wind up the scheme; or
 - (d) the members pass an extraordinary resolution to remove the responsible entity but do not, at the same meeting, pass an extraordinary resolution choosing a company to be the new responsible entity that consents to becoming the scheme's responsible entity.

Note: For the Court's power to order winding up, see subsection 601FQ(5) and section 601ND.

- (2) The responsible entity of a registered scheme may wind up the scheme in accordance with its constitution and any orders under subsection 601NF(2) if the responsible entity is permitted by subsection 601NC(3) to wind up the scheme.
- (3) Interests must not be issued in a registered scheme at a time after the responsible entity has become obliged to ensure the scheme is wound up, or after the scheme has started to be wound up.

601NF Other orders about winding up

- (1) The Court may, by order, appoint a person to take responsibility for ensuring a registered scheme is wound up in accordance with its constitution and any orders under subsection (2) if the Court

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thinks it necessary to do so (including for the reason that the responsible entity has ceased to exist or is not properly discharging its obligations in relation to the winding up).

- (2) The Court may, by order, give directions about how a registered scheme is to be wound up if the Court thinks it necessary to do so (including for the reason that the provisions in the scheme's constitution are inadequate or impracticable).
- (3) An order under subsection (1) or (2) may be made on the application of:
 - (a) the responsible entity; or
 - (b) a director of the responsible entity; or
 - (c) a member of the scheme; or
 - (d) ASIC.

601NG Unclaimed money to be paid to ASIC

If, on completion of the winding up of a registered scheme, the person who has been winding up the scheme has in their possession or under their control any unclaimed or undistributed money or other property that was part of the scheme property, the person must, as soon as practicable, pay the money or transfer the property to ASIC to be dealt with under Part 9.7.

Part 5C.10—Deregistration

601PA Deregistration—voluntary

Responsible entity may apply for deregistration

- (1) The responsible entity of a registered scheme may lodge an application for deregistration of the scheme with ASIC.
- (2) The responsible entity may only apply if:
 - (a) the scheme:
 - (i) has 20 or less members (calculated in accordance with subsection 601ED(4)) and all the members agree that the scheme should be deregistered; and
 - (ii) is not required to be registered by paragraph 601ED(1)(b) or (c); or
 - (b) because of subsection 601ED(2) (exemption based on excluded issues), the scheme is not required to be registered and all the members agree that the scheme should be deregistered; or
 - (c) the scheme is not a managed investment scheme.
- (3) If ASIC is satisfied that the application complies with subsections (1) and (2), it must give notice of the proposed deregistration:
 - (a) on the national database; and
 - (b) in the *Gazette*.When 2 months have passed since the *Gazette* notice, ASIC may deregister the scheme.
- (4) ASIC must give notice of the deregistration to the applicant.

601PB Deregistration by ASIC

- (1) ASIC may decide to deregister a registered scheme if:

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- (a) the scheme does not have a responsible entity that meets the requirements of section 601FA; or
- (b) the scheme does not have a constitution that meets the requirements of sections 601GA and 601GB; or
- (c) the scheme does not have a compliance plan that meets the requirements of section 601HA; or
- (d) the scheme's property is not being:
 - (i) clearly identified as the scheme's property; and
 - (ii) held separately from property of the responsible entity and property of any other scheme;in accordance with the scheme's compliance plan; or
- (e) the following conditions are satisfied:
 - (i) the annual return for the scheme is at least 6 months late; and
 - (ii) no other documents have been lodged by or on behalf of the scheme in the last 18 months; and
 - (iii) ASIC has no reason to believe that the scheme is being operated; or
- (f) the scheme has been wound up.

Deregistration procedure

- (2) If ASIC decides to deregister a scheme under this section, it must give notice of the proposed deregistration:
 - (a) to the scheme's responsible entity; and
 - (b) to any other person who is winding up the scheme; and
 - (c) on the national database; and
 - (d) in the *Gazette*.If the notice is given under paragraph (1)(a), (b), (c) or (d), the notice must specify the period at the end of which ASIC proposes to deregister the scheme.
- (3) ASIC may deregister the scheme:
 - (a) if paragraph (1)(a), (b), (c) or (d) applies—at the end of the period set out in the *Gazette* notice; or

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- (b) if paragraph (1)(e) or (f) applies—when 2 months have passed since the *Gazette* notice.
- (4) ASIC does not have to give a person notice under subsection (2) if ASIC does not have the necessary information about the person's address.
- (5) ASIC must give notice of the deregistration to everyone who was notified of the proposed deregistration under paragraph (2)(a) or (b).

601PC Reinstatement

- (1) ASIC may reinstate the registration of a managed investment scheme if ASIC is satisfied that the scheme should not have been deregistered or if the defect that led to the scheme being deregistered has been remedied.
- (2) The Court may make an order that ASIC reinstate the registration of a managed investment scheme if:
 - (a) an application for reinstatement is made to the Court by:
 - (i) a person aggrieved by the deregistration; or
 - (ii) a person who was winding up the scheme; and
 - (b) the Court is satisfied that it is just that the scheme's registration be reinstated.
- (3) The Court may give any directions it thinks just for putting the scheme and other people in the same position, as far as possible, as if the scheme had not been deregistered.

ASIC to give notice of reinstatement

- (4) ASIC must give notice of a reinstatement in the *Gazette*. If ASIC exercises its power under subsection (1) in response to an application by a person, ASIC must also give notice of the reinstatement to the applicant.

Part 5C.11—Exemptions and modifications

601QA ASIC’s power to make exemption and modification orders

- (1) ASIC may:
 - (a) exempt a person from a provision of this Chapter; or
 - (b) declare that this Chapter applies to a person as if specified provisions were omitted, modified or varied as specified in the declaration.

Without limiting this, ASIC may declare that this Chapter applies to a person as if section 601HA included a requirement for scheme property to be held by a person other than the responsible entity as the responsible entity’s agent.
- (2) The exemption or declaration may:
 - (a) apply to all or specified provisions of this Chapter; or
 - (b) apply to all persons, specified persons, or a specified class of persons; and
 - (c) relate to all interests, specified interests or a specified class of interests in managed investment schemes; and
 - (d) relate to any other matter generally or as specified.
- (3) An exemption may apply unconditionally or subject to specified conditions. A person to whom a condition specified in an exemption applies must comply with the condition. The Court may order the person to comply with the condition in a specified way. Only ASIC may apply to the Court for the order.
- (4) The exemption or declaration must be in writing and ASIC must publish notice of it in the *Gazette*.
- (5) For the purposes of this section, the *provisions of this Chapter* include:
 - (a) regulations made for the purposes of this Chapter; and

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- (b) definitions in this Law or the regulations as they apply to references in:
 - (i) this Chapter; or
 - (ii) regulations made for the purposes of this Chapter; and
- (c) Division 11 of Part 11.2.

601QB Modification by regulations

The regulations may modify the operation of this Chapter or any other provisions of this Law relating to securities in relation to:

- (a) a managed investment scheme; or
- (b) all managed investment schemes of a specified class.

Chapter 6—Acquisition of shares

Part 6.1—Interpretation

602 Effect of this Part

The provisions of this Part have effect for the purposes of this Chapter, except so far as the contrary intention appears in this Chapter.

603 Definitions

Unless the contrary intention appears:

announcement, in relation to a dealer, has a meaning affected by section 606;

appropriate dealer, in relation to an announcement relating to shares in a class of shares in a listed body, means:

- (a) if the body is included in the official list of the Exchange or of a second board of an Exchange subsidiary—a member of the Exchange; or
- (b) otherwise—a member of the body's home stock exchange;

approved manner, in relation to sending a document, has the meaning given by section 607;

business rules, in relation to a securities exchange or stock exchange, means rules, regulations or by-laws that have been made by the securities exchange or stock exchange or are contained in its constitution, and that govern:

- (a) the activities or conduct of the securities exchange or stock exchange or of its members; or
- (b) the activities or conduct of other persons in relation to a stock market of the securities exchange or stock exchange;

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but does not include the listing rules of the securities exchange or stock exchange;

closing phase, in relation to the offer period in relation to offers made under a takeover announcement, means the 5 trading days of the target company's home stock exchange immediately before the end of the offer period;

defeating condition, in relation to a takeover offer, means:

- (a) a condition that will, in circumstances referred to in the condition, result in the rescission of, or entitle the offeror to rescind, a contract that results from an acceptance of the offer; or
- (b) a condition that prevents a binding contract from resulting from an acceptance of the offer unless or until the condition is fulfilled;

entitled has:

- (a) in relation to shares—the meaning given by section 609; or
- (b) in relation to marketable securities (other than shares) of a body corporate—the meaning given by section 609 as applying by virtue of section 605;

Exchange subsidiary means a securities exchange, or a stock exchange, that is a subsidiary of the Exchange;

full takeover scheme means a takeover scheme under which each takeover offer relates to all the shares in the target company in the relevant class that the offeree holds;

home stock exchange, in relation to a listed body, means:

- (a) if the body is included in the official list of the Exchange or of a second board of an Exchange subsidiary—the stock exchange designated to the body, for the purposes of the listing rules of the Exchange or of that subsidiary, as the body's Home Exchange; or
- (b) otherwise:

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- (i) if the body is included in the official list of only one stock exchange—that stock exchange; or
- (ii) if the body is included in the official list of each of 2 or more stock exchanges—the stock exchange, being one of those stock exchanges, declared in writing by the Commission to be the body’s home stock exchange;

invitation means a statement, however expressed, that is not an offer but expressly or impliedly invites a holder of shares to offer to dispose of shares or a holder of a right, being a right to acquire a share or an interest in a share under an option, to offer to dispose of the right;

listed body means a body corporate that has a share capital and is included in the official list of a stock exchange;

listed company means a company that is a listed body;

listing rules, in relation to a securities exchange or stock exchange, means rules, regulations or by-laws governing or relating to:

- (a) the admission to, or removal from, the official list of the securities exchange or stock exchange of bodies corporate, governments, unincorporated bodies or other persons for the purposes of the quotation on the stock market of the securities exchange or stock exchange of securities of bodies corporate, governments, unincorporated bodies or other persons and for other purposes; or
- (b) the activities or conduct of bodies corporate, governments, unincorporated bodies and other persons who are included in that list;

whether those rules, regulations or by-laws:

- (c) are made by the securities exchange or stock exchange or are contained in its constitution; or
- (d) are made by another person and adopted by the securities exchange or stock exchange;

marketable parcel, in relation to shares in a listed body, means a marketable parcel of shares in that body within the meaning of the

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relevant business rules or listing rules of that body's home stock exchange;

marketable security, in relation to a body corporate, means:

- (a) a share in the body corporate;
- (b) an option or right in respect of a share in the body corporate granted by the body corporate;
- (c) a debenture issued by the body corporate; or
- (d) an interest in a managed investment scheme made available by the body corporate;

and includes a convertible note issued by the body corporate;

notifiable securities exchange, in relation to a listed body, means:

- (a) the body's home stock exchange; and
- (b) any other securities exchange (other than the Exchange or an Exchange subsidiary), or stock exchange (other than the Exchange or an Exchange subsidiary), in an official list of which the body is included;

odd lot, in relation to shares in a listed body, has the meaning given by section 612;

offeror means:

- (a) a person who:
 - (i) sends, or proposes to send, a takeover offer, whether the person sends, or proposes to send, the offer himself, herself or itself or by an agent or nominee; or
 - (ii) makes, or proposes to make, offers to acquire shares in accordance with section 674; or
- (b) 2 or more persons who:
 - (i) together send, or propose to send, a takeover offer, whether they send, or propose to send, the offer themselves or by an agent or nominee; or
 - (ii) together make, or propose to make, offers to acquire shares in accordance with section 674;

or either or any of those persons;

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offer period means the period during which offers made under a takeover scheme or under a takeover announcement remain open and, in relation to an offer that has been accepted, the period during which the offer would have remained open if it had not been accepted;

ordinary course of trading, in relation to a stock market, has, in subsection 620(1) or (2) or 698(5), a meaning affected by section 604;

Part A statement means a written statement that complies with the requirements of Part A in section 750;

Part B statement means a written statement that complies with the requirements of Part B in section 750;

Part C statement means a written statement that complies with the requirements of Part C in section 750;

Part D statement means a written statement that complies with the requirements of Part D in section 750;

prescribed occurrence, in relation to a target company, means:

- (a) the company converting all or any of its shares into a larger or smaller number of shares (see section 254H);
- (b) the target company or a subsidiary resolving to reduce its share capital in any way;
- (ba) the target company or a subsidiary:
 - (i) entering into a buy-back agreement; or
 - (ii) resolving to approve the terms of a buy-back agreement under subsection 206D(1) or 206E(1);
- (c) the target company or a subsidiary making an allotment of, or granting an option to subscribe for, any of its shares, or agreeing to make such an allotment or grant such an option;
- (d) the target company or a subsidiary issuing, or agreeing to issue, convertible notes;

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- (e) the target company or a subsidiary disposing, or agreeing to dispose, of the whole, or a substantial part, of its business or property;
- (f) the target company or a subsidiary charging, or agreeing to charge, the whole, or a substantial part, of its business or property;
- (g) the target company or a subsidiary resolving that it be wound up;
- (h) the appointment of a provisional liquidator of the target company or of a subsidiary;
- (j) the making of an order by a court for the winding up of the target company or of a subsidiary;
- (k) an administrator of the target company, or of a subsidiary, being appointed under section 436A, 436B or 436C;
- (l) the target company or a subsidiary executing a deed of company arrangement; or
- (m) the appointment of a receiver, or a receiver and manager, in relation to the whole, or a substantial part, of the property of the target company or of a subsidiary;

proportional takeover scheme means a takeover scheme under which each takeover offer relates to a proportion of the shares in the target company in the relevant class that the offeree holds, being a proportion that is the same in respect of each offer;

recorded, in relation to a dealing in shares in a listed body, means recorded by a securities exchange;

relevant official meeting, in relation to an announcement relating to shares in a class of shares in a listed body, means an official meeting of:

- (a) if the body is included in the official list of the Exchange or of a second board of an Exchange subsidiary—the Exchange; or
 - (b) otherwise—the body's home stock exchange;
- being an official meeting:

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- (c) held on a stock market of the body's home stock exchange;
and
- (d) of a kind at which shares in that class are usually dealt in;
whether or not shares in that class are dealt in at that official
meeting;

remedial order has the meaning given by section 613;

renounceable option means an assignable option to have an allotment of shares in a body corporate made to the holder of the option;

representative, in relation to a person, includes:

- (a) in any case—an employee of the person; and
- (b) if the person is a partner in a partnership that carries on a securities business:
 - (i) another partner in the partnership; or
 - (ii) an employee of the partnership;

stock market, in relation to a securities exchange or a stock exchange, includes, in the case of the Exchange, a stock market of a securities exchange or of a stock exchange, as the case may be, that is a subsidiary of the Exchange;

takeover announcement means an announcement that relates to shares in a listed company and is made in accordance with Division 1 of Part 6.4;

takeover offer means an offer to acquire shares made under a takeover scheme;

takeover period means:

- (a) in relation to a takeover scheme—the period:
 - (i) beginning when the Part A statement was served on the target company; and
 - (ii) ending at the end of 28 days after the day on which the statement was served or, if offers are sent pursuant to

The Corporations Law—Section 604

the statement before the end of those 28 days, at the end of the offer period; or

- (b) in relation to a takeover announcement—the period:
 - (i) beginning when the announcement was made; and
 - (ii) ending at the end of the offer period;

takeover scheme means offers that relate to shares in a company and, because of section 634, are taken to be made under a takeover scheme;

target company means:

- (a) in relation to a takeover offer—the company for the acquisition of shares in which that offer has been, or is proposed to be, sent;
- (b) in relation to a takeover scheme—the company shares in which are proposed to be acquired under the scheme; and
- (c) in relation to a takeover announcement—the company in relation to shares in which the takeover announcement has been, or is proposed to be, made;

trading day, in relation to a securities exchange or stock exchange, means a day on which a stock market of that securities exchange or stock exchange is open for trading in securities.

604 Acquisition of shares by “special” transaction

A reference in subsection 620(1) or (2) or 698(5) to an acquisition of shares in a company at an official meeting of a stock exchange in the ordinary course of trading on the stock market of that stock exchange does not include a reference to an acquisition of shares by a transaction that, when it is reported to the relevant stock exchange, is, under the business rules or listing rules of that stock exchange, described as “special”.

The Corporations Law—Section 605

605 Acquisition and disposal of, entitlement to, and relevant interests in, marketable securities other than shares

For the purpose of determining whether or not a person has a relevant interest in, acquires, disposes of, or is entitled to, a marketable security (other than a share) of a body corporate, the provisions (other than section 44) of Divisions 2 and 5 of Part 1.2 and sections 51 and 609 apply as if a reference in those provisions to a share (other than a reference to a voting share) were a reference to a marketable security (other than a share) of a body corporate.

606 Announcement by representative of dealer

An announcement that a representative of a member of a stock exchange makes, on the member's behalf, at an official meeting of the stock exchange shall be deemed to be made by the member.

607 Approved manner of sending documents

- (1) The Commission may, by notice served on a person, direct the person to send, or approve the person sending, in a specified manner specified documents that the person proposes to send under this Chapter.
- (2) A person sends a document in an approved manner if, and only if, the person sends it:
 - (a) if there is a relevant direction by the Commission—in the manner specified in the direction;
 - (b) if there is no relevant direction but there is a relevant approval—in the manner specified in the approval or in the prescribed manner; or
 - (c) in any other case—in the prescribed manner.

The Corporations Law—Section 608

608 Doing acts

A reference to a person doing an act or thing includes a reference to a person doing the act or thing together with any other person or persons.

609 Entitlement to shares

- (1) The shares in a body corporate to which a person, being the body corporate itself or any other person, is entitled include:
 - (a) shares in which the first-mentioned person has a relevant interest;
 - (b) except where the first-mentioned person is a nominee body corporate in respect of which a certificate by the Commission is in force under subsection (3)—shares in which a person who is an associate of the first-mentioned person (otherwise than by virtue of paragraph 12(1)(d), (f) or (g)) has a relevant interest; and
 - (c) shares to which the first-mentioned person is entitled by virtue of subsection (2).
- (2) Where a person has, or proposes to enter into, an agreement with another person:
 - (a) because of which the first-mentioned person has or will have power (even if it is in any way qualified):
 - (i) to exercise;
 - (ii) to control, directly or indirectly, the exercise of; or
 - (iii) to influence substantially the exercise of;any voting power attached to shares in which the other person has a relevant interest;
 - (b) under which the first-mentioned person:
 - (i) will or may acquire; or
 - (ii) may be required by the other person to acquire;shares in which the other person has a relevant interest; or

The Corporations Law—Section 610

- (c) under which the other person may be required to dispose of shares in accordance with the first-mentioned person's directions;
then, whatever other effect the agreement may have, the first-mentioned person is entitled to those shares.
- (3) The Commission may issue to a nominee body corporate a certificate declaring the nominee body corporate to be an approved nominee body corporate for the purposes of this Chapter and may, by notice served on the nominee body corporate, revoke the certificate.

610 Inadvertence or mistake etc.

In determining for the purposes of a provision of this Chapter, whether or not a person's contravention of the provision was due:

- (a) to the person's inadvertence or mistake;
- (b) to the person not being aware of a relevant fact or occurrence; or
- (c) to circumstances beyond the person's control; the person's ignorance of, or a mistake on the person's part concerning, a matter of law shall be disregarded.

611 Knowledge of employee or agent imputed to employer or principal

In any proceedings under or arising out of this Chapter, a person shall, unless the contrary is proved, be presumed to have been aware at a particular time of a fact or occurrence of which an employee or agent of the person having duties or acting on behalf of the employer or principal in connection with the matter to which the proceedings relate was aware at the time.

The Corporations Law—Section 612

612 Odd lots

- (1) A parcel of shares in a listed body constitutes an odd lot if the number of shares in that parcel is less than one marketable parcel of shares in that body.
- (2) When the number of shares in a parcel of shares in a listed body is greater than one marketable parcel of shares in that body and, after excluding so many of the shares in that parcel as constitute a marketable parcel or marketable parcels of shares in that body, a number of shares remains, that remaining number of shares constitutes an odd lot.

613 Remedial orders

- (1) A reference to a remedial order, in relation to the Court, is a reference to any one or more of the following orders:
 - (a) an order restraining the exercise of any voting or other rights attached to shares;
 - (b) an order directing a body corporate not to make payment, or to defer making payment, of any amount or amounts due from the body corporate in respect of shares;
 - (c) an order restraining the acquisition or disposal of, or of an interest in, shares;
 - (d) an order directing the disposal of, or of an interest in, shares;
 - (e) an order vesting in the Commission shares or an interest in shares;
 - (f) an order directing a body corporate not to register the transfer or transmission of shares;
 - (g) an order that an exercise of the voting or other rights attached to shares be disregarded;
 - (h) an order cancelling an agreement or offer relating to a takeover scheme or takeover announcement, or a proposed takeover scheme or proposed takeover announcement, or any other agreement or offer in connection with the acquisition of shares;

The Corporations Law—Section 613

- (j) an order declaring an agreement or offer relating to a takeover scheme or takeover announcement, or a proposed takeover scheme or proposed takeover announcement, or any other agreement or offer in connection with the acquisition of shares to be voidable.
- (2) For the purposes of the application of subsection (1) in relation to section 739, references in subsection (1) to shares include references to:
- (a) non-voting shares; and
 - (b) renounceable options and convertible notes.

Part 6.2—Control of acquisition of shares

615 Restrictions on acquisitions

- (1) Except as provided by this Chapter, a person shall not acquire shares in a company if:
 - (a) any person who:
 - (i) is not entitled to any voting shares in the company; or
 - (ii) is entitled to less than the prescribed percentage of the voting shares in the company;
would, immediately after the acquisition, be entitled to more than the prescribed percentage of the voting shares in the company; or
 - (b) any person who is entitled to not less than the prescribed percentage, but less than 90%, of the voting shares in the company would, immediately after the acquisition, be entitled to a greater percentage of the voting shares in the company than immediately before the acquisition.
- (4) A person shall not offer to acquire, or issue an invitation in relation to, shares in a company if the person is prohibited by subsection (1) from acquiring those shares.
- (5) It is a defence to a prosecution of a person for a contravention of this section if it is proved that the contravention was due to inadvertence or mistake or to the person not being aware of a relevant fact or occurrence.
- (6) An acquisition of shares is not invalid because of a contravention of this section.
- (7) In this section:

prescribed percentage means:
 - (a) subject to paragraph (b)—20%; or

The Corporations Law—Section 616

- (b) where a lesser percentage is prescribed by regulations in force for the time being for the purposes of this section—that lesser percentage.

616 Acquisitions permitted under takeover scheme

Section 615 does not apply in relation to an acquisition of shares as a result of the acceptance of an offer to acquire those shares made under a takeover scheme.

617 Certain acquisitions permitted under takeover announcements

Section 615 does not apply in relation to an acquisition of shares in a listed company as a result of the acceptance of an offer to acquire those shares made under a takeover announcement.

618 Acquisition of not more than 3% of voting shares permitted in each 6 months

- (1) Section 615 does not prohibit an acquisition of voting shares in a company because of the effect of the acquisition on the entitlement to voting shares in the company of a person (in this section called a *relevant person*) if:

- (a) the relevant person has been entitled to not less than the prescribed percentage of the voting shares in the company for a continuous period of not less than 6 months ending on the day immediately before the day on which the acquisition takes place; and
(b) the number ascertained in accordance with the formula

$$\frac{100 (VA1 + VA2 - VD)}{V}$$

does not exceed 3.

- (2) For the purposes of paragraph (1)(b):

VA1 is the number of voting shares to be acquired;

VA2 is the number of voting shares in the company:

The Corporations Law—Section 619

- (a) that were acquired by any person within the 6 months ending on the day immediately before the day on which the first-mentioned acquisition takes place, excluding any voting shares acquired by the person concerned by an allotment:
 - (i) in relation to which subsection 621(1) or a corresponding previous law applies; and
 - (ii) that was made to the person concerned as a result of that person's acceptance of an offer made in accordance with paragraph 621(2)(b) or a corresponding previous law; and
- (b) the acquisition of which by the person concerned increased the number of voting shares in the company to which the relevant person was entitled;

VD is the number of voting shares in the company:

- (a) that were disposed of by any person during the 6 months ending on the day immediately before the day on which the first-mentioned acquisition takes place; and
- (b) the disposal of which by the person concerned decreased the number of voting shares in the company to which the relevant person was entitled; and

V is the total number of voting shares in the company.

- (3) In subsection (1):

prescribed percentage means:

- (a) subject to paragraph (b), 19%; or
- (b) where a lesser percentage is prescribed by regulations in force for the time being for the purposes of this section—that lesser percentage.

619 Acquisition of shares in small companies or with consent of shareholders

- (1) Section 615 does not:
 - (a) prohibit the acquisition of shares in a company that does not have more than 15 members; or
-

The Corporations Law—Section 620

- (b) prohibit the acquisition of shares in a company that is a proprietary company and has more than 15 members where the members of the company have consented in writing to the provisions of this Chapter not applying with respect to the acquisition;
if the acquisition would not result in a contravention of section 615 in relation to the acquisition of shares in another body corporate.
- (2) For the purposes of subsection (1), 2 or more persons holding jointly shares in a company shall be deemed to be one member of the company.

620 Acquisition on market during takeovers

- (1) Where:
 - (a) a Part A statement relating to offers under a full takeover scheme in respect of a class of shares in a company is served on the company; and
 - (b) no offer under the takeover scheme is subject to a defeating condition other than:
 - (i) a condition that a prescribed occurrence in relation to the company does not take place; or
 - (ii) another condition approved by the Commission;section 615 does not prohibit the acquisition during the takeover period by the offeror of shares in that class at an official meeting of a stock exchange in the ordinary course of trading on the stock market of that stock exchange.
- (2) Where a takeover announcement is made in respect of a class of shares in a company, section 615 does not prohibit the acquisition during the takeover period by the offeror of shares in that class at an official meeting of a stock exchange in the ordinary course of trading on the stock market of that stock exchange.
- (3) Where:
 - (a) a Part A statement relating to offers under a takeover scheme is served on a company;

The Corporations Law—Section 621

- (b) after the Part A statement was served the offeror acquires shares in the target company;
- (c) the acquisition of those shares would, but for subsection (1), have contravened section 615; and
- (d) the offeror does not send the offers before the end of 28 days after the day on which the Part A statement was served on the target company;

the offeror is not entitled, without the consent of the Commission, to exercise any voting rights attached to the shares referred to in paragraph (b).

621 Acquisition as a result of *pari passu* allotment

- (1) Section 615 does not prohibit the acquisition of shares in a company by an allotment if:
 - (a) the requirements set out in subsection (2) have been complied with in relation to the allotment; and
 - (b) the allotment:
 - (i) is made to a person as a result of the acceptance by that person of an offer made in accordance with paragraph (2)(b);
 - (ii) is made to a person as an underwriter or sub-underwriter in relation to the allotment; or
 - (iii) is made to a nominee in accordance with subsection (3).
- (2) The requirements referred to in subsection (1) are as follows:
 - (a) the directors of the company must have passed a resolution agreeing to make available a number of shares specified in, or ascertained in accordance with, the resolution for allotment to all persons who were registered as the holders of shares in the company, or to all persons who were registered as the holders of voting shares in the company, on the date specified in the resolution;
 - (b) the company must have made an offer to each person to allot to the person such number of those shares as the person agrees to subscribe for, being a number that does not exceed

The Corporations Law—Section 621

the number specified in the offer in accordance with paragraph (c); and

- (c) the number of shares to be specified in an offer for the purposes of paragraph (b) must be as nearly as practicable the number ascertained in accordance with the formula:

$$TA \times \frac{NP}{TC}$$

where:

TA is the total number of shares agreed to be made available in accordance with paragraph (a);

NP is the number of shares in the company, or the number of voting shares in the company, as the case may be, held by the person to whom the offer is made immediately before the date specified in the resolution; and

TC is the total number of shares in the company, or the total number of voting shares in the company, as the case may be, immediately before that date.

- (3) A company shall be deemed to comply with the requirements of subsection (2) in relation to the holders of shares in the company whose addresses as shown in the register of members are places outside Australia and the external Territories (in this subsection called *foreign shareholders*) if the company, in lieu of making offers to the foreign shareholders in accordance with that subsection:

- (a) allots to a nominee approved:
- (i) where the company is a listed company—by the company's home stock exchange; or
 - (ii) where the company is not a listed company—by the Commission;

the number of shares in respect of which the company would, but for this subsection, be required to make offers to foreign shareholders in accordance with subsection (2);

- (b) causes the shares so allotted to be offered for sale in such manner, at such price and on such other terms and conditions

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as are approved by that stock exchange or the Commission, as the case may be; and

- (c) pays to each of the foreign shareholders the amount ascertained in accordance with the formula:

$$\frac{\text{Net Proceeds of Sale}}{\text{TS}} \times \frac{\text{NS}}{\text{TS}}$$

where:

Net Proceeds of Sale is the amount (if any) remaining after deducting from the proceeds of sale:

- (i) the expenses of the sale; and
- (ii) the amounts (if any) payable to the company in respect of the allotment of the shares;

NS is the number of shares in respect of which the company would, but for this subsection, be required to make an offer to the foreign shareholder concerned in accordance with subsection (2); and

TS is the total number of shares allotted to the nominee in accordance with paragraph (a).

622 Acquisitions pursuant to prospectus

- (1) Section 615 does not apply in relation to an acquisition of shares in a company by an allotment pursuant to a prospectus:
 - (a) in relation to an invitation to subscribe for the shares or an offer to accept subscriptions for the shares, being an invitation or offer issued or made to, or to persons who include, all the members of the company; and
 - (b) that has been lodged under Division 2 of Part 7.12 or a corresponding previous law and has been registered under that Division or corresponding previous law where such registration was required.

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- (2) Section 615 does not apply in relation to an acquisition of shares in a company by an allotment made in accordance with a proposal particulars of which were set out in a prospectus where:
- (a) the prospectus was the first prospectus issued by the company;
 - (b) the person who acquired the shares was a promoter in respect of the prospectus; and
 - (c) the prospectus has been lodged under Division 2 of Part 7.12 or under a corresponding previous law.
- (3) Section 615 does not apply in relation to an acquisition of shares by an allotment of shares pursuant to:
- (a) an underwriting agreement particulars of which were set out in a prospectus that has been lodged under Division 2 of Part 7.12 or under a corresponding previous law; or
 - (b) a sub-underwriting agreement that is related to such an underwriting agreement;
- where the prospectus contained an invitation to subscribe for the shares or an offer to accept subscriptions for the shares.

622A Acquisitions where a section 1043B notice has been lodged

Section 615 does not apply in relation to an acquisition of shares in a company by purchase pursuant to an invitation to buy the shares or an offer to sell the shares if:

- (a) the offer or invitation was issued or made to, or to persons including, all the members of the company; and
- (b) a notice in respect of the invitation or offer has been lodged under section 1043B; and
- (c) if section 1043C applies to the notice and, because of regulations under that section, the notice is required to be registered by the Commission—the notice has been so registered.

623 Acquisitions approved by resolution of target company

Section 615 does not apply in relation to an acquisition of shares in a company by virtue of an allotment or purchase if the company has agreed to the allotment or purchase by a resolution passed at a general meeting at which no votes were cast in relation to the resolution in respect of any shares held by, or by an associate of, the person to whom the first-mentioned shares were to be allotted, or by whom or from whom the first-mentioned shares were to be bought, as the case may be.

624 Allotment by newly formed company

Section 615 does not apply in relation to an acquisition of shares by an allotment made by a company that has not started any business and has not exercised any borrowing power.

625 Acquisition under compromise or arrangement approved by Court

Section 615 does not apply in relation to an acquisition of shares under a compromise or arrangement approved by the Court under Part 5.1 or under a corresponding previous law.

626 Acquisition by liquidator

Section 615 does not apply in relation to an acquisition of shares under section 507 or under a corresponding previous law.

627 Acquisition by exercise of option or right

Section 615 does not apply in relation to an acquisition of shares resulting from the exercise by a person of a renounceable option or of an option or right granted or conferred by a convertible note, where, if the person had acquired the shares when the person acquired the renounceable option or the convertible note, as the case may be, the acquisition of the shares would not, because of subsection 620(1) or (2), or a corresponding previous law, have

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contravened section 615 or a corresponding previous law, as the case may be.

628 Acquisition of shares as consideration for takeover offer

Section 615 does not apply in relation to an acquisition of shares by a person as a result of the acceptance by that person of a takeover offer, where the shares constituted, or formed part of, the consideration for the takeover offer.

629 Downstream acquisition resulting from acquisition of shares in a listed company

Section 615 does not apply in relation to an acquisition of shares in a company as a result of the acquisition of shares in another body corporate if:

- (a) at the time of the last-mentioned acquisition, the other body corporate is incorporated in Australia and is a listed body;
and
- (b) the acquisition of the shares in the other body corporate:
 - (i) results from the acceptance of an offer to acquire those shares that was made under a takeover scheme or takeover announcement; or
 - (ii) would, but for subsection 620(1) or (2), contravene section 615.

630 Acquisition by exercise of power vested in lender

Section 615 does not apply in relation to an acquisition of shares by a person whose ordinary business includes the lending of money where the acquisition results from the exercise by that person of a power in relation to the shares conferred on or vested in the person pursuant to, because of or in connection with a transaction in connection with the lending of money entered into by the person in the ordinary course of that business, other than a transaction entered into with an associate of the person.

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631 Acquisition by will or operation of law

Section 615 does not apply in relation to an acquisition of shares by will or by operation of law.

632 Acquisition of forfeited shares

Section 615 does not apply in relation to an acquisition of forfeited shares at an auction conducted on a stock market of a stock exchange.

632A Acquisition by way of buy-back

Section 615 does not apply to a buy-back authorised by section 206B.

633 Acquisitions permitted by regulations or by the Commission

Section 615 does not apply in relation to:

- (a) an acquisition of shares made in a prescribed manner or in prescribed circumstances;
- (b) without limiting the generality of paragraph (a) of this section, an acquisition of shares in a prescribed company; or
- (c) an acquisition of shares made with the Commission's written approval.

Part 6.3—Takeover schemes

Division 1—Nature of takeover offers

634 Offers must comply with this Division

For the purposes of this Chapter, offers to acquire shares are made under a takeover scheme if, and only if, the offers relate only to a class of shares in a company (in this Division called the *relevant class*) and the requirements of this Division have been complied with.

635 Full takeover schemes and proportional takeover schemes

One of the following paragraphs must apply in relation to the offers:

- (a) each offer relates to all the shares in the relevant class that the offeree holds;
- (b) each offer relates to a proportion of the shares in the relevant class that the offeree holds, being a proportion that is the same in respect of each offer.

636 Identical offers

- (1) The offers must be the same disregarding:
 - (a) the fact that the number of shares that may be acquired under each offer is limited by the number of shares held by the offeree; and
 - (b) any differences in the consideration specified for each share in the offers that are attributable only to the fact that the offers relate to shares having different accrued dividend entitlements or relate to shares on which different amounts are unpaid.
- (2) The offeror must send an offer in an approved manner to each holder of shares in the relevant class.

637 Service of Part A statement and copy of offer on target company

- (1) The offeror must have, after the commencement of this Chapter but not earlier than 28 days and not later than 14 days before the day on which the offers are sent, served on the target company:
 - (a) a Part A statement relating to the offers that is signed:
 - (i) where the offeror is, or includes, a natural person or natural persons, by that person or by each of those persons; and
 - (ii) where the offeror is, or includes, a body corporate or bodies corporate, by not fewer than 2 directors of the body corporate, or by 2 directors of each of the bodies corporate, authorised to sign the statement by a resolution passed at a meeting of the directors, or, in the case of a body corporate that has only one director, by that director;
and has endorsed on it a statement that a copy of the Part A statement has been registered by the Commission and that the Commission takes no responsibility as to its contents and specifying the date on which the copy was so registered; and
 - (b) a copy of one of the proposed offers to which the Part A statement relates, being a copy that need not include the name or address of the offeree, the proposed date of the offer or any other date that is related to or dependent upon that date, or the particulars referred to in subsection 638(4).
- (2) The offeror must have, on the day on which the Part A statement was served under subsection (1):
 - (a) lodged a notice stating that the Part A statement has been so served; and
 - (b) if the target company is a listed company—served on each notifiable securities exchange in relation to that company a copy of each of the documents served on that company in accordance with subsection (1).

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638 Contents of offers

- (1) Each offer must be in writing.
- (2) Each offer must have the same date, being a date that is not earlier than 3 days before the day on which the offer is sent and not later than that day.
- (3) Each offer must state that it will, unless withdrawn, remain open during a period ending on a specified date, being a date that is not earlier than one month, or later than 6 months, after the date of the offer.
- (4) Each offer must specify, in relation to each class of shares in the target company:
 - (a) the total number of shares in the class; and
 - (b) the number of shares in the class to which the offeror was entitled immediately before the offer was sent (which may be expressed as a number of shares or as a percentage of the total number of shares in the class).
- (5) Each offer must, if it is subject to a defeating condition, specify a date, being a date that is not less than 7 days and not more than 14 days before the last day of the offer period, for the publication of the notice referred to in subsection 663(4).
- (6) Each offer must set out how the obligations of the offeror are to be satisfied.
- (7) Each offer must contain a provision setting out when the obligations of the offeror are to be satisfied, being a provision under which the consideration for the offer is, if the offer is accepted, to be paid or provided:
 - (a) unless the offer is subject to a defeating condition—on or before the thirtieth day after the offer is accepted; or
 - (b) if the offer is subject to a defeating condition—on or before the thirtieth day after the offer is accepted, or the offer, or the contract resulting from the acceptance of the offer, becomes unconditional, whichever happens later;

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or, if that day is later than the twenty-first day after the end of the offer period, on or before the last-mentioned day.

639 Part A Statement, and Part B Statement if available, to accompany offers

- (1) Each offer must be accompanied by a copy of the Part A statement referred to in paragraph 637(1)(a).
- (2) If the target company has, before the end of 14 days after the day on which it received that Part A statement, given to the offeror a Part B statement in relation to the offers, each offer must be accompanied by a copy of that Part B statement and a copy of any report that accompanied that Part B statement.

640 Service on Commission of copies of documents accompanying offers

The offeror must have lodged, not later than the last day on which an offer was sent, a copy of every document that accompanied the offers other than a document previously lodged under this Division.

641 Offer price

- (1) If:
 - (a) the consideration that under each of the offers is to be paid or provided for the acquisition of the shares to which the offer relates consists solely of a cash sum or includes alternative considerations one of which consists solely of a cash sum; and
 - (b) during the 4 months ending on the day on which the first of the offers is sent, the offeror, or an associate of the offeror, purchased or agreed to purchase shares in the relevant class; the amount per share of that cash sum must be not less than:
 - (c) unless paragraph (d) applies—the highest price per share paid or agreed to be paid, pursuant to such a purchase or

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agreement to purchase, for any of the shares referred to in paragraph (b); or

- (d) if the target company, at any time during that period:
- (i) made, agreed to make, or announced a proposal to make, or to agree to make, an allotment of any of its shares;
 - (ii) granted, agreed to grant, or announced a proposal to grant, or to agree to grant, an option to subscribe for any of its shares;
 - (iii) issued, agreed to issue, or announced a proposal to issue, or to agree to issue, convertible notes; or
 - (iv) declared, or announced a proposal to declare, a dividend;

and an approval by the Commission of an amount in relation to the offers is in force under subsection (3)—the last-mentioned amount.

- (2) Where a person has entered into an agreement for the purchase of a share or shares in a company, being an agreement that provides that the price payable for the share or any of the shares is a price specified in the agreement but may be varied in accordance with the terms of the agreement, any such variations shall be disregarded in determining, for the purposes of subsection (1), the price agreed to be paid for the share or shares pursuant to the agreement.
- (3) Upon application by an offeror who proposes to send offers to acquire shares in a class of shares in a company, the Commission may, in writing, approve, for the purposes of subsection (1), a specified amount in relation to the offers.

642 Offers not to contain certain conditions

- (1) None of the offers must be subject to a condition (however expressed, and whatever the purported effect of fulfilment or failure of the condition) the fulfilment or failure of which depends on, or on matters including, one or more of the following matters:

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- (a) whether the number of shares in respect of which the offeror receives an acceptance or acceptances of one or more of the offers exceeds a particular number of shares;
 - (b) whether the percentage of shares in the relevant class to which the offeror becomes entitled exceeds a particular percentage;
 - (c) whether the number of offers accepted exceeds a particular number;
- however the particular number or percentage was, or is to be, determined, whether or not the particular number or percentage is specified in the condition and, if it is so specified, however it is expressed.
- (2) None of the offers must be subject to a condition (however expressed) that permits the offeror to acquire, or that may result in the offeror acquiring, shares in the relevant class from some but not all of the persons who accept the offers.
 - (3) Neither of subsections (1) and (2) limits the generality of the other.
 - (4) Subsection (1) does not apply in relation to a condition (however expressed) to which an offer is subject and the sole effect of which is to prevent:
 - (a) a binding contract from resulting from an acceptance of the offer; or
 - (b) an obligation of the offeror from arising under a contract resulting from an acceptance of the offer;unless or until:
 - (c) the number of shares in respect of which the offeror receives an acceptance or acceptances of one or more of the offers exceeds a particular number;
 - (d) the offeror becomes entitled to not less than a particular percentage of the shares in the relevant class; or
 - (e) the number of offers accepted exceeds a particular number;whichever is specified in the condition.

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- (5) Subsection (1) does not apply in relation to a condition (however expressed) to which an offer is subject and the sole effect of which is that:
- (a) a contract resulting from an acceptance of the offer will be rescinded;
 - (b) the offeror will be entitled to rescind such a contract; or
 - (c) the offeror will be relieved of an obligation arising under such a contract;
- if:
- (d) the number of shares in respect of which the offeror receives an acceptance or acceptances of one or more of the offers does not exceed a particular number;
 - (e) the offeror does not become entitled to not less than a particular percentage of the shares in the relevant class; or
 - (f) the number of offers accepted does not exceed a particular number;
- whichever is specified in the condition.
- (6) The document prepared by the Companies and Securities Law Review Committee, entitled “Report to the Ministerial Council on Partial Takeover Bids” and dated August 1985, is declared to be a relevant document for the purposes of section 109J.

642A Quoted securities—SCH business rules may specify mode of acceptance

- (1) If:
- (a) an offer relates wholly or partly to shares that are quoted securities; and
 - (b) the SCH business rules require that an acceptance of the offer, so far as it relates to those shares, must be made in a particular way;
- an acceptance of the offer, so far as it relates to those shares, is effective if, and only if, it is made in that way.
- (2) Subsection (1) has effect despite any requirements specified in the offer.

Division 2—Part A statements and takeover offers

643 Additional matter in Part A statement

A Part A statement may contain, in addition to the information referred to in Part A in section 750, such information as the offeror thinks fit, other than information that is false in a material particular or materially misleading.

644 Registration of Part A statements and offers

- (1) A person shall not serve a statement that purports to be a Part A statement on a target company unless:
 - (a) a copy of the statement; and
 - (b) a copy of one of the proposed offers to which the statement relates, being a copy that need not include:
 - (i) the name or address of the offeree;
 - (ii) the date of the proposed offer or any other date that is related to or dependent upon that date; or
 - (iii) the particulars referred to in subsection 638(4);have been registered by the Commission within the 21 days ending on the day immediately before the day on which the statement is served.
- (2) Subject to subsections (3) and (4), the Commission shall register the copies.
- (3) The Commission shall refuse to register the copies if:
 - (a) it appears that the statement or the proposed offer does not comply, or that neither complies, with the requirements of this Law; or
 - (b) the Commission is of the opinion that the statement or the proposed offer contains, or that both contain, matter that is false in a material particular or materially misleading.

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- (4) The Commission shall refuse to register the copies unless, in relation to each report that, because of clause 18 in Part A in section 750, is set out in the copy of the statement, there is lodged a notice, signed by the person or persons by whom the report is made, to the effect that the person, or each of the persons, consents to the inclusion of the report in the statement in the form and context in which it is included.
- (5) If, by 5 p.m. on the next day (being a day on which the office of the Commission at which the copies were lodged is open to the public) after the day on which the copies were lodged:
 - (a) the Commission has neither registered, nor refused to register, the copies; and
 - (b) the offeror has not, by notice to the Commission, withdrawn the copies;the copies shall be deemed to have been registered by the Commission at that time.
- (6) A statement served on a target company in contravention of this section shall, for the purposes of this Chapter other than this section and section 704, be deemed not to have been served.

645 Extension of time for paying consideration

- (1) The Commission may, on application made by an offeror before the time by which the consideration specified in the takeover offer is required by the terms of the offer to be paid or provided, fix a later time as the time by which that consideration is to be paid or provided.
- (2) Where a later time is so fixed, that later time shall be deemed to be specified in the offer, or, if the offer has been accepted, in the contract that resulted from the acceptance, in substitution for the time actually specified.
- (3) An offeror shall ensure that the consideration specified in the takeover offer is paid or provided by the time so specified or deemed to be specified.

646 Notice of offers to be served

- (1) Where takeover offers have been sent, the offeror shall, on the day on which the last of the offers is sent:
 - (a) serve notice on the target company that the offers have been sent and of the date of the offers;
 - (b) if the target company is a listed company—serve a copy of the notice on each notifiable securities exchange in relation to that company; and
 - (c) lodge a copy of the notice.
- (2) A notice or a copy of a notice referred to in subsection (1) shall be accompanied by a copy of one of the offers and a copy of every document that accompanied that offer.

Division 3—Part B statements

647 Part B statement

- (1) A target company shall:
 - (a) before the end of 14 days after the day on which it received a Part A statement, give a Part B statement to the offeror; or
 - (b) before the end of 14 days after the day on which it received a notice served under subsection 646(1):
 - (i) give a Part B statement to the offeror; and
 - (ii) give a copy of that statement to each person to whom an offer to which the Part A statement relates was made.
- (2) The Part B statement shall:
 - (a) be signed by all the directors or by not fewer than 2 directors authorised to sign the statement by a resolution passed at a meeting of the directors or, in the case of a company that has only one director, by that director; or
 - (b) if the company is being wound up or is under administration—be signed by the liquidator or administrator, as the case may be; or
 - (c) if the company has executed a deed of company arrangement that has not yet terminated—be signed by the deed's administrator.
- (3) The Part B statement shall not refer to any report made by an expert (other than a report set out in the Part A statement or a report that accompanies the Part B statement in accordance with section 648) unless:
 - (a) the report is set out in the Part B statement; and
 - (b) the Part B statement contains or is accompanied by a statement that the person or each of the persons by whom the report is made consents to the inclusion of the report in the form and context in which it is included.

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- (4) A target company that gives a statement that purports to be a Part B statement under subsection (1) shall, on the day on which the statement is given:
- (a) if the company is a listed company—serve on each notifiable securities exchange in relation to that company a copy of the statement and of every document accompanying the statement; and
 - (b) lodge:
 - (i) a copy of the statement and of every document accompanying the statement; and
 - (ii) in respect of any report accompanying the statement—a notice signed by the person or persons by whom the report is made to the effect that the person consents, or that each of those persons consents, to the report accompanying the Part B statement.
- (5) A Part B statement may contain, in addition to the information referred to in Part B in section 750, such information (other than information that is false in a material particular or materially misleading) as the directors, or the liquidator or official manager, as the case may be, think or thinks fit.

648 Offeror connected with target company

- (1) If:
- (a) an offeror is entitled to not less than 30% of:
 - (i) the voting shares in the target company; or
 - (ii) if the voting shares in the target company are divided into 2 or more classes—the shares in one of those classes;
 - (b) an offeror is or includes a natural person who is a director of the target company; or
 - (c) an offeror is or includes a body corporate and a director of the target company is a director of that body corporate;
- a Part B statement given in accordance with subsection 647(1) shall be accompanied by a copy of a report made by an expert

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(other than an associate of the offeror or of the target company) setting out the relevant particulars, stating whether, in the expert's opinion, the takeover offers are fair and reasonable and setting out the reasons for forming that opinion.

- (2) The relevant particulars are:
- (a) particulars of any relationship of the expert with the offeror, the target company or any associate of the offeror or of the target company, including, without limiting the generality of the foregoing, particulars of any circumstances in which the expert furnishes advice to or acts on behalf of the offeror, the target company or such an associate in the proper performance of the functions attaching to the expert's professional capacity or to the expert's business relationship with the offeror, the target company or the associate;
 - (b) particulars of any pecuniary or other interest of the expert that could reasonably be regarded as being capable of affecting the expert's ability to give an unbiased opinion in relation to the takeover offers; and
 - (c) particulars of:
 - (i) any fee; and
 - (ii) any pecuniary or other benefit, whether direct or indirect;that the expert has received or will or may receive in connection with the making of the report.
- (3) Where the target company obtains 2 or more reports each of which could be used for the purposes of compliance with subsection (1), the Part B statement given by the company shall be accompanied by a copy of each report.

Division 4—Effect of offers in special circumstances

649 Acquisition by third party of shares subject to takeover offer

Where:

- (a) a takeover offer (in this section called the *original offer*) relating to particular shares (in this section called the *relevant shares*) has been made to a person under a full takeover scheme; or
- (b) a takeover offer (in this section also called the *original offer*), relating to a proportion of particular shares (in this section also called the *relevant shares*) has been made to a person under a proportional takeover scheme;

and another person was at the time when the original offer was made, or becomes at any time during the period during which the original offer remains open and before the original offer is accepted, the holder of, or entitled to be registered as the holder of, shares (in this section called the *transferred shares*), being some or all of the relevant shares, the offeror shall be deemed:

- (c) to have made at that time to the other person a corresponding takeover offer relating to:
 - (i) if paragraph (a) applies—the transferred shares; or
 - (ii) if paragraph (b) applies—the proportion of the transferred shares;
- (d) to have made at that time to the person referred to in paragraph (a) or (b), as the case may be, a corresponding takeover offer relating to:
 - (i) if paragraph (a) applies—such (if any) of the relevant shares as are shares other than the transferred shares; or
 - (ii) if paragraph (b) applies—that proportion of such (if any) of the relevant shares as are shares other than the transferred shares; and
- (e) despite section 653, to have withdrawn, immediately after that time, the original offer.

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650 Acceptance of takeover offers by trustees, nominees etc.

- (1) This section applies where:
 - (a) a takeover offer relating to particular shares (in this section called the *relevant shares*) in a class of shares in a company has been made to a person under a full takeover scheme; or
 - (b) a takeover offer relating to a proportion of particular shares (in this section also called the *relevant shares*) in a class of shares in a company has been made to a person under a proportional takeover scheme.
- (2) If, at any time during the period during which the takeover offer remains open and before it is accepted, the relevant shares consist of 2 or more distinct portions, the takeover offer shall be deemed at that time to consist of separate takeover offers made to the person in relation to, or in relation to the relevant proportion of, the respective distinct portions of shares.
- (3) An acceptance by the person of a takeover offer that is deemed to exist by virtue of subsection (2) in relation to, or in relation to the relevant proportion of, a distinct portion of shares is ineffective unless the person has given to the offeror a notice stating that the relevant shares consist of distinct portions and the acceptance specifies the number of shares in the distinct portion to which the acceptance relates.
- (3A) A notice under subsection (3):
 - (a) if it relates to shares that are entered on an SCH subregister—must be in an electronic form approved by the SCH business rules for the purposes of this Part; or
 - (b) if it relates to shares that are not entered on an SCH subregister—must be in writing.
- (4) If the person purports at a particular time to accept a takeover offer on the basis that it is a takeover offer that is deemed to exist by virtue of subsection (2) but the shares in relation to which, or in relation to a proportion of which, the person purported to accept the takeover offer do not consist of a distinct portion, the person

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contravenes this section but the acceptance is as valid as it would have been if those shares had consisted of a distinct portion.

- (5) For the purposes of this section, where a person who holds particular shares in a class of shares in a company holds some, but not all, of the shares on account of a particular person, such of the shares as the first-mentioned person holds on account of the particular person shall be taken to constitute a distinct portion of the first-mentioned shares.
- (6) For the purposes of this section, where a person holds particular shares in a class of shares in a company, such (if any) of the shares as the person does not hold on account of a person shall be taken to constitute a distinct portion of the first-mentioned shares.
- (7) For the purposes of this section:
 - (a) a person who is, or is entitled to be registered as, the holder of particular shares shall be taken to hold the shares; and
 - (b) a person who:
 - (i) is entitled to be registered as the holder of particular shares; and
 - (ii) holds the person's interest in the shares on account of a particular person;shall be taken to hold the shares on account of the particular person.
- (8) For the purposes of this section, where a person holds shares, or an interest in shares, as trustee for, as nominee for, or otherwise on behalf of or on account of, a person, the first-mentioned person shall be taken to hold the shares, or the interest in the shares, as the case may be, on account of the second-mentioned person.
- (9) A person may, at the one time, accept 2 or more takeover offers that are deemed to exist by virtue of subsection (2) as if they were a single takeover offer in relation to, or in relation to the relevant proportion of, a distinct portion of shares.
- (10) Where a person accepts a takeover offer that is deemed to exist by virtue of subsection (2), a corresponding takeover offer shall not,

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merely because of the offeror becoming, or becoming entitled to be registered as, the holder of any of the relevant shares as a result of the acceptance, be deemed by virtue of paragraph 649(d) to have been made to the person.

651 Avoidance of odd lots where takeover offer relates to proportion of offeree's shares

(1) Where:

- (a) a takeover offer relating to a proportion of particular shares (in this subsection called the *offeree's shares*) in a class of shares in a company has been made to a person under a proportional takeover scheme;
- (b) the target company is a listed company;
- (c) the relevant offer is accepted; and
- (d) a proportion of the offeree's shares, being the proportion to which the offer does not relate, consists of an odd lot of shares or consists of a marketable parcel or marketable parcels of shares and an odd lot of shares;

the offer shall, except for the purposes of paragraph 635(b) and this subsection, be deemed always to have related to, to relate to, and to have been accepted in relation to, a number of shares in that class equal to the sum of:

- (e) the number of shares of which the proportion referred to in paragraph (a) of this subsection consists; and
- (f) the number of shares in that odd lot of shares.

(2) This section applies notwithstanding section 649 or 650.

652 Offeror not entitled to bid for balance where takeover offer relates to proportion of offeree's shares

Where a takeover offer (in this section called the *relevant offer*) relating to a proportion of particular shares (in this section called the *relevant shares*) has been made to a person under a proportional takeover scheme, an offer (other than an offer that the offeror is, by virtue of section 649, deemed to have made) that:

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- (a) was or is made by the offeror before, at or after the time when the relevant offer was made;
- (b) was or is made to that person or to any other person; and
- (c) relates to shares that are or include some or all of such of the relevant shares as are not shares to which the relevant offer relates;

shall be taken to have been, or to be, as the case may be, made otherwise than under the takeover scheme.

Division 5—Withdrawal and variation of offers

653 Withdrawal of offers

A takeover offer is not capable of being withdrawn without the written consent of the Commission, which may be given subject to such conditions (if any) as are specified in the consent.

654 Circumstances in which offers may be varied

- (1) An offeror may not vary a takeover offer except:
 - (a) in accordance with this Division;
 - (b) in accordance with the regulations; or
 - (c) with the written consent of the Commission and in accordance with any conditions specified by the Commission in the consent.
- (2) Where an offeror varies an offer under a takeover scheme as mentioned in paragraph (1)(a), the offeror shall, at the same time, make a corresponding variation to each other offer (other than an offer that has been accepted before the variation is made) under the takeover scheme.

655 Variation of consideration

- (1) An offeror may vary an offer under a takeover scheme by doing one or more of the following in relation to the whole or a part of the consideration that is specified in the offer as the consideration for the acquisition of the shares to which the offer relates:
 - (a) where a cash sum is specified—by increasing the amount of that sum;
 - (b) where shares are, stock is, or debentures are, specified—by specifying a cash sum in addition to the shares, stock or debentures;
 - (c) where shares are specified—by increasing the number of those shares;

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- (d) where stock is specified—by increasing the amount of that stock;
 - (e) where debentures are specified—by increasing the rate of interest payable under those debentures;
 - (f) where debentures are specified—by increasing the amount of those debentures;
 - (g) where an option to acquire unissued shares is specified—by varying that option so as to increase the number of unissued shares that may be acquired under that option.
- (2) Where the consideration specified in an offer under a takeover scheme as the consideration for the acquisition of the shares to which the offer relates is varied under subsection (1):
- (a) if another offer under the takeover scheme has been accepted before the variation, the contract resulting from the acceptance of that other offer is varied so that the consideration under the contract is the consideration that would have been specified in that other offer if a corresponding variation had been made to that other offer before it was accepted; and
 - (b) if the consideration under the contract referred to in paragraph (a) has already been received, the offeree is entitled to receive the additional consideration immediately.
- (3) An offeror may vary an offer under a takeover scheme in which the consideration specified does not include a cash sum or does not consist solely of a cash sum by offering as an alternative consideration to the consideration specified in the offer a consideration that consists solely of a cash sum.
- (4) Where an offer under a takeover scheme is varied under subsection (3) so as to offer a cash sum as an alternative consideration and another offer under the takeover scheme was accepted before the variation:
- (a) the contract resulting from the acceptance of that other offer shall be deemed to be varied so as to confer on the person who accepted that other offer the right, by written notice given to the offeror within the period mentioned in

The Corporations Law—Section 656

paragraph (b), to elect to accept the cash sum in lieu of the consideration that was specified in that other offer;

- (b) the offeror shall as soon as practicable send to the person who accepted that other offer a written notice informing the person that the person may, before the end of one month beginning on the day after the day on which the notice was received, give written notice to the offeror electing to accept the cash sum in lieu of the consideration that was specified in that other offer; and
- (c) if the consideration under the contract referred to in paragraph (a) was received by the person who accepted that other offer before the person received the notice from the offeror under paragraph (b) and the person gives notice to the offeror in accordance with this subsection electing to accept the cash sum in lieu of the consideration that was specified in that other offer—the person shall return the consideration (together with any necessary documents of transfer) with the notice of election and is entitled, upon the receipt of the consideration by the offeror, to receive the cash sum.

656 Variation of offer period

- (1) An offeror may vary an offer under a takeover scheme:
 - (a) if the offer is subject to a defeating condition—before the publication of a notice under subsection 663(4) in relation to offers under the takeover scheme; or
 - (b) if the offer is not subject to such a condition—before the end of the offer period;by extending the offer period for a further period but, subject to subsection 657(2), so that the total offer period does not exceed 12 months.
- (2) Subsection (1) applies in relation to a takeover scheme subject to any condition specified in a consent under section 653 given in relation to an offer made under the takeover scheme.
- (3) The references in subsection (1) to the offer period are, if that period has been extended by the previous exercise on one or more

The Corporations Law—Section 657

occasions of the power conferred by that subsection, references to the period as so extended.

657 Manner of varying offers

- (1) Variations of offers under a takeover scheme shall be made by:
 - (a) serving on the target company a notice:
 - (i) signed in the same manner as a Part A statement is required by subsection 637(1) to be signed;
 - (ii) setting out the terms of the proposed variation and particulars of such modifications of the Part A statement as are necessary having regard to the variation; and
 - (iii) where the effect of the proposed variation will be to postpone for more than one month the time by which the offeror's obligations under the takeover scheme are to be satisfied—stating the effect of the provisions of section 658; and
 - (b) sending a copy of that notice in an approved manner to each person to whom an offer was made under the takeover scheme (including, subject to subsection (3), a person who has accepted an offer).
- (2) Where an offeror purports, in accordance with subsection 656(1), to vary an offer under a takeover scheme that is open for a period not exceeding 6 months so that the total offer period would exceed 6 months, the offeror shall, within the period of one month beginning 5 months after the date of the offer:
 - (a) serve on the target company a notice signed in the same manner as a Part A statement is required by subsection 637(1) to be signed and setting out any information that the offeror would have been required to include in the Part A statement if the statement had been lodged for registration 5 months after the date of the offer, being information that differs from the information included in that Part A statement;
 - (b) send a copy of that notice in an approved manner to each person to whom an offer was made under the takeover

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- scheme (including, subject to subsection (3), a person who has accepted an offer); and
- (c) if the target company is a listed company—serve a copy of that notice on each notifiable securities exchange in relation to that company.
- (3) It is not necessary to send under subsection (1) or (2) a copy of a notice to a person who has accepted an offer under the takeover scheme if the variation of offers under the takeover scheme relates only to an extension of the offer period and:
- (a) the offers are not subject to a defeating condition; or
 - (b) the offers were subject to such a condition but at the time of the service of the notice on the target company the offers are free from the condition or the condition has been fulfilled.

658 Effect of variation on offeree who has accepted offer

- (1) Where an offeree who has accepted a takeover offer that is subject to a defeating condition receives a copy of a notice under subsection 657(1) in relation to a variation of offers under the takeover scheme, being a variation the effect of which is to postpone for more than one month the time when the offeror's obligations under the takeover scheme are to be satisfied:
- (a) the offeree may withdraw the offeree's acceptance of the offer by:
 - (i) giving notice to the offeror within one month beginning on the day after the day on which the copy of the first-mentioned notice was received; and
 - (ii) returning any consideration received by the offeree; and
 - (b) if the offeree withdraws the acceptance of the offer under paragraph (a), the offeror must, before the end of 14 days after the withdrawal day (as defined in subsection (4)):
 - (i) take such action (if any) as the SCH business rules require in relation to any of the shares to which the acceptance relates that are entered on an SCH subregister; and

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- (ii) return any documents that were sent by the offeree to the offeror with the acceptance of the offer.
- (2) A notice under subparagraph (1)(a)(i):
 - (a) if it relates to shares that are entered on an SCH subregister—must be in an electronic form approved by the SCH business rules for the purposes of this Part; or
 - (b) if it relates to shares that are not entered on an SCH subregister—must be in writing.
 - (3) The reference in subparagraph (1)(a)(ii) to returning consideration includes, in the case of consideration that consists of securities, a reference to:
 - (a) if the securities are entered on an SCH subregister—taking such action as the SCH business rules require in relation to the return of the securities; or
 - (b) otherwise—providing the offeree with any documents of transfer necessary to effect the return of securities.
 - (4) For the purposes of paragraph (1)(b), the *withdrawal day* is:
 - (a) if the offeree does the things referred to in paragraph (1)(a) on the same day—that day; or
 - (b) if the offeree does those things on different days—the last of those days.

659 Registration of notices of variation

- (1) An offeror is not entitled to serve a notice under section 657 unless a copy of the notice has been registered by the Commission.
 - (2) Where a copy of a notice is lodged for registration under subsection (1), the Commission shall not register the copy of the notice unless:
 - (a) in the case of a notice under subsection 657(1)—the Commission is of the opinion that the proposed variation is permitted by this Division; and
 - (b) in the case of a notice under subsection 657(1) or (2)—the notice appears to have been signed:
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The Corporations Law—Section 660

- (i) if the offeror is, or includes, a natural person or natural persons—by that person or each of those persons; and
 - (ii) if the offeror is, or includes, a body corporate or bodies corporate—by a director or directors of the body corporate or of each of the bodies corporate.
- (3) A copy of a notice referred to in subsection 657(1) or (2) shall, when sent in accordance with paragraph 657(1)(b) or (2)(b), have endorsed on it a statement that another copy of the notice has been registered by the Commission and that the Commission takes no responsibility as to the contents of the notice and specifying the date on which that other copy was so registered.

660 Acquisition not affected by contravention

An acquisition of shares as a result of the acceptance of a takeover offer is not invalid because:

- (a) the offeror has purported to vary the takeover offer in accordance with this Division but has contravened a requirement of this Division;
- (b) the offeror has purported to vary the takeover offer in accordance with the regulations but has contravened a requirement of the regulations; or
- (c) the offeror has purported to vary the takeover offer with the consent of the Commission given under paragraph 654(1)(c) but has contravened a condition imposed by the Commission under that paragraph.

661 Section 645 not affected

Nothing in this Division affects the operation of section 645.

Division 6—Conditional offers and contracts

662 Takeover offers not to be subject to certain terms or conditions

- (1) An offeror shall not make a takeover offer that requires the offeree to approve or consent to:
 - (a) a payment or other benefit being made or given to a director, secretary or executive officer of the target company as compensation for loss of, or as consideration in connection with retirement from, office as director, secretary or executive officer, or any other office, in connection with the management of the target company or of a body corporate that is related to the target company; or
 - (b) a payment or other benefit being made or given to a director, secretary or executive officer of a body corporate that is related to the target company as compensation for loss of, or as consideration in connection with retirement from, office as director, secretary or executive officer, or any other office, in connection with the management of the target company or of a body corporate that is related to the target company;and any such requirement is void.
- (2) An offeror shall not make a takeover offer subject to a defeating condition (however expressed) the fulfilment of which depends on:
 - (a) an opinion, belief or other state of mind of the offeror or of an associate of the offeror; or
 - (b) whether or not a particular event happens, being an event that is within the sole control of the offeror or of an associate of the offeror;and, if a takeover offer is made subject to a condition in contravention of this subsection, the condition is void.
- (3) An offeror shall not make a takeover offer that is subject to a condition of a kind referred to in subsection 642(4) or (5) unless the particular number or percentage of shares, or the particular number of offers, as the case requires, is specified in the offer.

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- (4) The number of shares specified in accordance with subsection (3) may be expressed as a number of shares or as a percentage of the total number of shares in the class to which the takeover offer relates or of the total number of shares in that class of shares to which the offeror is not entitled.
- (5) If subsection (3) is contravened, the condition is void.
- (6) Where a number or percentage is specified in accordance with subsection (3), a provision in the takeover offer is void in so far as it purports to provide for the number or percentage to be varied.

663 Declaration where takeover offers are conditional

- (1) Where an offeror makes a takeover offer that is subject to a defeating condition, the offeror may not, except in accordance with this section, whether expressly or impliedly and whether in writing or by conduct, declare the takeover offer or any contract resulting from the acceptance of the takeover offer to be free from the condition, and may not otherwise treat the takeover offer or any contract resulting from the acceptance of the takeover offer as being free from the condition.
- (2) Where an offer under a takeover scheme is subject to a defeating condition, the offeror may declare the offer to be free from the condition if:
 - (a) it is a term of the offer that the offeror may do so not less than 7 days before the last day of the offer period and the offer is declared to be free from the condition in accordance with that term; and
 - (b) at the same time the offeror declares all other offers under the takeover scheme, and all contracts formed by the acceptance of offers under the takeover scheme, to be free from the condition.
- (3) If an offeror declares all offers under a takeover scheme to be free from a defeating condition, the offeror shall as soon as practicable publish a notice stating that the offers are free from the condition and specifying the proportion of the number of shares in the class

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of shares to which the offers related to which, so far as the offeror knows, the offeror is entitled.

- (4) The offeror shall, whether or not a notice has been published under subsection (3), publish on the prescribed date a notice stating:
- (a) whether the offers have been declared to be free from the condition;
 - (b) whether the offers have become free from the condition by the operation of subsection 664(2); and
 - (c) whether, so far as the offeror knows, the condition was, at the time of lodging the notice for publication, fulfilled.

- (5) In subsection (4):

prescribed date means:

- (a) the date specified in the takeover offers in accordance with paragraph 638(5); or
 - (b) if the offer period has been extended as provided by Division 5—the date that is later than the date referred to in paragraph (a) by a period equal to the period of the extension.
- (6) Where a notice under subsection (4) states that the offers have been declared to be, or that the offers have become, free from a defeating condition or that a defeating condition has been fulfilled, the notice shall also specify the proportion of the class of shares to which the offers related to which, so far as the offeror knows, the offeror is entitled.
- (7) A notice under subsection (3) or (4) relating to offers to acquire shares in a company must be published:
- (a) in this jurisdiction; and
 - (b) if shares in the company are listed for quotation on a stock market conducted in another jurisdiction, or on 2 or more such stock markets—in each jurisdiction in which that stock market, or any of those stock markets, is conducted;
- in a newspaper circulating generally in the jurisdiction concerned.

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- (8) Where a notice referred to in subsection (3) or (4) is lodged for publication, the offeror shall, on the first day on which the notice is lodged for publication:
- (a) lodge a copy of the notice; and
 - (b) if the target company is a listed company—serve a copy of the notice on that company’s home stock exchange.
- (9) Where:
- (a) offers made under a takeover scheme have at any time been subject to a defeating condition; and
 - (b) at the end of the offer period:
 - (i) the offeror has not declared the offers to be free from the condition;
 - (ii) the offers have not become free from the condition by the operation of subsection 664(2); and
 - (iii) the condition has not been fulfilled;
- all contracts resulting from the acceptance of offers, and all acceptances that have not resulted in binding contracts, are void.

Division 7—Effect of outside acquisitions

664 Effect on conditional offers

- (1) This section applies where:
 - (a) a takeover offer made in respect of shares in a company is subject to a condition of a kind referred to in subsection 642(4) or (5); and
 - (b) during the takeover period the offeror becomes entitled to shares in the company in the same class as the first-mentioned shares otherwise than as a result of the acceptance of an offer under the takeover scheme.
- (2) If the shares to which the offeror became entitled as mentioned in paragraph (1)(b) constitute more than 20% of the voting shares in the company, excluding any shares to which the offeror was entitled when the Part A statement was served, the offer is free from the condition.
- (3) If subsection (2) does not free the offer from the condition, then, for the purpose of determining whether the condition has been fulfilled, the offeror shall be deemed to have become entitled to the shares referred to in paragraph (1)(b) as a result of receiving an acceptance or acceptances of an offer or offers under the takeover scheme.
- (4) Subsection (3) does not apply for the purpose of determining the number of offers under a takeover scheme that have been accepted.

665 Effect on offers

Where:

- (a) a takeover offer is made in respect of shares in a company;
- (b) the consideration payable under the offer consists solely of a cash sum or includes alternative considerations one of which consists solely of a cash sum;

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- (c) after the Part A statement was served on the target company and before the offer is accepted, the offeror purchases shares in the company in the same class as the first-mentioned shares, otherwise than as a result of the acceptance of an offer under the takeover scheme, for a consideration that consists solely of a cash sum; and
- (d) the amount paid or payable for any of the shares referred to in paragraph (c) is higher than the cash sum payable under the offer for each share to which the offer relates;

the offer shall be deemed to be varied so that the cash sum payable for each share to which the offer relates is an amount equal to the highest amount paid or payable by the offeror for any of the shares referred to in paragraph (c).

666 Effect on contracts

Where:

- (a) a takeover offer made in respect of shares in a company is accepted;
- (b) the consideration paid or payable under the contract resulting from the acceptance of the offer consisted or consists solely of a cash sum;
- (c) after the acceptance of the offer and before the end of the offer period, the offeror purchases shares in the company in the same class as the first-mentioned shares, otherwise than as a result of the acceptance of an offer under the takeover scheme, for a consideration that consists solely of a cash sum; and
- (d) the amount paid or payable for any of the shares referred to in paragraph (c) is higher than the consideration paid or payable for each share under the contract referred to in paragraph (b);

that contract shall be deemed to be varied so that the consideration payable for each share under the contract is an amount equal to the highest amount paid or payable by the offeror for any of the shares referred to in paragraph (c) and, if the offeree has already received the whole or any part of the consideration under the contract, the

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offeree is entitled to receive immediately the additional consideration resulting from the variation.

667 Notice to offerees where cash not the sole consideration

(1) Where:

- (a) a takeover offer made in respect of shares in a company is accepted;
- (b) the consideration paid or provided or to be paid or provided under the contract resulting from the acceptance of the offer does not consist solely of a cash sum; and
- (c) during the takeover period the offeror purchased or purchases shares in the company in the same class as the first-mentioned shares, otherwise than as a result of the acceptance of an offer under the takeover scheme, for a consideration that consists solely of a cash sum;

the offeror shall, before the end of 14 days after the last day of the offer period, give written notice to the offeree;

- (d) setting out the highest price paid or payable by the offeror for any of the shares referred to in paragraph (c); and
- (e) informing the offeree that the offeree may, before the end of 28 days after the day on which the notice is received, give written notice to the offeror electing to receive for each share in respect of which the offeree has accepted the offer an amount equal to that price in substitution for the consideration under the contract.

(2) Where an election is made under paragraph (1)(e):

- (a) the offeree is entitled to receive the substituted amount for each share; and
- (b) is entitled to receive that amount immediately or, if the offeree has already received the whole or any part of the consideration under the contract, immediately upon returning that consideration (together with any necessary documents of transfer) to the offeror.

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- (3) Where, in accordance with paragraph (2)(b), an offeree returns to a company any certificates (together with any necessary documents of transfer) in respect of shares allotted by that company as the consideration or part of the consideration for the acquisition of shares in a body corporate, the company may cancel the allotment of those shares.

668 Notice to offerees where cash consideration to constitute a loan

- (1) Where:

- (a) a takeover offer made in respect of shares in a company is accepted;
- (b) the consideration under the contract resulting from the acceptance of the offer consists solely of a cash sum and it is a term of the contract that the offeree makes, or that the sum is applied in whole or in part in making, a payment by way of a deposit or loan; and
- (c) during the takeover period the offeror purchased or purchases shares in the company in the same class as the first-mentioned shares, otherwise than as a result of the acceptance of an offer made under the takeover scheme, for a consideration that consists solely of a cash sum and the contract for the purchase of those shares does not contain a term of the kind mentioned in paragraph (b);

the offeror shall, before the end of 14 days after the last day of the offer period, give written notice to the offeree:

- (d) setting out the highest price paid or payable by the offeror for any of the shares referred to in paragraph (c); and
- (e) informing the offeree that the offeree may, before the end of 28 days after the day on which the notice is received, give written notice to the offeror electing to receive for each share in respect of which the offeree has accepted the offer an amount equal to that price in substitution for the consideration under the contract.

- (2) Where an election is made under paragraph (1)(e):

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- (a) the contract referred to in paragraph (1)(b) shall be deemed not to have included the term referred to in that paragraph;
- (b) the offeree is entitled to receive the substituted amount for each share to which the contract relates and is entitled to receive that amount immediately;
- (c) the offeree shall as soon as practicable return to the offeror any consideration that the offeree has received under the contract (excluding any consideration that has been applied, or an amount equivalent to which has been applied, in making a payment by way of deposit or loan in accordance with the term referred to in paragraph (1)(b)) and any document evidencing any payment by way of a deposit or loan that the offeree has made in accordance with that term; and
- (d) upon the payment of the substituted amount to the offeree, any debt due to the offeree arising out of any payment by way of a deposit or loan in accordance with the term referred to in paragraph (1)(b) or arising out of the application of the consideration under the contract is, by force of this paragraph, discharged.

Division 8—Takeover approval provisions

669 Definitions

In this Division:

relevant day, in relation to a takeover scheme, means the day that is the fourteenth day before the last day of the offer period;

renew, in relation to takeover approval provisions of a company, means renew under subsection 672(2);

takeover approval provisions, in relation to a company, means provisions of the kind referred to in subsection 671(1) that are contained in, or that it is proposed to insert, as the case requires, the constitution of the company.

670 Effect of Division

This Division applies notwithstanding anything contained in the business rules or listing rules of a securities exchange, in the constitution of a company, or in any agreement.

671 Constitution may contain takeover approval provisions

- (1) Subject to this Division, the constitution of a company may contain provisions to the effect that, where offers have been made under a proportional takeover scheme in respect of shares in a class of shares in the company:
 - (a) the registration of a transfer giving effect to a contract resulting from the acceptance of an offer made under the takeover scheme is prohibited unless and until a resolution (in this subsection called *an approving resolution*) to approve the takeover scheme is passed in accordance with the provisions;
 - (b) a person (other than the offeror or an associate of the offeror) who, as at the end of the day on which the first offer under

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the takeover scheme was made, held shares in that class is entitled to vote on an approving resolution and, for the purpose of so voting, is entitled to one vote for each of the last-mentioned shares;

- (c) an approving resolution shall be voted on in whichever of the following ways is specified in the provisions:
 - (i) at a meeting, convened and conducted by the company, of the persons entitled to vote on the resolution;
 - (ii) by means of a postal ballot conducted by the company in accordance with a procedure set out in the provisions;or, if the provisions so provide, in whichever of those ways is determined by the directors of the company; and
 - (d) an approving resolution that has been voted on shall be taken to have been passed if the proportion that the number of votes in favour of the resolution bears to the total number of votes on the resolution is greater than such proportion (not exceeding one-half) as is specified in the provisions, and otherwise shall be taken to have been rejected.
- (2) Except in so far as the constitution of a company otherwise provides, the provisions (whether of a law or of that constitution, or any other provisions) that apply in relation to a general meeting of the company shall apply, with such modifications as the circumstances require, in relation to a meeting that is convened under the takeover approval provisions of the company and shall so apply as if the last-mentioned meeting were a general meeting of the company.
- (3) Where:
- (a) takeover offers have been made under a proportional takeover scheme; and
 - (b) the constitution of the target company contains takeover approval provisions;
- then:
- (c) the directors of the company shall ensure that a resolution to approve the takeover scheme is voted on in accordance with

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those provisions before the relevant day in relation to the takeover scheme; and

- (d) if the directors fail to ensure that such a resolution is so voted on, each of the directors contravenes this subsection.
- (4) Where a resolution to approve a takeover scheme is voted on, in accordance with takeover approval provisions of the target company, before the relevant day in relation to the takeover scheme, the target company shall, on or before the relevant day:
- (a) give to the offeror; and
 - (b) if the target company is a listed company—serve on each notifiable securities exchange in relation to that company; a written notice stating that a resolution to approve the takeover scheme has been so voted on and that the resolution has been passed, or has been rejected, as the case requires.
- (5) Where, as at the end of the day before the relevant day in relation to a proportional takeover scheme:
- (a) the constitution of the target company in relation to the takeover scheme contains takeover approval provisions; and
 - (b) no resolution to approve the takeover scheme has been voted on in accordance with those provisions;
- a resolution to approve the takeover scheme shall, for the purposes of those provisions, be deemed to have been passed in accordance with those provisions.
- (6) Where:
- (a) the constitution of a company contains takeover approval provisions; and
 - (b) a resolution to approve a proportional takeover scheme is voted on, in accordance with those provisions, before the relevant day in relation to the takeover scheme and is rejected;
- then:
- (c) despite section 653:
 - (i) all offers under the takeover scheme that have not, as at the end of the relevant day, been accepted; and

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- (ii) all offers under the takeover scheme that have been accepted and from whose acceptance binding contracts have not, as at the end of the relevant day, resulted; shall be deemed to be withdrawn at the end of the relevant day;
- (d) as soon as practicable after the relevant day, the offeror shall return to each person who has accepted an offer referred to in subparagraph (c)(ii) any documents that were sent by the person to the offeror with the acceptance of the offer;
- (e) the offeror is entitled to rescind, and shall, as soon as practicable after the relevant day, rescind, each contract resulting from the acceptance of an offer made under the takeover scheme; and
- (f) a person who has accepted an offer made under the takeover scheme is entitled to rescind the contract (if any) resulting from that acceptance.

672 Provisions relating to the inclusion, effect and renewal of takeover approval provisions

- (1) Takeover approval provisions of a company, unless sooner omitted from the constitution of the company, cease to apply at the end of:
 - (a) unless paragraph (b) or (c) applies—3 years;
 - (b) if the constitution provides that the provisions apply for a specified period of less than 3 years and the provisions have not been renewed—the specified period; or
 - (c) if the provisions have been renewed on at least one occasion and the resolution, or the later or last of the resolutions, as the case requires, renewing the provisions states that the provisions are renewed for a specified period of less than 3 years—the specified period;beginning:
 - (d) if the provisions were contained in the constitution at the time when the company was incorporated or formed and have not been renewed—at that time;

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- (e) if the provisions were inserted in the constitution and have not been renewed—when the provisions were so inserted; or
 - (f) if the provisions have been renewed on at least one occasion—when the provisions were renewed, or last renewed, as the case requires;
- and, upon the provisions ceasing to apply, the constitution is, by force of this subsection, altered by omitting the provisions.
- (2) A company may renew takeover approval provisions of the company in any manner in which the company may alter its constitution by inserting such provisions and, in relation to a renewal of such provisions, shall comply with the requirements of any law or of its constitution that apply in relation to such an alteration, being an alteration with respect to the manner in which the renewal may be effected.
 - (3) With every notice that:
 - (a) specifies the intention to propose:
 - (i) a resolution for the alteration of the constitution of a company by inserting takeover approval provisions; or
 - (ii) a resolution to renew takeover approval provisions of a company; and
 - (b) is sent to a person who is entitled to vote on the proposed resolution;the company shall send a statement that:
 - (c) explains the effect of the proposed provisions, or of the provisions proposed to be renewed, as the case may be;
 - (d) explains the reasons for proposing the resolution and sets out the factual matters and principles underlying those reasons;
 - (e) states whether, as at the day on which the statement is prepared, any of the directors of the company is aware of a proposal by a person to acquire, or to increase the extent of, a substantial interest in the company and, if so, explains the extent (if any) to which such a proposal has influenced the decision to propose the resolution;
 - (f) in the case of a proposed resolution to renew takeover approval provisions—reviews both the advantages, and
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- disadvantages, of the provisions proposed to be renewed for the directors, and the members, respectively, of the company during the period during which the provisions have been in effect; and
- (g) discusses both the potential advantages, and the potential disadvantages, of the proposed provisions, or of the provisions proposed to be renewed, as the case may be, for the directors, and the members, respectively, of the company.
- (4) Where, on a particular day, a company purports to:
- (a) alter its constitution by inserting takeover approval provisions; or
 - (b) renew takeover approval provisions of the company;
- then:
- (c) shareholders who together hold not less than 10% of the issued shares in a class of shares in the company may, before the end of 21 days after that day, apply to the Court to have the purported alteration or renewal set aside; and
 - (d) unless and until an application made under paragraph (c) is finally determined by the making of an order setting aside the purported alteration or renewal, the company shall be deemed for all purposes (other than the purposes of such an application):
 - (i) to have validly altered its constitution by inserting the provisions referred to in paragraph (a); or
 - (ii) to have validly renewed the provisions referred to in paragraph (b);as the case may be.
- (5) An application under paragraph (4)(c) may be made, on behalf of the shareholders entitled to make the application, by such one or more of them as they appoint in writing.
- (6) On an application under paragraph (4)(c), the Court, if it is satisfied that it is appropriate in all the circumstances to do so, may make an order setting aside the purported alteration or renewal, but otherwise shall dismiss the application.

Corporations Law Chapter 6 Acquisition of shares

Part 6.3 Takeover schemes

Division 8 Takeover approval provisions

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- (7) Before the end of 14 days after the day on which the Court makes in relation to a company an order of the kind referred to in subsection (6), the company shall lodge an office copy of the order.

Part 6.4—Takeover announcements

Division 1—Offers constituted by announcement

673 Nature of offers

For the purposes of this Chapter, offers to acquire shares in a listed company are made under a takeover announcement if, and only if:

- (a) the offers are made in accordance with this Division; and
- (b) the requirements of this Division that apply to the person on whose behalf the offers are made are complied with.

674 Making of announcement

- (1) Subject to this Division, a person, or 2 or more persons together, may make offers to acquire shares in a class of shares in a listed company by causing an appropriate dealer to make on behalf of that person or those persons at a relevant official meeting an announcement to the effect that, during the period of one month beginning on the first trading day of the company's home stock exchange after the end of 14 days after the day of the announcement, the dealer offers, on behalf of that person or those persons, to acquire, at a cash price per share specified in the announcement, all shares in that class in respect of which offers made by the announcement are accepted in accordance with section 675.
- (2) Except with the consent of the Commission, a person is not entitled, or 2 or more persons together are not entitled, to make offers under subsection (1) in relation to shares in a company if that person, or either or any of those persons:
 - (a) is entitled to not less than 30% of the voting shares in the company; or
 - (b) in the case of a company the voting shares in which are divided into 2 or more classes of shares—is entitled to not less than 30% of the shares in one of those classes.

The Corporations Law—Section 675

675 Acceptance of offers

- (1) Offers that relate to shares in a class of shares in a company and are made by an announcement by an appropriate dealer in accordance with subsection 674(1) may be accepted:
 - (a) in any case—at a relevant official meeting; or
 - (b) if the offers cannot be accepted at a particular relevant official meeting:
 - (i) because neither the dealer nor a representative of the dealer is present at the official meeting;
 - (ii) because dealings in shares in that class are not permitted at that official meeting; or
 - (iii) for any other reason;by a notice that is signed by or on behalf of a holder of shares in that class and is served on the company's home stock exchange on the day of that official meeting.
- (2) Where:
 - (a) an appropriate dealer has made an announcement, in accordance with subsection 674(1), at a relevant official meeting; and
 - (b) a notice accepting an offer made by the announcement is served, in accordance with subsection (1), on a stock exchange that conducts a stock market in this jurisdiction;the stock exchange shall, as soon as practicable, notify the dealer of the acceptance of the offer.

676 Price to be specified

- (1) The price to be specified in an announcement made in accordance with subsection 674(1) on behalf of an offeror in respect of shares in a class of shares in a company as the price per share at which shares will be acquired shall, if the offeror or an associate of the offeror, in the 4 months ending on the day immediately before the day of the announcement, purchased or agreed to purchase shares in that company in that class of shares, be not less than the highest

The Corporations Law—Section 677

price per share paid or agreed to be paid in respect of any of those shares pursuant to any such purchase or agreement to purchase.

- (2) Where, in the 4 months ending on the day immediately before the day of a takeover announcement, the offeror or an associate of the offeror has entered into an agreement for the purchase of a share or shares in the target company, being an agreement that provides that the price payable for the share or any of the shares is a price specified in the agreement but may be varied in accordance with the terms of the agreement, any such variations shall be disregarded in determining, for the purposes of subsection (1), the price agreed to be paid for the share or shares under the agreement.

677 Acquisitions at higher price

- (1) Subject to subsection (2), nothing in this Division prohibits an offeror from acquiring at an official meeting of a stock exchange, in the ordinary course of trading on the stock market of that stock exchange, during the period beginning when the takeover announcement is made and ending immediately before the start of the closing phase of the offer period, shares to which the takeover announcement relates at a price that is higher than the price specified in the announcement or is higher than any price that is deemed by a previous operation of this subsection or of subsection 681(2) to be specified in the announcement.
- (2) If the offeror acquires shares at such a higher price during the period to which subsection (1) applies, that higher price shall, for the purposes of any offer that is accepted after the acquisition takes place, be deemed to be the price specified in the announcement unless and until another price is deemed by virtue of the operation of this subsection or of subsection 681(2) to be specified in the announcement.
- (3) During the closing phase of the offer period, the offeror shall not acquire shares to which the takeover announcement relates at a price that is higher than the price that, at the end of the period to which subsection (1) applies, is, or is deemed to be, the price specified in the announcement.

The Corporations Law—Section 678

678 Offer period

Subject to section 684, offers made by an announcement in accordance with subsection 674(1) remain open for the period of one month referred to in that subsection or, if that period has been extended in accordance with subsection 681(3), for that period as so extended.

679 Part C statements

- (1) An offeror who makes offers by an announcement in accordance with subsection 674(1) in relation to shares in a company shall:
 - (a) on the day on which the announcement is made:
 - (i) serve on the target company a Part C statement relating to the offers that is signed:
 - (A) where the offeror is, or includes, a natural person or natural persons, by that person or by each of those persons; and
 - (B) where the offeror is, or includes, a body corporate or bodies corporate, by not fewer than 2 directors of the body corporate, or by 2 directors of each of the bodies corporate, authorised to sign the statement by a resolution passed at a meeting of the directors, or, in the case of a body corporate that has only one director, by that director;
 - (ii) serve a copy of the statement on the target company's home stock exchange; and
 - (iii) lodge a copy of the statement; and
 - (b) before the end of 14 days after the day on which the announcement is made, send a copy of the statement in an approved manner to each holder of shares in the class to which the announcement relates.
- (2) A Part C statement may contain, in addition to the information referred to in Part C in section 750, such information as the offeror

The Corporations Law—Section 680

thinks fit, other than information that is false in a material particular or materially misleading.

680 Service on Commission of copies of documents accompanying offers

An offeror who makes offers by an announcement in accordance with subsection 674(1) in relation to shares in a company shall lodge, not later than the last day on which a copy of the Part C statement is sent to a holder of shares in the class to which the announcement relates, a copy of every document that accompanied copies of the Part C statement sent to holders of shares in that class.

681 Variation of offers

(1) If, at any time during the takeover period in relation to a takeover announcement:

- (a) the target company makes an allotment of, or grants an option to subscribe for, any of its shares, or agrees to make such an allotment or to grant such an option;
- (b) the target company issues, or agrees to issue, convertible notes; or
- (c) the target company declares a dividend;

the offeror may, with the consent of the Commission, cause an appropriate dealer to make on the offeror's behalf at a relevant official meeting an announcement stating that a specified lower price per share is to be substituted for the price per share specified in the takeover announcement.

(2) Where such an announcement is made, the lower price shall, unless and until a different price is deemed to be specified in the takeover announcement by this subsection or subsection 677(2), be deemed to be the price specified in the takeover announcement.

(3) An offeror who has made offers under a takeover announcement may cause an appropriate dealer to make on the offeror's behalf:

- (a) before the closing phase of the offer period; or

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- (b) if, during that closing phase, another offeror makes offers under a takeover scheme, or makes offers under a takeover announcement, in respect of shares in the class to which the first-mentioned offers relate—during that closing phase; an announcement at a relevant official meeting extending the offer period for a further period of one month, but so that the total offer period does not exceed 6 months.
- (4) Where an offeror causes an announcement to be made under subsection (1) or (3) in relation to a company, the offeror shall, on the day on which the announcement is made:
- (a) serve on the company and on the company's home stock exchange; and
 - (b) lodge with the Commission; a notice setting out the terms of the announcement.

682 Liability of dealers

- (1) Where:
- (a) an appropriate dealer makes a takeover announcement; and
 - (b) a person (whether on the person's own behalf or on behalf of another) accepts an offer made by the announcement;
- then:
- (c) unless paragraph (d) applies—the dealer; or
 - (d) if the dealer is acting as agent for a member of a securities exchange—that member;
- shall be deemed to have contracted as principal with that person to acquire the shares to which the acceptance relates, but nothing in this subsection affects the rights and obligations between the dealer, or that member, as the case may be, and the offeror.
- (2) Where, in respect of a contract that resulted from the acceptance of an offer made under a takeover announcement, a member of a stock exchange who contracted, or is deemed by subsection (1) to have contracted, as principal with the person who accepted the offer was, when the contract was made, a partner in a partnership that carried on a securities business, any liabilities of the member

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arising because of the member so having contracted, or being deemed to have contracted, as principal are joint and several liabilities of the persons who were the partners in the partnership at that time.

Division 2—Response of target company

683 Part D statement

- (1) Where a target company receives a Part C statement served under subsection 679(1), the company shall, before the end of 14 days after the day on which the takeover announcement was made, serve a Part D statement on the company's home stock exchange.
- (2) The Part D statement shall:
 - (a) be signed by all the directors or by not fewer than 2 directors authorised to sign the statement by a resolution passed at a meeting of the directors or, in the case of a company that has only one director, by that director; or
 - (b) if the company is being wound up or is under administration—be signed by the liquidator or administrator, as the case may be; or
 - (c) if the company has executed a deed of company arrangement that has not yet terminated—be signed by the deed's administrator.
- (3) The Part D statement shall not refer to any report made by an expert (other than a report set out in the Part C statement) unless:
 - (a) the report is set out in the Part D statement; and
 - (b) the Part D statement contains or is accompanied by a statement that the person or each of the persons by whom the report is made consents to the inclusion of the report in the form and context in which it is included.
- (4) On the day on which a statement that purports to be a Part D statement is served, the target company shall lodge, and give to the offeror, a copy of the statement and of every document accompanying the statement.
- (5) A Part D statement may contain, in addition to the information referred to in Part D in section 750, such information (other than information that is false in a material particular or materially

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misleading) as the directors, or the liquidator or official manager,
as the case may be, think or thinks fit.

Division 3—Withdrawal and suspension of offers

684 Withdrawal of offers

- (1) If, during the takeover period in relation to a takeover announcement, a prescribed occurrence takes place, the offeror may, before the end of that period, by causing an appropriate dealer to make on the offeror's behalf at a relevant official meeting an announcement to that effect, withdraw such of the offers as have not been accepted.
- (2) An offeror is not entitled, because of any of the occurrences referred to in paragraphs (a) to (g), inclusive, of the definition of *prescribed occurrence* in section 603, to withdraw offers made under a takeover announcement if, at the time of the relevant occurrence, the offeror was entitled to more than 50% of the voting shares in the target company.
- (3) If a takeover announcement is made on behalf of a natural person or on behalf of 2 or more persons at least one of whom is a natural person and, during the takeover period, that natural person or, if there are 2 or more natural persons, either or any of them:
 - (a) dies;
 - (b) becomes bankrupt; or
 - (c) is declared by an Australian court to be incapable of managing his or her affairs;such of the offers made under the takeover announcement as have not been accepted shall be deemed to have been withdrawn on the day on which the person died, became bankrupt or was declared to be so incapable, as the case may be.
- (4) If a takeover announcement is made on behalf of a body corporate or on behalf of 2 or more persons at least one of whom is a body corporate and, during the takeover period:
 - (a) an administrator of that body corporate, or, if there are 2 or more bodies corporate, of either or any of them, is appointed under section 436A, 436B or 436C;

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- (b) an order is made by a court for the winding up of that body corporate or, if there are 2 or more bodies corporate, of either or any of them; or
- (c) a provisional liquidator of that body corporate, or, if there are 2 or more bodies corporate, of either or any of them, is appointed;

such of the offers made under the takeover announcement as have not been accepted shall be deemed to have been withdrawn on the day on which the administrator was so appointed, the winding up order was made or the provisional liquidator was appointed, as the case may be.

- (5) If, during the takeover period in relation to a takeover announcement, the relevant dealer in relation to the takeover announcement:
 - (a) in any case:
 - (i) becomes bankrupt; or
 - (ii) is directed by the board of a stock exchange or securities exchange of which the relevant dealer is a member to cease carrying on the business of dealing in securities; or
 - (b) where he or she carries on a securities business otherwise than in partnership:
 - (i) dies; or
 - (ii) is declared by an Australian court to be incapable of managing his or her affairs;

such of the offers made under the takeover announcement as have not been accepted shall be deemed to have been withdrawn on the day on which the relevant dealer became bankrupt, was so directed, died or was so declared, as the case may be.

- (6) In subsection (5):

relevant dealer, in relation to a takeover announcement, means:

- (a) unless paragraph (b) applies—the appropriate dealer who made the announcement; or

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- (b) if the appropriate dealer who made the announcement is acting as agent for a member of a securities exchange—that member.
- (7) During the takeover period in relation to a takeover announcement:
- (a) the offeror may, with the consent of the Commission, by causing an appropriate dealer to make on the offeror's behalf at a relevant official meeting an announcement to that effect, withdraw such of the offers as have not been accepted; or
 - (b) the appropriate dealer who made the takeover announcement on behalf of the offeror may, with the consent of the Commission, by making at a relevant official meeting an announcement to that effect, withdraw such of the offers as have not been accepted.

685 Suspension of acceptance of offers made under takeover announcement

- (1) Where a takeover announcement is made, the Commission may, during the takeover period, on the application of the offeror or the appropriate dealer who made the takeover announcement on behalf of the offeror, by written order declare that such of the offers as have not been accepted are not capable of being accepted while the order is in force.
- (2) An order made under subsection (1) does not have the effect of extending the offer period.

Part 6.5—Provisions relating to both takeover offers and takeover announcements

Division 1—Restrictions on offerors

686 Restriction on disposal of shares by offeror

- (1) Where a Part A statement is served on the target company, the offeror shall not, during:
 - (a) the takeover period; and
 - (b) if takeover offers are sent, in accordance with an order under section 738, pursuant to the Part A statement—the offer period;

dispose of any shares in the target company in the same class of shares as the shares to which the Part A statement relates unless another person (not being an associate of the offeror) has, after the Part A statement was served and before the disposal takes place, made a takeover offer or caused a takeover announcement to be made in respect of that class of shares in the target company.

- (2) Where a takeover announcement is made in relation to shares in a company, the offeror shall not, during the takeover period, dispose of any shares in the target company in the same class of shares as the first-mentioned shares unless another person (not being an associate of the offeror) has, after the making of the announcement and before the disposal takes place, made a takeover offer or caused a takeover announcement to be made in respect of that class of shares in the target company.

Division 2—Notification of acquisitions and disposals of shares in listed companies

687 Periods in respect of which notification to be given

For the purposes of the application of this Division in relation to a listed company, each of the following periods is a relevant period:

- (a) if a Part A statement is served on the company:
 - (i) the takeover period; and
 - (ii) if takeover offers are sent, in accordance with an order under section 738, pursuant to the statement—the offer period; and
- (b) if a takeover announcement is made in relation to shares in the company—the takeover period.

688 Persons by whom notification to be given

- (1) For the purposes of the application of this Division in relation to a listed company, a person is, at a relevant time, a prescribed person in relation to a period that is, because of the service of a Part A statement or the making of a takeover announcement, a relevant period in relation to the company if:
 - (a) the person is, or is one of the persons who constitute, the offeror; or
 - (b) the person is, at that time, entitled to more than the notifiable percentage of the voting shares in the company and is not, and is not an associate of, a person referred to in paragraph (a).
- (2) For the purposes of paragraph (1)(b), the notifiable percentage is 5% or, if a lesser percentage is prescribed by regulations in force for the time being for the purposes of that paragraph, that lesser percentage.

689 Notifications by offeror

A person who, at the start of a relevant period in relation to a listed company, is a prescribed person in relation to that period because of paragraph 688(1)(a) shall:

- (a) serve on each notifiable securities exchange in relation to the company, before 9.30 a.m. on the next trading day of that securities exchange after the first day of that period, a notice setting out:
 - (i) whether the person has become entitled or ceased to be entitled to any voting shares in the company since the start of that period and, if so, the notifiable particulars of those shares; and
 - (ii) whether the person is entitled to any voting shares in the company when the notice is served and, if so, the notifiable particulars of those shares; and
- (b) if, during that period, the person becomes entitled or ceases to be entitled to any voting shares in the company and has not previously given a notice under this section to each notifiable securities exchange in relation to the company because of the person having become entitled or ceased to be entitled, as the case may be, to those shares, serve on that securities exchange, before 9.30 a.m. on the next trading day of that securities exchange after the day on which the person so became entitled or ceased to be entitled to shares in the company, a notice setting out:
 - (i) the notifiable particulars of those shares; and
 - (ii) if the person is entitled to any voting shares in the company when the notice is served—the notifiable particulars of those shares.

690 Notifications by other persons acquiring more than 5% shareholding

A person who, during a relevant period in relation to a listed company, becomes a prescribed person in relation to that period because of paragraph 688(1)(b) (whether or not the person had

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previously been a prescribed person in relation to that period) shall serve on each notifiable securities exchange in relation to the company, before 9.30 a.m. on the next trading day of that securities exchange after the day on which the person so became a prescribed person, a notice setting out:

- (a) the notifiable particulars of the voting shares in the company to which the person was entitled when the person so became a prescribed person; and
- (b) if the person is entitled to any voting shares in the company when the notice is served—the notifiable particulars of those shares.

691 Notifications by person ceasing to hold more than 5% shareholding

Where:

- (a) during a relevant period in relation to a listed company, a person who is a prescribed person in relation to that period because of paragraph 688(1)(b) ceases to be entitled to voting shares in the company; and
- (b) as a result of so ceasing to be entitled to those shares the person ceases to be a prescribed person in relation to that period;

the person shall serve on each notifiable securities exchange in relation to the company, before 9.30 a.m. on the next trading day of that securities exchange after the day on which the person ceased to be entitled to those shares, a notice setting out the notifiable particulars of those shares and of any other voting shares in the company to which the person became entitled or ceased to be entitled since the person last served a notice under this Division in relation to the company during that period or, if the person has not previously served a notice during that period, since the start of that period.

692 Notifications of changes in shareholding exceeding 1% by persons with more than 5% shareholding

(1) Where:

- (a) during a relevant period in relation to a listed company, a person becomes entitled or ceases to be entitled to voting shares in the company at a time when the person is a prescribed person in relation to that period because of paragraph 688(1)(b);
- (b) the number of voting shares in the company to which the person is entitled immediately after becoming entitled or ceasing to be entitled to the first-mentioned shares:
 - (i) is greater or less than the number of voting shares in the company to which the person was entitled when the person last served a notice under this Division in relation to the company during that period or, if the person has not previously served a notice during that period, the number of voting shares in the company to which the person was entitled at the start of that period; and
 - (ii) is so greater or less by a number of voting shares that is not less than the notifiable percentage of the voting shares in the company; and
- (c) the person has not ceased to be a prescribed person; the person shall serve on each notifiable securities exchange in relation to the company, before 9.30 a.m. on the next trading day of that securities exchange after the day on which the person became entitled or ceased to be entitled to those first-mentioned shares, a notice setting out:
- (d) the notifiable particulars of those first-mentioned shares and of any other voting shares in the company to which the person became entitled or ceased to be entitled since the person last served a notice under this Division in relation to the company during that period or, if the person has not previously served a notice during that period, since the start of that period; and

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- (e) if the person is entitled to any voting shares in the company when the notice is given—the notifiable particulars of those shares.
- (2) For the purposes of subparagraph (1)(b)(ii), the notifiable percentage is:
 - (a) subject to paragraph (b), 1%; or
 - (b) if a lesser percentage is prescribed by regulations in force for the time being for the purposes of that subparagraph—that lesser percentage.
- (3) Where each of 2 or more persons would, but for this subsection, be required to serve a notice under subsection (1) in relation to the same shares in a company because each of them has become entitled or each of them has ceased to be entitled to those shares, it is sufficient compliance with that subsection if one only of them serves the notice.

693 Particulars to be notified

- (1) The notifiable particulars in relation to shares in a company to which a person is entitled (in this subsection called *relevant shares*) are:
 - (a) the number of relevant shares;
 - (b) if shares in the company are divided into 2 or more classes—the number of relevant shares in each class;
 - (c) if the person knows that another person is also entitled to the relevant shares—the name of that other person and a statement as to which of the persons entitled to the shares has a relevant interest in the shares; and
 - (d) such other matters (if any) as are prescribed.
- (2) The notifiable particulars in relation to shares in a company to which a person has become entitled (in this subsection called *relevant shares*) are:
 - (a) the number of relevant shares;

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- (b) the consideration (if any) for the acquisition of each share (whether in the company or in another body corporate) by which the person became entitled to the relevant shares;
 - (c) if shares in the company are divided into 2 or more classes—the number of relevant shares in each class;
 - (d) if the person became entitled to the relevant shares because of a contract that contained provisions of a prescribed kind—particulars of those provisions; and
 - (e) such other matters (if any) as are prescribed.
- (3) The notifiable particulars in relation to shares in a company to which a person has ceased to be entitled (in this subsection called *relevant shares*) are:
- (a) the number of relevant shares;
 - (b) the consideration (if any) for the disposal of each share (whether in the company or in another body corporate) by which the person ceased to be entitled to the relevant shares;
 - (c) if shares in the company are divided into 2 or more classes—the number of relevant shares in each class;
 - (d) if the person ceased to be entitled to the relevant shares because of a contract that contained provisions of a prescribed kind—particulars of those provisions; and
 - (e) such other matters (if any) as are prescribed.
- (4) A notice served under this Division that specifies, in accordance with paragraph (2)(b) or (3)(b), consideration for 2 or more acquisitions of shares, 2 or more disposals of shares, or an acquisition or acquisitions of shares and a disposal or disposals of shares, shall, if the consideration in respect of 2 or more of the transactions consisted only of a cash sum, also specify separately the higher or highest such sum paid or payable or received or receivable for any of the shares referred to in that notice.

694 Person need serve only one notice per day

A person is not required on any day to serve more than one notice under this Division in relation to the same company.

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695 Defence

In a prosecution of a person for failing to serve a notice on a securities exchange under this Division, it is a defence if it is proved that:

- (a) when the person was required to serve the notice the person was not aware of a fact or occurrence that gave rise to the requirement; and
- (b) the person did not become aware of that fact or occurrence before the end of the relevant period or, if the person became so aware before the end of that period, the person served the notice on the next trading day of the securities exchange after becoming so aware.

Division 3—Notification of acquisition of shares in unlisted company

696 Notification of offeror's entitlement

(1) In this section:

company means a company that is not a listed company;

notifiable percentage means:

- (a) 25%;
- (b) 50%;
- (c) 75%; or
- (d) 90%;

relevant period, in relation to a company on which a Part A statement has been served, means:

- (a) the takeover period; and
- (b) if takeover offers are sent, in accordance with an order under section 738, pursuant to the statement—the offer period;

relevant person, in relation to a relevant period in relation to a company, means the person who is, or each of the persons who constitute, the offeror in relation to the Part A statement concerned.

(2) Where:

- (a) at a particular time during a relevant period in relation to a company, the percentage of the voting shares in the company to which a relevant person is entitled is less than a notifiable percentage; and
- (b) immediately after that time, the percentage of the voting shares in the company to which the relevant person is entitled is equal to or greater than that notifiable percentage;

the relevant person shall, as soon as practicable, and in any event before the end of 2 business days after the day in which that time occurred, serve on the company a notice setting out the percentage

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Division 3 Notification of acquisition of shares in unlisted company

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of the voting shares in the company to which the relevant person is entitled when the notice is served.

- (3) Where a company receives a notice under subsection (2), it shall make the notice available at its registered office for inspection without charge by any member of the company at any time during the remainder of the relevant period in relation to the company when the registered office is open to the public.

Division 4—Prohibition on additional benefits

697 Persons selling shares before the making of offers not to be given additional benefits in certain cases

(1) Where:

- (a) a person acquires shares in a class of shares in a company;
- (b) within 6 months beginning on the day after the day on which the acquisition referred to in paragraph (a) took place, an offeror:
 - (i) makes takeover offers under a takeover scheme; or
 - (ii) causes a takeover announcement to be made;in respect of shares in that class;
- (c) at a particular time, whether before, at or after the end of the offer period, a person (in this subsection called the *relevant person*), being the offeror or an associate of the offeror:
 - (i) gives, offers to give, or agrees to give, a benefit to; or
 - (ii) receives, or agrees to receive, a benefit from;a person who had, immediately before the acquisition referred to in paragraph (a), a relevant interest in any of the shares acquired as mentioned in that paragraph, or an associate of a person who so had such a relevant interest;
- (d) the giving or receiving of the benefit, the offer to give the benefit, or the agreement to give or receive the benefit, as the case may be, is attributable to, or is attributable to matters including, the acquisition referred to in paragraph (a); and
- (e) the amount or value of the benefit was, or is to be, determined by reference to, or by reference to matters including:
 - (i) if subparagraph (b)(i) applies—the amount or value of the consideration that, under an offer made under the takeover scheme (including such an offer as varied, deemed to be varied or proposed to be varied), is to be paid or provided for the acquisition of the shares to which the offer relates;

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- (ii) if subparagraph (b)(ii) applies—the price per share specified, or deemed to be specified, in the takeover announcement; or
- (iii) the amount or value of the consideration for which the offeror acquires during the offer period (whether or not as a result of the acceptance of an offer made under the takeover scheme, or of an offer made under the takeover announcement, as the case may be), or under section 701 or 703, shares in that class, or for which the offeror proposes, offers, or proposes to offer, so to acquire such shares;

the relevant person contravenes this subsection.

(2) Where:

- (a) a person acquires shares in a class of shares in a company;
- (b) as at a particular time within 6 months beginning on the day after the day on which the acquisition referred to in paragraph (a) took place, an offeror:
 - (i) proposes to send takeover offers under a takeover scheme; or
 - (ii) proposes to cause a takeover announcement to be made; in respect of shares in that class;
- (c) at the time referred to in paragraph (b), a person (in this subsection called the *relevant person*), being the offeror or an associate of the offeror:
 - (i) gives, offers to give, or agrees to give, a benefit to; or
 - (ii) receives, or agrees to receive, a benefit from;a person who had, immediately before the acquisition referred to in paragraph (a), a relevant interest in any of the shares acquired as mentioned in that paragraph, or an associate of a person who so had such a relevant interest;
- (d) the giving or receiving of the benefit, the offer to give the benefit or the agreement to give or receive the benefit, as the case may be, is attributable to, or is attributable to matters including, the acquisition referred to in paragraph (a); and

- (e) the amount or value of the benefit was, or is to be, determined by reference to, or by reference to matters including:
 - (i) if subparagraph (b)(i) applies—the amount or value of the consideration that, under an offer proposed to be made under the takeover scheme, is to be paid or provided for the acquisition of the shares to which the offer relates;
 - (ii) if subparagraph (b)(ii) applies—the price per share proposed to be specified in the takeover announcement; or
 - (iii) the amount or value of the consideration for which the offeror proposes to acquire shares in that class (whether or not as a result of the acceptance of a proposed offer under the takeover scheme, or of an offer to be made under the proposed takeover announcement, as the case may be) during the period during which the proposed takeover offers, or offers to be made under the proposed takeover announcement, as the case may be, remain open, or for which the offeror proposes to acquire such shares under section 701 or 703;

the relevant person contravenes this subsection.

- (3) An agreement is void to the extent that it purports to provide for:
 - (a) a person to give, offer to give, or agree to give, a benefit to a person; or
 - (b) a person to receive, or agree to receive, a benefit from a person;in contravention of subsection (1) or (2).

698 Offerees not to be given benefits except under takeover scheme or takeover announcement

- (1) Subject to subsection (5), if a Part A statement is served on a target company, the offeror, or an associate of the offeror, shall not, during the takeover period, give, offer to give or agree to give to a person whose shares may be acquired under the takeover scheme,

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or to an associate of such a person, any benefit not provided for under the takeover offers or, if the takeover offers are varied in accordance with Division 5 of Part 6.3, under the takeover offers as so varied.

- (2) Subject to subsection (5), a person who proposes to send takeover offers within the next following 4 months (in this subsection called the *proposed offeror*), or an associate of such a person, shall not give, offer to give or agree to give to a person whose shares may be acquired under the takeover scheme, or to an associate of such a person, any benefit that the proposed offeror is not proposing to provide for under the takeover offers.
- (3) Subject to subsection (5), if a takeover announcement is made in relation to shares in a company, the offeror, or an associate of the offeror, shall not, during the takeover period, give, offer to give or agree to give to a person whose shares may be acquired pursuant to the takeover announcement, or to an associate of such a person, any benefit not provided for under the terms of the takeover announcement or, if those terms have been varied under section 681, under the terms as so varied.
- (4) Subject to subsection (5), a person who proposes to cause a takeover announcement to be made within the next following 4 months (in this subsection called the *proposed offeror*), or an associate of such a person, shall not give, offer to give or agree to give to a person whose shares may be acquired pursuant to the takeover announcement, or to an associate of such a person, any benefit that the proposed offeror is not proposing to provide for under the terms of the takeover announcement.
- (5) Nothing in this section prohibits:
 - (a) the variation of a takeover offer as provided by Division 5 of Part 6.3; or
 - (b) the acquisition of shares in a company at an official meeting of a stock exchange in the ordinary course of trading on the stock market of that stock exchange.

Division 5—Obligations of target company

699 Obligations of target company to provide information

- (1) Where a Part A statement or a Part C statement has been served on a target company, the offeror may request the company to supply a written statement setting out:
 - (a) the names and addresses (so far as they are known to the company) of the persons who, at the date of service of the Part A statement or the Part C statement, as the case may be, held shares in, or renounceable options or convertible notes granted or issued by, the company;
 - (b) in respect of each person who held shares—the number of shares held;
 - (c) in respect of each person who held renounceable options—particulars of the renounceable options and the number of shares to which the options relate; and
 - (d) in respect of each person who held convertible notes—particulars of the convertible notes and the number of shares into which the notes may be converted.
- (2) Where such a request is made, the company shall send the statement to the offeror:
 - (a) if the company requires payment of an amount not exceeding the prescribed amount—before the end of 7 days after the day on which payment of the amount is received by the company; or
 - (b) in a case to which paragraph (a) does not apply—before the end of 7 days after the day on which the request is made.

700 Expenses of directors of target company

Notwithstanding anything in the constitution of a company, the directors of the company are entitled to have refunded to them by the company any expenses reasonably incurred by them in the interest of the members of the company in relation to a takeover

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Part 6.5 Provisions relating to both takeover offers and takeover announcements

Division 5 Obligations of target company

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scheme involving the acquisition of shares in the company or in relation to a takeover announcement relating to shares in the company.

Division 6—Rights of offerors and shareholders

701 Provisions relating to dissenting shareholders

- (1) For the purposes of this section:
- (a) where takeover offers have been made under a full takeover scheme in respect of shares in a class of shares, the shares in respect of which the offers were made (other than shares to which the offeror was entitled when the first of the offers was made) are shares subject to acquisition;
 - (b) where a takeover announcement has been made in respect of shares in a class of shares, the shares in that class (other than shares to which the offeror is entitled) are shares subject to acquisition;
 - (c) a reference to outstanding shares is a reference to:
 - (i) shares subject to acquisition by virtue of paragraph (a) in respect of which a takeover offer was made but has not been accepted, excluding shares acquired by the offeror otherwise than under the takeover scheme; or
 - (ii) shares subject to acquisition by virtue of paragraph (b) in respect of which an offer made under a takeover announcement has not been accepted, excluding shares acquired by the offeror otherwise than by the acceptance of offers made under the takeover announcement; and
 - (d) a reference to a dissenting offeree is a reference to:
 - (i) in relation to shares in respect of which takeover offers have been made—a person who is the holder of shares that are outstanding shares by virtue of subparagraph (c)(i); and
 - (ii) in relation to shares in respect of which a takeover announcement has been made—a person who is the holder of shares that are outstanding shares by virtue of subparagraph (c)(ii).
- (2) Where:

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- (a) takeover offers have been made under a full takeover scheme, or a takeover announcement has been made, in respect of a class of shares;
 - (b) during the takeover period the number of shares in that class to which the offeror is entitled has become not less than 90% of the shares in that class (notwithstanding that that number of shares may subsequently become less than that percentage as a result of the issue of further shares in that class); and
 - (c) if the shares subject to acquisition constitute less than 90% of the shares in that class:
 - (i) three-quarters of the offerees have disposed of to the offeror (whether under the takeover scheme or by acceptance of offers made by the takeover announcement, as the case may be, or otherwise) the shares subject to acquisition that were held by them; or
 - (ii) at least three-quarters of the persons who were registered as the holders of shares in that class immediately before the day on which the Part A statement was served on the target company or the takeover announcement was made are not so registered at the end of one month after the end of the offer period;
- the offeror may, before the end of 2 months after the end of the offer period, give notice, as prescribed, to a dissenting offeree to the effect that the offeror desires to acquire the outstanding shares held by the dissenting offeree.
- (3) For the purposes of subparagraph (2)(c)(ii), 2 or more persons registered as holding shares jointly shall be deemed to be one person.
 - (4) An offeror to whom subsection (2) applies in relation to a particular company shall, on the first day on which the offeror gives a notice under that subsection in relation to that company, lodge a copy of that notice or, if on that day the offeror gives 2 or more notices under that subsection in relation to that company, a copy of any one of those notices.

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- (5) Where a notice is given under subsection (2), the offeror is entitled and bound, subject to this section, to acquire the shares to which the notice relates on the terms that were applicable in relation to the acquisition of shares under the takeover scheme or pursuant to the takeover announcement immediately before the end of the offer period.
- (6) Subsection (5) does not apply in relation to a dissenting offeree where, on an application made by the dissenting offeree:
- (a) before the end of one month after the day on which the notice was given under subsection (2); or
 - (b) before the end of 14 days after the day on which the dissenting offeree was given a statement under subsection (9);
- whichever is the later, the Court orders that subsection (5) is not to apply in relation to the dissenting offeree.
- (7) Where alternative terms were offered under a takeover offer to which this section applies, the dissenting offeree may, by notice given to the offeror:
- (a) before the end of one month after the day on which the notice was given under subsection (2); or
 - (b) before the end of 14 days after the day on which the dissenting offeree was given a statement under subsection (9);
- whichever is the later, specify which of those terms the dissenting offeree prefers, and the terms so specified shall apply to the acquisition of the outstanding shares held by the dissenting offeree.
- (7A) A notice under subsection (7):
- (a) if it relates to shares that are entered on an SCH subregister—must be in an electronic form approved by the SCH business rules for the purposes of this Part; or
 - (b) if it relates to shares that are not entered on an SCH subregister—must be in writing.
- (8) If a dissenting offeree fails to give a notice before the time applicable under subsection (7), the offeror may, unless the Court

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otherwise orders, determine which of the terms referred to in that subsection is to apply to the acquisition of the outstanding shares of the dissenting offeree.

- (9) A dissenting offeree may, by written notice given to the offeror before the end of one month after the day on which the notice under subsection (2) was given, ask for a written statement of the names and addresses of all other dissenting offerees and the offeror shall as soon as practicable give a written statement accordingly.
- (10) Unless the Court, on an application made under subsection (6), has ordered to the contrary, the offeror shall, before the end of 14 days after:
- (a) the end of one month after the day on which the notice under subsection (2) was given;
 - (b) the end of 14 days after the last day on which a statement under subsection (9) was given; or
 - (c) where an application has been made to the Court under subsection (6)—the day on which the application has been disposed of;
- whichever last happens, serve a copy of the notice under subsection (2) on the company that issued the shares, together with an instrument of transfer of the shares signed on behalf of the holder of the shares by a person appointed by the offeror and also signed by the offeror, and pay, allot or transfer to the target company the consideration for the transfer, and the target company shall thereupon register the offeror as the holder of those shares.
- (11) The target company shall hold the consideration so received in trust for the former holder of the shares and shall as soon as practicable give written notice to the former holder that the consideration has been received and is being held by that company pending instructions from the former holder as to how it is to be dealt with.
- (12) Where consideration held as provided by subsection (11) consists of or includes money, that money shall be paid into a bank account opened and maintained for that purpose only.

702 Money or property unclaimed by dissenting shareholders

(1) In this section:

property includes money;

transferred includes paid;

unclaimed property means property held in trust by a company for a person under section 701 for a period of not less than 2 years and in respect of which the company has not received from the person a request that the property be transferred to, or in accordance with the directions of, the person and includes any accretions and any property substituted for the whole or any part of that property.

(2) Where, at the end of the calendar year beginning next after the commencement of this section or at the end of any subsequent calendar year, a company holds any unclaimed property, the company shall, on or before 31 January next after the end of that year, enter particulars of that unclaimed property in an alphabetical register kept, in respect of that year, by the company at its registered office or at such other place in Australia as the Commission approves.

(3) A person may request the company to permit the person to inspect all or any of the registers kept by the company under this section and, where such a request is made, the company shall permit the person to inspect the register or registers concerned:

(a) if the company requires payment of an amount not exceeding the prescribed amount—before the end of 7 days after the day on which payment of that amount is received by the company; or

(b) in any other case—before the end of 7 days after the day on which the request is made.

(4) Where a company transfers property, particulars of which have been entered in a register, to the person entitled to it, the company may delete the relevant entry from the register.

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- (5) A company that keeps a register in respect of a calendar year shall, on or before the last day of February next after the end of that year, give a copy of that register to the Commission for publication in the *Gazette* and shall provide with the copy a statutory declaration made by an officer of the company verifying that the copy is a true copy.
- (6) All property particulars of which have been entered in a register and which the company has not transferred to the person entitled to it before the end of 12 months after the date of publication of a copy of the register in the *Gazette* shall, before the end of 28 days after the last day of that period, be transferred by the company to the Commission to be dealt with under Part 9.7.
- (7) The company is thereafter discharged from liability to any person in respect of the property.
- (8) The Commission may, at any time after receipt of a copy of a register, examine any of the accounts relating to the unclaimed property referred to in that register and may for that purpose require the company to produce to the Commission or to a person appointed by the Commission any document referring to that property.
- (9) Where an error is found in the register, the Commission may direct that the register be amended and, if the Commission thinks it appropriate, that a copy of the amended register be published in the *Gazette*.
- (10) The Commission may examine the financial records of a company that has not given to the Commission a copy of a register kept under this section.
- (11) Except as provided by subsection (7), this section does not deprive a person of any right or remedy to which the person is entitled against a liquidator or company.
- (12) Where, at the commencement of this section, a company holds property in trust for a person under a previous law of this jurisdiction corresponding to section 701:

- (a) the company must continue to hold the property in trust for the person until requested by the person to transfer it to, or in accordance with the directions of, the person; and
- (b) the definition of *unclaimed property* in subsection (1) of this section applies in relation to the property as if the reference in that definition to section 701 included a reference to that previous law and a reference to this subsection.

703 Rights of remaining shareholders and holders of options and notes

(1) Where:

- (a) a Part A statement has been served, or a takeover announcement has been made, in respect of a class of shares in a company; and
- (b) during the takeover period the number of shares in that class to which the offeror is entitled becomes not less than 90% of the shares in that class (notwithstanding that that number of shares may subsequently become less than that percentage as a result of the issue of further shares in that class);

the offeror shall, before the end of one month after the end of the offer period, give notice, as prescribed, to the holders of remaining shares in that class who, when the notice is given, had not been given notice under subsection 701(2) stating that the offeror became entitled to shares as mentioned in paragraph (b) and containing such other information (if any) as is prescribed.

- (2) A holder of remaining shares referred to in subsection (1) may, before the end of 3 months after the day on which notice to that holder was given under that subsection, require the offeror to acquire shares in the class concerned of which that holder is the holder and where, in the case of a takeover offer, alternative terms were offered in respect of shares in that class to which the takeover offer related, elect which of those terms that holder will accept.
- (3) Where a shareholder gives notice under subsection (2) with respect to shares, the offeror is entitled and bound to acquire those shares:

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- (a) if a Part A statement was served—on the terms that were applicable in relation to the acquisition of shares under the takeover scheme immediately before the end of the offer period and, where alternative terms were applicable, on the terms for which the shareholder has elected or, where the shareholder has not elected, on whichever of the terms the offeror determines; or
 - (b) if a takeover announcement was made—on the terms that were applicable in relation to the acquisition of shares pursuant to the takeover announcement immediately before the end of the offer period;
- or on such other terms as are agreed or as the Court, on the application of the offeror or shareholder, thinks fit to order.
- (4) Where:
- (a) a Part A statement has been served, or a takeover announcement has been made, as mentioned in paragraph (1)(a); and
 - (b) during the takeover period the number of voting shares in the company to which the offeror is entitled becomes not less than 90% of the voting shares in the company;
- the offeror shall, before the end of one month after the offer period, give, as prescribed, a notice to the holders of non-voting shares in the company and to the holders of renounceable options or convertible notes granted or issued by the company stating that the offeror became entitled to shares as mentioned in paragraph (b) and containing such other information (if any) as is prescribed.
- (5) A notice given under subsection (4) shall not propose terms for the acquisition by the offeror of the shares, renounceable option or convertible note to which the notice relates unless the notice is accompanied by a copy of a report made by an expert (other than an associate of the offeror or of the company that issued the shares, granted the option or issued the note) setting out the particulars referred to in subsection (7), stating whether, in the expert's opinion, the terms proposed in the notice are fair and reasonable and giving the reasons for forming that opinion.

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- (6) Where an offeror obtains 2 or more reports, each of which could be used for the purposes of compliance with subsection (5), the notice given under subsection (4) shall not propose terms for the acquisition by the offeror of the shares, option or note to which the notice relates unless the notice is accompanied by a copy of each report.
- (7) The particulars that are required by subsection (5) to be set out in a report made by an expert are:
- (a) particulars of any relationship of the expert with the offeror, the company or any associate of the offeror or of the company, including, without limiting the generality of the foregoing, particulars of any circumstances in which the expert gives advice to or acts on behalf of the offeror, the company or such an associate in the proper performance of the functions attaching to the expert's professional capacity or to the expert's business relationship with the offeror, the company or the associate;
 - (b) particulars of any pecuniary or other interest of the expert that could reasonably be regarded as being capable of affecting the expert's ability to give an unbiased opinion in relation to the proposed terms for the acquisition of shares, options or notes; and
 - (c) particulars of:
 - (i) any fee; and
 - (ii) any pecuniary or other benefit, whether direct or indirect;that the expert has received or will or may receive in connection with the making of the report.
- (8) Where a notice is given under subsection (4) to the holder of any non-voting shares, renounceable option or convertible note:
- (a) the holder of the shares, option or note may, before the end of 3 months after the day on which the notice was given, require the offeror to acquire the shares, option or note; and
 - (b) if a holder of shares or of an option or note so gives notice with respect to the shares, option or note, the offeror is

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entitled and bound to acquire the shares, option or note on such terms as are agreed or as the Court, on the application of the offeror or holder, determines.

- (9) Where an offeror has given a notice or notices under subsection (1) or (4), the offeror shall as soon as practicable lodge a copy of the notice or of one of the notices.

Part 6.6—Liability for mis-statements

704 Mis-statements in Part 6.12 statements etc.

(1) Where:

- (a) there is, in a statement that purports to be a Part A statement served under subsection 637(1), in an offer that purports to be a takeover offer, in a statement that purports to be a Part C statement served under paragraph 679(1)(a) or in a notice served or given under section 657 or subsection 701(2) or 703(1) or (4), matter that is false in a material particular or materially misleading; or
- (b) there is an omission of material matter from such a statement, offer or notice;

a person to whom this subsection applies contravenes this subsection.

(2) The persons to whom subsection (1) applies are:

- (a) the offeror;
- (b) where false or misleading matter appeared in, or material matter was omitted from, a statement:
 - (i) if the offeror is or includes a body corporate—a person who was a director of that body corporate when the statement was served, other than:
 - (A) a director who was not present at the meeting at which the resolution authorising the signing of the statement was agreed to; or
 - (B) a director who voted against that resolution; and
 - (ii) subject to subsection (9), a person a notice of whose consent to the inclusion in the statement of a report made by the person has been lodged under subsection 644(4); and
- (c) where:

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- (i) false or misleading matter appeared in, or material matter was omitted from, an offer or notice; and
 - (ii) the offeror is or includes a body corporate;
a person who was a director of that body corporate when the offer was sent or the notice was given, as the case may be.
- (3) Where:
 - (a) there is, in a statement that purports to be a Part B statement given under subsection 647(1) or in a statement that purports to be a Part D statement served under subsection 683(1), matter that is false in a material particular or materially misleading; or
 - (b) there is an omission of material matter from such a statement; a person to whom this subsection applies contravenes this subsection.
- (4) The persons to whom subsection (3) applies are:
 - (a) the target company;
 - (b) where the statement was signed as mentioned in paragraph 647(2)(a) or 683(2)(a)—a person who was a director of the target company when the statement was given or served, other than:
 - (i) a director who was not present at the meeting at which the resolution authorising the signing of the statement was agreed to; or
 - (ii) a director who voted against that resolution; and
 - (c) where the statement was signed as mentioned in paragraph 647(2)(b) or 683(2)(b)—the person who signed the statement.
- (5) Where:
 - (a) there is:
 - (i) in a report that is set out in a statement that purports to be a Part B statement in accordance with paragraph 647(3)(a) or accompanies a statement that purports to be a Part B statement in accordance with section 648;

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- (ii) in a report that is set out in a statement that purports to be a Part D statement in accordance with paragraph 683(3)(a); or
 - (iii) in a report that accompanies a notice given under subsection 703(4);
matter that is false in a material particular or materially misleading; or
 - (b) there is an omission of material matter from such a report;
the person who made the report contravenes this subsection.
- (6) It is a defence to a prosecution of a person for a contravention of subsection (1), (3) or (5) if it is proved:
- (a) that, when the statement was served or given, the offer was sent, the notice was given or the report was made, the person:
 - (i) believed on reasonable grounds that the false matter was true;
 - (ii) believed on reasonable grounds that the misleading matter was not misleading;
 - (iii) in the case of an omission, believed on reasonable grounds that no material matter had been omitted; or
 - (iv) in the case of an omission, did not know that the omitted matter was material; and
 - (b) that:
 - (i) on the date of the information, the person so believed or did not so know; or
 - (ii) before that date, the person ceased so to believe or came to know that the omitted matter was material, and as soon as practicable gave reasonable notice containing such matters as were necessary to correct the false or misleading matter or the omission.
- (7) A person who contravenes subsection (1), (3) or (5), whether or not the person has been convicted of an offence in respect of the contravention, is liable, subject to this section, to pay compensation to a person who acts, or refrains from acting, on the faith of the contents of the relevant statement, offer, notice or report for any

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loss or damage suffered by that person by relying on the false or misleading matter or because of the omission of material matter.

- (8) It is a defence to an action under subsection (7) if:
- (a) any matter referred to in paragraph (6)(a) is proved; and
 - (b) where the action is brought by a person who acted on the faith of the contents of the relevant statement, offer, notice or report, it is also proved that:
 - (i) when the plaintiff so acted, the defendant believed as mentioned in subparagraph (6)(a)(i), (ii) or (iii) or did not know that the omitted matter was material; or
 - (ii) before the plaintiff so acted, the defendant ceased so to believe or came to know that the omitted matter was material, and as soon as practicable gave reasonable notice containing such matters as were necessary to correct the false or misleading matter or the omission.
- (9) A person referred to in subparagraph (2)(b)(ii) contravenes subsection (1), and is liable to pay compensation under subsection (7), only in respect of false or misleading matter in the report referred to in that subparagraph or an omission of material matter from that report.

705 Mis-statements in public statements, advertisements etc.

- (1) Where:
- (a) a person proposes, or 2 or more persons together propose, to send a takeover offer, or to cause a takeover announcement to be made, in respect of shares in a company;
 - (b) the person, or either or any of the persons, referred to in paragraph (a), or an associate of the person or of either or any of the persons, or, if the person or either or any of the persons or an associate of the person or of either or any of the persons is a body corporate, an officer of the body corporate or an associate of such an officer:

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- (i) makes or issues an oral or written statement to the public, or publishes an advertisement, relating to a prescribed matter; or
- (ii) sends a document relating to a prescribed matter to any of the holders of shares in, or of renounceable options or convertible notes granted or issued by, the target company; and
- (c) there is in the statement or advertisement, or in the document, matter that is false in a material particular or materially misleading;

the person who made or issued the statement, published the advertisement or sent the document contravenes this subsection.

(2) Where:

- (a) the directors of a company have reason to believe that a person proposes, or 2 or more persons together propose, to send a takeover offer, or to cause a takeover announcement to be made, in respect of shares in the company;
- (b) the target company or a body corporate that is related to the target company, or an officer of the target company or of such a body corporate or an associate of such an officer:
 - (i) makes or issues an oral or written statement to the public, or publishes an advertisement, relating to a prescribed matter; or
 - (ii) sends a document relating to a prescribed matter to any of the holders of shares in, or of renounceable options or convertible notes granted or issued by, the target company; and
- (c) there is in the statement or advertisement, or in the document, matter that is false in a material particular or materially misleading;

the person who made or issued the statement, published the advertisement or sent the document contravenes this subsection.

(3) Where:

- (a) a takeover offer is sent, or a takeover announcement is made, in respect of shares in a company;

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- (b) at any time during the period beginning when the takeover offer is sent or the takeover announcement is made and ending at the end of the offer period, a person to whom this subsection applies:
 - (i) makes or issues an oral or written statement to the public, or publishes an advertisement, in connection with the offers under the takeover scheme or in connection with the takeover announcement, relating to a prescribed matter; or
 - (ii) sends, in connection with the offers under the takeover scheme or in connection with the takeover announcement, a document relating to a prescribed matter to any of the holders of shares in, or of renounceable options or convertible notes granted or issued by, the target company (other than a document required by this Chapter to be so sent); and
 - (c) there is in the statement or advertisement, or in the document, matter that is false in a material particular or materially misleading;
that person contravenes this subsection.
- (4) The persons to whom subsection (3) applies are:
- (a) the offeror or an associate of the offeror;
 - (b) the target company;
 - (c) an officer of the target company or an associate of such an officer; or
 - (d) if the offeror or an associate of the offeror is a body corporate—an officer of the body corporate or an associate of such an officer.
- (5) For the purposes of subsections (1), (2) and (3):
- (a) a reference to a document includes a reference to a disc, tape, cinematograph film or other article from which sounds or images can be reproduced; and
 - (b) a prescribed matter is a matter relating to affairs of, or to marketable securities issued or to be issued by:

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- (i) the target company or a body corporate that is related to the target company;
 - (ii) the offeror or a body corporate that is related to the offeror; or
 - (iii) any other offeror in relation to the target company, or any body corporate that is related to such an offeror.
- (6) It is a defence to a prosecution of a person for a contravention of subsection (1), (2) or (3) if it is proved:
- (a) that, when the statement was made or issued, the advertisement was published or the document was sent, the person:
 - (i) believed on reasonable grounds that the false matter was true; or
 - (ii) believed on reasonable grounds that the misleading matter was not misleading; and
 - (b) that:
 - (i) on the date of the information, the person so believed; or
 - (ii) before that date, the person ceased so to believe and as soon as practicable gave reasonable notice containing such matters as were necessary to correct the false or misleading matter.
- (7) A person who contravenes subsection (1), (2) or (3), whether or not the person has been convicted of an offence in respect of the contravention, is liable, subject to this section, to pay compensation to a person who acts, or refrains from acting, on the faith of the contents of the relevant statement, advertisement or document for any loss or damage suffered by that person by relying on the false or misleading matter.
- (8) It is a defence to an action under subsection (7) if:
- (a) any matter referred to in paragraph (6)(a) is proved; and
 - (b) where the action is brought by a person who acted on the faith of the contents of the relevant statement, advertisement or document, it is also proved that:

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- (i) when the plaintiff so acted, the defendant believed as mentioned in subparagraph (6)(a)(i) or (ii); or
- (ii) before the plaintiff so acted, the defendant ceased so to believe and as soon as practicable gave reasonable notice containing such matters as were necessary to correct the false or misleading matter.

706 Existing causes of action not affected

Nothing in this Part affects any cause of action existing apart from this Part.

Part 6.7—Substantial shareholdings

707 Companies in relation to which Part applies

- (1) In this Part:

company means:

- (a) a listed company; or
 - (b) a company, other than a listed company, that is for the time being declared by the Minister, by order published in the *Gazette*, to be a company in relation to which this Part applies.
- (2) The Minister may, by order published in the *Gazette*, revoke or vary an order published under subsection (1).

708 Substantial shareholdings and substantial shareholders

- (1) For the purposes of this Part, a person has a substantial shareholding in a body corporate if, and only if, the person is entitled to not less than the prescribed percentage of:
- (a) where the voting shares in the body are not divided into 2 or more classes—those voting shares; or
 - (b) where the voting shares in the body are divided into 2 or more classes—the shares in one of those classes.
- (2) For the purposes of this Part, the voting shares in a body corporate to which a person is entitled do not include voting shares in which an associate of the person has a relevant interest if a certificate issued by the Commission to that associate under subsection (3) in respect of those shares is in force.
- (3) The Commission may issue to a person a certificate declaring that specified shares in which that person has a relevant interest are to be disregarded for the purpose of ascertaining the voting shares to which another person specified in the certificate is entitled, and

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may, by written notice to the first-mentioned person, revoke the certificate.

- (4) For the purposes of this Part, a person who has a substantial shareholding in a body corporate is a substantial shareholder in that body.
- (5) In this section:
- prescribed percentage* means:
- (a) subject to paragraph (b), 5%; or
 - (b) where another percentage is prescribed by regulations in force for the time being for the purposes of this section—that other percentage.
- (6) For the purposes of this Part, a notifiable change in the entitlement of a person to shares in a body corporate shall be taken to occur if, and only if, there occurs a change in the relevant interest or relevant interests of the person, or in the relevant interest or relevant interests of an associate of the person, in voting shares in the body.
- (7) For the purposes of subsection (6), but without limiting the generality of that subsection, where a person acquires, or disposes of, voting shares in a body corporate, a change in the relevant interest or relevant interests of the person in voting shares in the body shall be deemed to occur.
- (8) For the purposes of this Part:
- (a) a person who becomes required to give notice under subsection 709(1) or (2) shall be taken to have become, at the time when the person became a substantial shareholder in the company, required to give a substantial shareholding notice to the company; and
 - (b) a person who becomes required to give a notice under subsection 710(1) or (2) shall be taken to have become, immediately after the change referred to in paragraph 710(1)(a) or (2)(a), as the case may be, required to give a substantial shareholding notice to the company.

709 Substantial shareholder to notify company of interests

- (1) A person who is a substantial shareholder in a company shall give a written notice to the company in accordance with this section.
- (3) A notice by a person under subsection (1) shall:
 - (a) be in such form (if any) as is prescribed;
 - (b) state:
 - (i) the person's name and address;
 - (ii) the prescribed particulars of the voting shares in the company in which the person or an associate of the person has a relevant interest or relevant interests (including, unless the interest or interests cannot be related to a particular share or shares, the name of the person who is registered as the holder);
 - (iii) the prescribed particulars of each such interest;
 - (iv) the prescribed particulars of any agreement, or any other circumstances, because of which the person or the associate acquired that interest or has that interest; and
 - (v) such other particulars (if any) as are prescribed; and
 - (c) be accompanied by the prescribed documents.
- (4) A person required to give a notice under subsection (1) shall give the notice before the end of 2 business days after the day on which that person becomes aware of the relevant interest or interests because of which the person is a substantial shareholder.
- (5) The notice shall be so given notwithstanding that the person has ceased to be a substantial shareholder before the end of the period referred to in subsection (4).

710 Substantial shareholder to notify company of changes in interests

- (1) Where:
 - (a) there occurs at a particular time a notifiable change in the entitlement of a person to shares in a company;

The Corporations Law—Section 710

- (b) immediately before the change, the person was a substantial shareholder in the company; and
 - (c) immediately after the change, the person is a substantial shareholder in the company and is entitled to a percentage of the shares in a class of voting shares in the company that is greater than, or less than, by 1% or more of the shares in that class, the percentage of the shares in that class to which the person was entitled at the time (in this section called the *relevant time*) when the person last became required to give a substantial shareholding notice to the company;
- the person shall give a notice to the company in accordance with this section.
- (3) A notice by a person under subsection (1) shall:
 - (a) be in such form (if any) as is prescribed;
 - (b) set out the person's name;
 - (c) set out, in relation to each notifiable change in the entitlement of the person to shares in the company (not being a prescribed change) that occurred during the period beginning at the relevant time and ending immediately after the time referred to in paragraph (1)(a):
 - (i) whether the change was a change in a relevant interest or relevant interests of an associate of the person and, if so, the name of the associate;
 - (ii) the date of the change and the prescribed particulars of the change; and
 - (iii) the prescribed particulars of any agreement, or any other circumstances, because of which the change occurred; and
 - (d) be accompanied by the prescribed documents.
 - (4) A person required to give a notice under subsection (1) shall give the notice before the end of 2 business days after the day on which that person becomes aware of the change referred to in paragraph (1)(a).

711 Person who ceases to be a substantial shareholder to notify company

- (1) A person who ceases at a particular time (in this section called the *relevant time*) to be a substantial shareholder in a company shall give a notice to the company in accordance with this section.
- (3) A notice by a person under subsection (1) shall:
 - (a) be in such form (if any) as is prescribed;
 - (b) set out the person's name;
 - (c) set out, in relation to each notifiable change in the entitlement of the person to shares in the company (not being a prescribed change) that occurred during the period beginning at the time when the person last became required to give a substantial shareholding notice to the company and ending at the relevant time:
 - (i) whether the change was a change in a relevant interest or relevant interests of an associate of the person and, if so, the name of the associate;
 - (ii) the date of the change and the prescribed particulars of the change; and
 - (iii) the prescribed particulars of any agreement, or any other circumstances, because of which the change occurred;
 - (d) set out the date on which the person ceased to be a substantial shareholder in the company and the prescribed particulars of any agreement, or any other circumstances, because of which the person ceased to be a substantial shareholder in the company; and
 - (e) be accompanied by the prescribed documents.
- (4) A person required to give a notice under subsection (1) shall give the notice before the end of 2 business days after the day on which the person becomes aware that the person or an associate has ceased to have a relevant interest or relevant interests in a share or shares in the company to the extent necessary to make the person a substantial shareholder in the company.

The Corporations Law—Section 712

712 References to operation of Division 5 of Part 1.2

The circumstances required to be stated in a notice under section 709, 710 or 711 include circumstances because of which, having regard to the provisions of Division 5 of Part 1.2:

- (a) a person has a relevant interest in voting shares;
 - (b) a change has occurred in a relevant interest in voting shares;
or
 - (c) a person has ceased to be a substantial shareholder in a company;
- as the case may be.

713 Copy of notice to be served on securities exchanges

A person who gives a notice under section 709, 710 or 711 to a listed company shall, on the day on which the person gives the notice, serve a copy of the notice on the company's home stock exchange.

714 Commission may extend period for giving notice under this Part

- (1) The Commission may, on the application of a person who is required to give a notice under this Part, extend, or further extend, the period for giving the notice.
- (2) An application for an extension under subsection (1) may be made, and the power of the Commission under that subsection may be exercised, notwithstanding that the period referred to in that subsection has ended.

715 Effect of actions under this Part

- (4) A company is not, because of anything done under this Part:
 - (a) to be taken for any purpose to have notice of; or
 - (b) put upon inquiry as to;a right of a person to or in relation to a share in the company.

716 Civil remedy where Part contravened

- (1) A person who contravenes section 709, 710 or 711, whether or not the person has been convicted of an offence in respect of the contravention, is liable to pay, to any person who suffers loss or damage as a result of the contravention, damages in respect of that loss or damage, unless it is proved that the contravention was due to the inadvertence or mistake of the first-mentioned person or to the first-mentioned person not being aware of a relevant fact or occurrence.

Part 6.8—Power to obtain information as to beneficial ownership of shares

717 Definitions

In this Part:

company has the same meaning as in Part 6.7;

primary notice, in relation to shares in a company, means a written notice addressed to the holder of the shares requiring the holder to give to the body giving the notice a written statement setting out:

- (a) full particulars of the holder's relevant interest in the shares and of the circumstances because of which the holder has that interest; and
- (b) so far as is known to the holder:
 - (i) full particulars of the name and address of every other person (if any) who has a relevant interest in any of the shares;
 - (ii) full particulars of each such interest and of the circumstances because of which the other person has that interest; and
 - (iii) full particulars of the name and address of each person (if any) who has given to the holder of the shares relevant instructions in relation to any of the shares and of those relevant instructions, and the date or dates on which those relevant instructions were given;

relevant instructions, in relation to shares, means instructions or directions:

- (a) in relation to the acquisition or disposal of the shares;
- (b) in relation to the exercise of any voting or other rights attached to the shares; or
- (c) in connection with any other matter relating to the shares;

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secondary notice, in relation to shares in a company, means a written notice addressed to a person requiring the person to give to the body giving the notice a written statement setting out:

- (a) full particulars of any relevant interest that the person has in any of the shares and of the circumstances because of which the person has that interest; and
- (b) so far as is known to the person:
 - (i) full particulars of the name and address of every other person (if any) who has a relevant interest in any of the shares;
 - (ii) full particulars of each such interest, and of the circumstances because of which the other person has that interest; and
 - (iii) full particulars of the name and address of each person (if any) who has given to the person to whom the notice is addressed relevant instructions in relation to any of the shares and of those relevant instructions, and the date or dates on which those relevant instructions were given.

718 Primary notice

- (1) The Commission may give to the holder of particular voting shares in a company a primary notice in relation to those shares.
- (2) A company, or a member of a company, may by writing request the Commission to give notices under this Part in relation to specified voting shares in the company.
- (3) On receiving a request under subsection (2), the Commission shall, unless it considers that in all the circumstances it would be unreasonable to do so, give to the holder of the shares a primary notice in relation to the shares.
- (4) A company may give to the holder of particular voting shares in the company a primary notice in relation to the shares.

The Corporations Law—Section 719

719 Secondary notice

- (1) Where the Commission receives, pursuant to a primary notice or secondary notice given to a person in relation to particular shares in a company, information that:
 - (a) another person has a relevant interest in any of the shares; or
 - (b) another person has given relevant instructions in relation to any of the shares;the Commission:
 - (c) if subsection 718(3) or this subsection required the notice to be given—shall, subject to subsection (2); or
 - (d) otherwise—may;give to the other person a secondary notice in relation to the first-mentioned shares.
- (2) The Commission need not comply with subsection (1) if it considers that in all the circumstances it would be unreasonable to give such a secondary notice to the other person.
- (3) Where a company receives, pursuant to a primary notice or secondary notice given to a person in relation to particular shares in the company, information that:
 - (a) another person has a relevant interest in any of the shares; or
 - (b) another person has given relevant instructions in relation to any of the shares;the company may give to the other person a secondary notice in relation to the first-mentioned shares.

719A Withdrawal of request under subsection 718(2)

- (1) A person may by writing withdraw a request made by the person under subsection 718(2), even if the Commission has already given at least one notice because of the request.
- (2) After a request is withdrawn under subsection (1), neither of subsections 718(3) and 719(1) requires the Commission to give a notice or further notice because of the request.

720 Commission may provide information obtained pursuant to a notice

Where the Commission receives information pursuant to a primary notice or secondary notice in relation to shares in a company, the Commission:

- (a) in any case—may provide the information to the company; and
- (b) if, because of a request made by a person under subsection 718(2), subsection 718(3) or 719(1) required the notice to be given—shall provide the information to the person, other than such of the information as the Commission considers it would be unreasonable in all the circumstances so to provide.

721 Request by person to whom notice given

- (1) A person who receives a primary notice or secondary notice in relation to shares in a company may, before the end of 2 business days after the day on which the notice was received, lodge a written request that, for special reasons set out in the request:
 - (a) the information should not be given to the body that gave the notice;
 - (b) if the Commission gave the notice—the information, if given to the Commission, should not be provided under section 720, or should be so provided only in a particular form; or
 - (c) if the company gave the notice—the information should only be given to the company in a particular form.
- (2) Where the Commission is satisfied that there are special reasons why:
 - (a) particular information should not be given to the body that gave the notice;
 - (b) if the Commission gave the notice—particular information, if given to the Commission, should not be provided under

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section 720, or should be so provided only in a particular form; or

- (c) if the company gave the notice—particular information should only be given to the company in a particular form; the Commission may give to the person a certificate referring to the information and stating that:
 - (d) the information need not be given to that body;
 - (e) the information, when given to the Commission, will not be provided under section 720, or will be so provided only in a specified form; or
 - (f) the information need only be given to the company in a specified form;
- as the case may be.

- (3) Where the Commission is not satisfied as mentioned in subsection (2), the Commission shall, by written notice to the person, refuse the request.

722 Compliance with notices

- (1) A person who receives a primary notice or secondary notice in relation to shares in a company shall, unless before the end of 2 business days after the day on which the person receives the notice the person lodges a request under subsection 721(1) in relation to particular information that the notice requires the person to give, comply with the notice before the end of 2 business days after that day.
- (2) Where a company gives to a person a primary notice or secondary notice in relation to shares in the company, the person shall, forthwith after lodging a request under subsection 721(1) in relation to particular information that the notice requires the person to give, notify the company in writing of the request.

723 Consequences of Commission’s decision on a request

Within 2 business days after the day on which the Commission notifies a person of its decision on a request that the person lodged under subsection 721(1) in relation to a primary notice or secondary notice in relation to shares in a company, the person shall:

- (a) if the Commission has given to the person pursuant to the request a certificate under subsection 721(2):
 - (i) except as provided in the certificate, comply with the notice;
 - (ii) if the company gave the notice and the certificate states that specified information need only be given to the company in a specified form—give the information to the company in that form; and
 - (iii) if the company gave the notice—give a copy of the certificate to the company; or
- (b) otherwise—comply with the notice.

723A Fee for complying with a notice given by a company under this Part

- (1) The regulations may prescribe fees that companies are to pay to persons for complying with notices given under this Part.
- (2) Where:
 - (a) a company gives to a person a notice under this Part;
 - (b) the regulations prescribe a fee that the company is to pay to the person for complying with the notice; and
 - (c) but for this subsection, the person would be required to comply with subsection 722(1) or section 723, in relation to the notice, before the end of a particular period;
the person is to be taken to be required to comply with that subsection or section before the end of:
 - (d) the period referred to in paragraph (c); or

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- (e) the period of 2 business days beginning on the day when the company so pays the fee;
whichever ends later.
- (3) Where:
- (a) because of subsection (2), a company pays to a person a fee for complying with a notice given to the person by the company under this Part; and
 - (b) the person contravenes subsection 722(1) or section 723 in relation to the notice;
- the company may recover from the person as a debt the amount of the fee, even if the person later complies with the notice.
- (4) A company's rights and remedies under subsection (3) are additional to, and do not prejudice, any other right or remedy of the company.

725 No notice of rights

A company is not, because of anything done under this Part or a corresponding previous law:

- (a) to be taken for any purpose to have notice of; or
 - (b) put upon inquiry as to;
- the right of a person to or in relation to a share in the company.

726 Civil liability

- (1) A person who contravenes section 722 or 723 is liable to pay, to any person who suffers loss or damage as a result of the contravention, damages in respect of that loss or damage, unless it is proved that the contravention was due to the inadvertence or mistake of the first-mentioned person or to the first-mentioned person not being aware of a relevant fact or occurrence.
- (3) If 2 or more persons each contravene section 722 or 723 because of the same act or omission, the liability of those persons under this section in respect of the contravention is joint and several.

727 Exceptions to criminal or civil liability

A person:

- (a) is not guilty of an offence by virtue of a contravention of section 722 or 723; and
 - (b) is not liable to pay damages under subsection 726(1);
- in respect of a failure to give information that a primary notice or secondary notice in relation to shares in a company required the person to give if it is proved that the giving of the notice was frivolous or vexatious.

Part 6.9—Powers of commission and corporations and securities panel, and ancillary powers of court

728 Power of Commission to exempt from compliance with this Chapter

- (1) The Commission may, on application by the person or persons concerned or by a person or persons included in the class or classes of persons concerned, by writing, exempt a specified person or persons, or a specified class or classes of persons, subject to such conditions (if any) as are specified in the exemption, from compliance, either generally or in a particular case or classes of cases, with this Chapter or a specified provision or provisions of this Chapter.
- (2) The Commission shall cause a copy of the instrument by which an exemption was given under subsection (1) to be published in the *Gazette*.
- (3) A person who is exempted by the Commission, subject to a condition, from compliance with this Chapter or a provision or provisions of this Chapter shall not contravene the condition.

729 Power of Court to enforce exemption condition

Where a person has contravened a condition to which an exemption under section 728 is subject, the Court, on the application of the Commission, may order the person to comply with the condition.

730 Power of Commission to modify operation of this Chapter

- (1) The Commission may on application by the person or persons concerned or by a person or persons included in the class or classes of persons concerned, declare, in writing, that this Chapter shall apply in relation to a specified person or persons, or a specified class or classes of persons, either generally or in a particular case or classes of cases, as if a specified provision or provisions of this Chapter were omitted or were modified or varied in a specified manner, and, when such a declaration is made, this Chapter applies accordingly.
- (2) The Commission shall cause a copy of an instrument by which a declaration was made under subsection (1) to be published in the *Gazette*.

731 Commission to take account of certain matters

In exercising any of its powers under section 728 or 730, the Commission shall take account of the desirability of ensuring that the acquisition of shares in companies takes place in an efficient, competitive and informed market and, without limiting the generality of the foregoing, shall have regard to the need to ensure:

- (a) that the shareholders and directors of a company know the identity of any person who proposes to acquire a substantial interest in the company;
- (b) that the shareholders and directors of a company have a reasonable time in which to consider any proposal under which a person would acquire a substantial interest in the company;
- (c) that the shareholders and directors of a company are supplied with sufficient information to enable them to assess the merits of any proposal under which a person would acquire a substantial interest in the company; and
- (d) that, as far as practicable, all shareholders of a company have reasonable and equal opportunities to participate in any benefits accruing to shareholders under any proposal under

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which a person would acquire a substantial interest in the company;
but nothing in this section requires the Commission to exercise any of its powers in a particular way in a particular case.

732 Occurrence of unacceptable circumstances

- (1) For the purposes of this Part, unacceptable circumstances shall be taken to have occurred if, and only if:
- (a) the shareholders and directors of a company did not know the identity of a person who proposed to acquire a substantial interest in the company; or
 - (b) the shareholders and directors of a company did not have a reasonable time in which to consider a proposal under which a person would acquire a substantial interest in the company; or
 - (c) the shareholders and directors of a company were not supplied with enough information for them to assess the merits of a proposal under which a person would acquire a substantial interest in the company; or
 - (d) the shareholders of a company did not all have reasonable and equal opportunities to participate in any benefits, or to become entitled to participate in any benefits, accruing, whether directly or indirectly and whether immediately or in the future, to any shareholder or to any associate of a shareholder, in connection with the acquisition, or proposed acquisition, by any person of a substantial interest in the company; or
 - (e) a company carries out, or proposes to carry out, a buy-back that is unreasonable having regard to:
 - (i) the effect of the buy-back on the control of that company or of another company; and
 - (ii) the fact that the disclosure and other procedural safeguards of this Chapter do not apply to the buy-back because of section 632A; or

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- (f) a company reduces its share capital, or proposes to reduce its share capital, in a way that is unreasonable having regard to its effect on the control of that company or another company;
or
 - (g) a company acquires, or proposes to acquire, a relevant interest in at least 5% of its voting shares and the acquisition is unreasonable having regard to its effect on the control of that company or another company.
- (2) Paragraph (1)(d) may be satisfied because of:
- (a) actions of the person acquiring, or proposing to acquire, the substantial interest; or
 - (b) actions of the directors of the company, including actions that caused the acquisition not to proceed, or that contributed to it not proceeding.

733 Declarations by Corporations and Securities Panel

- (1) Where it appears to the Commission that unacceptable circumstances have, or may have, occurred:
- (a) in relation to an acquisition of shares in a company; or
 - (b) as a result of conduct engaged in by a person in relation to shares in, or the affairs of, a company;
- the Commission may apply to the Corporations and Securities Panel for a declaration under subsection (3) in relation to the acquisition or conduct.
- (2) An application under subsection (1) may only be made before the end of:
- (a) unless paragraph (b) applies—the period of 60 days after the day on which the acquisition took place, or the conduct was engaged in; or
 - (b) if the Panel extends that period of 60 days for a further period not exceeding, or for further periods not exceeding in total, 30 days—that further period, or the later or last of those further periods.

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- (3) Where, on an application under subsection (1), the Panel is satisfied:
- (a) that unacceptable circumstances have occurred:
 - (i) in relation to an acquisition of shares in the company; or
 - (ii) as a result of conduct engaged in by a person in relation to shares in, or the affairs of, the company; and
 - (b) having regard to the matters referred to in section 731 and any other matters the Panel considers relevant, that it is in the public interest to do so;
- the Panel may by writing declare the acquisition to have been an unacceptable acquisition, or the conduct to have been unacceptable conduct, as the case may be.
- (4) The Panel may only make a declaration under subsection (3) before the end of whichever of the following ends last:
- (a) the period of 90 days after the day on which the acquisition took place, or the conduct was engaged in, as the case may be;
 - (b) the period of 30 days after the day on which the application was made;
 - (c) such other period as the Court orders on an application made by the Panel within the period referred to in paragraph (b).
- (5) The Panel may only make a declaration under subsection (3) if it has given each person to whom the declaration relates an opportunity to make submissions to an inquiry conducted by the Panel in relation to the matter.
- (6) Where the Panel makes a declaration under subsection (3), the Panel shall, as soon as practicable:
- (a) give to each person to whom the declaration relates a copy of:
 - (i) the instrument by which the declaration was made; and
 - (ii) a written statement of the Panel's reasons for deciding to make the declaration; and

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- (b) cause to be published in the *Gazette* a copy of the instrument by which the declaration was made.
- (7) The validity of a declaration under subsection (3) is not affected by failure to comply with subsection (6) in relation to the declaration.
- (8) Nothing in section 731 requires the Panel to perform a function, or exercise a power, in a particular way in a particular case.

733A Interim orders where application made under section 733

- (1) Where:
 - (a) the Commission makes an application under section 733 for a declaration (in this section called the *requested declaration*); and
 - (b) the Panel has not yet determined the application; and
 - (c) the Panel, or the President of the Panel, is of the opinion that it is desirable to make an interim order of a kind that the Panel could make under section 734 if it had already made the requested declaration;the Panel, or the President, as the case may be, may make such an interim order that is expressed to apply pending the determination of the application for the requested declaration.
- (2) An interim order may be made under subsection (1) even if another interim order has already been so made because of the making of the application for the requested declaration.

733B Interim orders where declaration made under section 733 before application under section 734

- (1) This section applies where, at the time when the Panel makes a declaration under subsection 733(3), the Commission has not yet applied to the Panel to make an order under section 734 in reliance on the declaration.

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- (2) If, immediately before that time, there was in force an interim order made under subsection 733A(1) because of the making of the application on which the declaration was made, the Panel may make at that time an order declaring the interim order to apply, with specified modifications (if any), for the 60 days beginning on the day when the declaration is made.
- (3) If the Panel makes an order under subsection (2), the interim order applies accordingly.
- (4) If:
 - (a) subsection (2) does not apply; or
 - (b) subsection (2) applies but the Panel decides not to make at that time an order under that subsection;the Panel may make at that time an interim order that:
 - (c) is of a kind that it could make under section 734 in reliance on the declaration; and
 - (d) is expressed to apply for the 60 days beginning on the day when the declaration is made.
- (5) The Panel may only make an order under subsection (2) or (4) if, in the Panel's opinion, it is desirable to do so.
- (6) If, after an order is made under subsection (2) or (4), the Commission applies to the Panel to make an order under section 734 in reliance on the declaration:
 - (a) an interim order may not be made under subsection 735(2) because of the application; and
 - (b) if the application is determined within the 60 days referred to in the first-mentioned order—the order ceases to have effect on the determination of the application.

734 Power of Panel to make orders

- (1) Subsection (2) of this section applies where, under subsection 733(3), the Corporations and Securities Panel:

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- (a) declares an acquisition of shares in a company to have been an unacceptable acquisition; or
 - (b) declares conduct engaged in by a person in relation to shares in, or the affairs of, a company to have been unacceptable conduct.
- (2) On the application of the Commission, the Panel may, whether or not it has previously made an order under this section in reliance on the declaration, make in writing one or more of the following orders:
- (a) any order that it thinks necessary or desirable to protect the rights or interests of any person affected by the acquisition or conduct or to ensure, as far as possible, that a takeover scheme or takeover announcement, or a proposed takeover scheme or proposed takeover announcement, in relation to shares in the company proceeds in the manner in which it would have proceeded if that acquisition had not taken place or that conduct had not been engaged in;
 - (b) without limiting the generality of paragraph (a):
 - (i) an order directing a person to supply specified information to the holders of shares in the company;
 - (ii) an order prohibiting the exercise of voting or other rights attached to specified shares;
 - (iii) an order directing a company not to make payment, or to defer making payment, of any amount or amounts due from the company in respect of specified shares;
 - (iv) an order prohibiting the acquisition or disposal of, or of an interest in, specified shares;
 - (v) an order directing the disposal of, or of an interest in, specified shares;
 - (vi) an order directing a company not to register a transfer or transmission of specified shares, being a transfer or transmission occurring after the commencement of this section;

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- (vii) an order that an exercise of the voting or other rights attached to specified shares be disregarded;
 - (viii) an order directing a company not to issue shares to a person who holds shares in the company, being shares that were proposed to be issued to the person because the person holds shares in the company or pursuant to an offer or invitation made or issued to the person because the person holds shares in the company;
 - (ix) an order cancelling, or declaring to be voidable, an agreement or offer that was made after the commencement of this section and that relates to a takeover scheme or takeover announcement, or to a proposed takeover scheme or proposed takeover announcement, or is otherwise connected with the acquisition of shares;
 - (x) an order directing a person who is registered as the holder of shares 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 those shares;
- (c) for the purpose of securing compliance with any order made under paragraph (a) or (b), an order directing a person to do, or to refrain from doing, a specified act.
- (2A) The Commission may apply to the Panel for an order under subsection (2) whether or not the Panel has yet made the necessary declaration under subsection 733(3).
- (3) The Panel may, by written order, vary or revoke, or suspend the operation of, an order made under subsection (2).
- (4) The Commission shall cause a copy of an order made under subsection (2) and of any order by which it is revoked or varied, or its operation is suspended, to be published in the *Gazette* and served:
- (a) on each person to whom the order is directed; and

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- (b) where it relates to specified shares in a company—on the company.
- (5) A person shall not contravene an order in force under subsection (2).
- (6) The Panel shall not make an order, or vary an order that is in force, under subsection (2) unless it has given each person to whom the order is directed an opportunity to make submissions to an inquiry conducted by the Panel in relation to the matter.
- (7) The Panel shall not make an order under this section if it is satisfied that the order would unfairly prejudice any person.
- (8) Where the Panel makes an order, or varies an order that is in force, under subsection (2), the Panel shall give to each person to whom the order is directed a copy of a written statement of the Panel's reasons for the decision to make or vary the order.

735 Miscellaneous provisions about orders by Panel

- (1) The Panel may, before making a declaration under subsection 733(3) or an order under section 734, direct the Commission to give notice of the application to such persons as the Panel thinks fit, or to publish notice of the application in such manner as the Panel thinks fit, or both.
- (2) Subject to paragraph 733B(6)(a) and subsection (2A) of this section, where an application is made to the Panel for an order under section 734, the Panel or the President of the Panel may, if in the opinion of the Panel or President, as the case may be, it is desirable to do so, make, before the Panel determines the application, an interim order, being an order of the kind to which the application relates that is expressed to apply pending the determination of the application.
- (2A) Where an application for an order under section 734 is made before the Panel has made the necessary declaration under

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subsection 733(3), an interim order made under subsection (2) of this section because of the application does not take effect unless and until the declaration is made.

- (3) The provisions of subsections 734(3), (4), (5) and (7), of subsections (5), (6), (7) and (8) of this section, and of section 736, apply in relation to:
 - (a) an interim order under subsection 733A(1) or 733B(4) or subsection (2) of this section; or
 - (b) an interim order under subsection 733A(1) as applying because of an order under subsection 733B(2);as if the interim order, or the interim order as so applying, as the case may be, were an order under subsection 734(2).
- (4) In addition to, and without limiting, their application as mentioned in subsection (3), the provisions referred to in that subsection apply, as so mentioned, as if the President were the Panel.
- (5) An order by the Panel under section 734 may include such ancillary or consequential provisions as the Panel thinks reasonable and appropriate.
- (6) Without limiting the nature of the orders that may be made by the Panel under section 734 directing the disposal of, or of an interest in, shares in a company, such an order may include one or more of the following provisions:
 - (a) a provision that the disposal shall be made within such time and subject to such conditions (if any) as the Panel thinks fit, including, if the Panel thinks fit, a condition that the disposal shall not be made to a particular person or persons or to a particular class or classes of persons;
 - (b) a provision that a specified person shall pay to the company the amount of, or an amount equal to the value of, any profit made by, or benefit accruing to, the person as a result of, or in connection with, the disposal of, or of an interest in, the shares.

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- (7) If the Panel makes an order of the kind referred to in subparagraph 734(2)(b)(vii), the exercise of rights attached to shares shall be disregarded as provided in the order.
- (8) If the Panel makes an order of a kind referred to in subparagraph 734(2)(b)(ix), then, by force of this subsection, the agreement or offer specified in the order is cancelled, or becomes voidable, as the case requires, as from the making of the order or such later time as is so specified.

736 Orders by the Court where Panel order contravened

Where a person contravenes an order made by the Panel under section 734, the Court may, on application by the Commission, make such order or orders as it considers necessary for the purpose of securing compliance with the Panel's order, including, but not limited to:

- (a) a remedial order; and
- (b) an order directing a person to do, or to refrain from doing, a specified act.

736A Commission may publish report about application to Panel or Court

- (1) This section applies where the Commission:
 - (a) applies under subsection 733(1) for a declaration under subsection 733(3) in relation to an acquisition of shares in a company or conduct engaged in in relation to shares in, or the affairs of, a company;
 - (b) applies for an order to be made under subsection 734(2) in reliance on such a declaration; or
 - (c) applies for an order to be made under section 736 for the purpose of securing compliance with an order made under subsection 734(2) in reliance on such a declaration.
- (2) The Commission may publish in any way it considers appropriate a report, statement or notice, whether or not in writing, that:

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- (a) states that the application has been made;
 - (b) names the company; and
 - (c) if the Commission considers that the report, statement or notice should name any other person to whom:
 - (i) if paragraph (1)(a) applies—the declaration, if made, would relate; or
 - (ii) if paragraph (1)(b) or (c) applies—an order applied for would, if made, be directed;names that other person.
- (3) Nothing in this section limits by implication a function or power of the Commission, the Panel or any other person or body.

Part 6.10—Powers of court

737 Orders where prohibited acquisitions take place

- (1) Where a person has acquired shares in a company in contravention of section 615, the Court, on the application of the Commission, the company, a member of the company or the person from whom the shares were acquired, may make such order or orders as it thinks just, including but without limiting the generality of the foregoing:
 - (a) a remedial order; and
 - (b) for the purpose of securing compliance with any other order made under this section, an order directing a person to do or refrain from doing a specified act.
- (2) Where, at the hearing of an application under subsection (1), it is proved to the satisfaction of the Court that:
 - (a) a person is entitled to shares in a company because another person who is an associate of the first-mentioned person has a relevant interest in those shares; and
 - (b) that other person became entitled to that relevant interest because of an acquisition of shares (whether in that company or in another body corporate) that took place within 6 months ending on the day immediately before the day on which the application was filed with the Court;then, in determining for the purposes of the application whether the acquisition referred to in paragraph (b) was made in contravention of section 615, the proof to the satisfaction of the Court of the matters mentioned in paragraphs (a) and (b) constitutes *prima facie* evidence that the other person was an associate of the first-mentioned person immediately after the acquisition took place.

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738 Orders where offers not sent pursuant to Part A statement

(1) Where:

- (a) a Part A statement relating to offers under a takeover scheme, being offers relating to shares in a class of shares in a target company, is served on the company;
- (b) after the Part A statement was served the offeror acquires shares in that class;
- (c) the acquisition of those shares would, but for subsection 620(1), have contravened section 615; and
- (d) the offeror does not send the offers before the end of 28 days after the day on which the Part A statement was served;

the Court, on the application of the Commission, may make such order or orders as it thinks just, including, but without limiting the generality of the foregoing:

- (e) a remedial order;
- (f) an order directing the offeror, within such time as is specified in the order, to send in an approved manner to each holder of shares in that class an offer to which the Part A statement relates; and
- (g) for the purpose of securing compliance with any other order made under this section, an order directing a person to do or refrain from doing a specified act.

(2) Where, under paragraph (1)(f), the Court orders a person to send offers, the Court may also order the person:

- (a) to send with each offer a notice setting out such information as the Court specifies; and
- (b) within a period specified in the order, to serve on the target company, lodge with the Commission, and, if the target company is a listed company, serve on each notifiable securities exchange in relation to that company, a copy of the notice.

(3) Where offers are sent pursuant to an order made by the Court under paragraph (1)(f), the offers shall be deemed to be made under a takeover scheme.

739 Orders to protect rights under takeover schemes or announcements

(1) Where:

- (a) a statement that purports to be a Part A statement relating to offers under a takeover scheme has been served on a target company or a takeover announcement has been made;
- (b) an application for an order under this section is made to the Court by the Commission, the offeror, the target company or a person who holds shares in the target company or held shares in the target company when the statement was so served or the takeover announcement was made; and
- (c) the Court is satisfied that a provision of this Chapter has been contravened;

the Court may make such orders as it thinks necessary or desirable to protect the interests of a person affected by the takeover scheme or takeover announcement (including a person who is the holder of non-voting shares in, or renounceable options or convertible notes granted or issued by, the target company).

(2) Where an offeror contravenes a condition specified in a consent given under section 653, the Court, on the application of the Commission, the target company, or a person affected by the contravention, may make such orders as the Court thinks necessary or desirable to protect the interests of a person affected by the contravention.

(3) The orders that may be made under subsection (1) or (2) include one or more of the following orders:

- (a) an order directing:
 - (i) where the Court is acting under subsection (1)—the offeror or the target company; or
 - (ii) where the Court is acting under subsection (2)—the offeror;

to supply to the holders of shares in the target company such information as is specified in the order;

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- (b) where a person has failed to do an act or thing that the person was required by this Chapter or the condition to do—an order directing that person to do that act or thing within a period specified in the order, notwithstanding that the period specified in this Chapter or the condition, as the case may be, for the doing of that act or thing has ended;
 - (c) a remedial order;
 - (d) for the purpose of securing compliance with any other order made under this section, an order directing a person to do or refrain from doing a specified act.
- (4) In this section, *shares*, in relation to a company, includes:
- (a) non-voting shares in the company; and
 - (b) renounceable options and convertible notes granted or issued by the company.

740 Powers of Court in relation to unfair or unconscionable agreements, payments or benefits

- (1) Subject to subsection (4), this section applies to:
- (a) an agreement entered into by a body corporate for the making of a payment by the body corporate to, or for the provision of a benefit by the body corporate for, a person who is a director, secretary or executive officer of the body corporate or of a body corporate that is related to the body corporate; or
 - (b) a payment or benefit made or provided by a body corporate, otherwise than under an agreement, to or for such a person; where the agreement is entered into or the payment or benefit is made or provided by the body corporate;
 - (c) if the body corporate is a company:
 - (i) before the end of 12 months after the day on which a Part A statement has been served on, or a takeover announcement has been made in respect of shares in, the body corporate or a related body corporate; or
 - (ii) at a time when the directors of the body corporate have reason to believe that a takeover offer or takeover

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- announcement is to be made in respect of shares in the body corporate or in a related body corporate; or
- (d) if the body corporate is not a company:
- (i) before the end of 12 months after the day on which a Part A statement has been served on, or a takeover announcement has been made in respect of shares in, a company that is related to the body corporate; or
 - (ii) at a time when the directors of the body corporate have reason to believe that a takeover offer or takeover announcement is to be made in respect of shares in a company that is related to the body corporate.
- (3) For the purposes of paragraph (1)(a), a body corporate that enters into an agreement with a person for the employment of, or for the performance of services by, that person for a fixed period shall be taken to have entered into an agreement for the provision of a benefit for that person.
- (4) This section does not apply to an agreement that has been entered into, or to a payment or benefit that has been made or provided, by the company (in this subsection called the *target company*) to shares in which the Part A statement or takeover announcement relates, or in respect of shares in which the directors believe that a takeover offer or takeover announcement is to be made, or by a body corporate that is related to the target company, if:
- (a) the agreement, payment or benefit has been approved by an ordinary resolution of the target company (whether before or after the agreement was entered into or the payment or benefit was made or provided); and
 - (b) where the person who is entitled to receive, or has received, the payment or benefit, or an associate of that person, was a member of the target company when the resolution was passed—that member did not vote, either personally or by proxy, on the resolution.
- (5) Where:
- (a) a body corporate enters into an agreement, or makes or provides a payment or benefit, to which this section applies;

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- (b) an application for an order under this subsection is made to the Court by:
 - (i) the body corporate;
 - (ii) the Commission;
 - (iii) members who together hold shares carrying at least 10% of the votes attached to voting shares in the body corporate or in a related body corporate;
 - (c) the application is made within 12 months, or such longer period as the Court thinks reasonable in the circumstances, after the day on which the agreement was entered into, or the payment or benefit was made or provided, as the case may be; and
 - (d) the Court is satisfied that the entering into the agreement, or the making or provision of the payment or benefit, was unfair or unconscionable having regard to the interests of the body corporate;
- the Court may:
- (e) in the case of an agreement:
 - (i) make an order declaring the agreement or any part of the agreement to be void and, if the Court thinks fit, to have always been void; and
 - (ii) if the Court thinks it just to do so—make an order directing any person to whom a payment was made or for whom a benefit was provided under the agreement, or another person specified in the order, to make a payment or transfer property to the body corporate or to do any other act for the benefit of the body corporate;
 - (f) in the case of a payment or benefit—if the Court thinks it just to do so, make an order directing the person to whom the payment was made or for whom the benefit was provided, or another person specified in the order, to make a payment or transfer property to the body corporate or to do any other act for the benefit of the body corporate; and
 - (g) in either case—make any other order that the Court thinks appropriate.

741 Powers of Court with respect to defaulting substantial shareholder

- (1) Where a person (in this section called the *substantial shareholder*) is, or at any time after the commencement of this Chapter has been, a substantial shareholder in a company and has contravened section 709, 710 or 711, the Court, on the application of the Commission or of the company, whether or not the contravention continues, may make such order or orders as it thinks just, including (without limiting the generality of the foregoing):
 - (a) a remedial order; and
 - (b) for the purpose of securing compliance with any other order made under this section, an order directing the company or any other person to do or refrain from doing a specified act.
- (2) Where, at the hearing of an application under this section, it is proved to the satisfaction of the Court that:
 - (a) a person is entitled to shares in a company because another person who is an associate of the first-mentioned person has a relevant interest in those shares; and
 - (b) that other person became entitled to that relevant interest within 6 months ending on the day immediately before the day on which the application was filed with the Court;then, in determining for the purposes of the application whether the first-mentioned person failed to comply with section 709, 710 or 711, the proof to the satisfaction of the Court of the matters mentioned in paragraphs (a) and (b) of this subsection constitutes *prima facie* evidence that the other person was an associate of the first-mentioned person from the time when that other person became entitled to that relevant interest until the date of the hearing.
- (3) In this section, *company* has the same meaning as in Part 6.7.

742 Powers of Court where beneficial ownership of shares not disclosed

- (1) Where:
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- (a) a person has contravened section 722 or 723 in relation to a notice given to the person under section 718 or 719 in relation to shares in a company (whether or not the contravention still continues); or
 - (b) a person has, in a statement given pursuant to a notice given to the person under section 718 or 719 in relation to shares in a company, stated that the person does not know particular information in relation to any of the shares or in relation to a person:
 - (i) who has a relevant interest in any of the shares; or
 - (ii) who has given in relation to any of the shares relevant instructions within the meaning of section 717;
- the following provisions of this section apply.
- (2) On the application of:
 - (a) the Commission;
 - (b) the company; or
 - (c) a member of the company who was entitled, or members of the company who were together entitled, to not less than 5% of the total voting rights of all the members having at the date of the notice a right to vote at general meetings of the company;the Court may make in relation to any of the shares such order or orders as it thinks just, including, but without limiting the generality of the foregoing:
 - (d) a remedial order; and
 - (e) for the purpose of securing compliance with any other order made under this subsection, an order directing the company or any other person to do or refrain from doing a specified act.
 - (3) Where a person has contravened section 722 or 723 in relation to a notice given under section 718 or 719 in relation to shares in a company, the Court shall not make an order under this section in relation to any of the shares if it is satisfied that the giving of the notice was frivolous or vexatious.

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- (4) A company is not, because of anything done under this section:
 - (a) to be taken for any purpose to have notice of; or
 - (b) put upon inquiry as to;
the right of a person to or in relation to a share in the company.
- (5) In this section, *company* has the same meaning as in Part 6.7.

743 Contravention due to inadvertence etc.

- (1) Where a person has contravened a provision of this Chapter and, on application by any interested person, the Court is satisfied that, in all the circumstances the contravention ought to be excused, the Court may make an order declaring any act, document or matter not to be invalid because of the contravention and to have effect, and at all times to have had effect, as if there had been no such contravention.
- (2) If the Court is satisfied that in all the circumstances a contravention of section 615, 709, 710, 711, 722 or 723 ought to be excused, the Court shall not make an order under section 737, 741 or 742, as the case may be, other than:
 - (a) an order restraining the exercise of voting or other rights attached to shares; or
 - (b) an order that an exercise of voting or other rights attached to shares be disregarded.
- (3) The circumstances to which the Court may have regard in deciding whether or not a contravention of a provision by a person ought to be excused include the contravention having been due to the person's inadvertence or mistake, to the person not having been aware of a relevant fact or occurrence or to circumstances beyond the control of the person.
- (4) This section applies notwithstanding anything contained in any other provision of this Chapter.

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744 Miscellaneous provisions relating to orders

(1) In this section:

relevant provision means section 729, 736, 737, 738, 739, 740, 741, 742 or 743.

(2) The Court shall not make an order under a relevant provision if it is satisfied that the order would unfairly prejudice any person.

(3) The Court may, before making an order under a relevant provision, direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

(4) Where an application is made to the Court for an order under a relevant provision other than section 738, the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, make an interim order, being an order of the kind to which the application relates that is expressed to apply pending the determination of the application, and an interim order so made shall, for the purposes of subsections (6), (10) and (11), be taken to be an order under that provision.

(5) Where the Commission applies to the Court for an order under a relevant provision, the Court shall not require the Commission or any other person, as a condition of making an interim order under subsection (4), to give any undertakings as to damages.

(6) An order under a relevant provision may include such ancillary or consequential provisions as the Court thinks just and reasonable.

(7) Without limiting the nature of the orders that may be made by the Court under a relevant provision directing the disposal of, or of an interest in, shares in a company, such an order may include one or more of the following provisions:

(a) a provision that the disposal shall be made within such time and subject to such conditions (if any) as the Court thinks just, including, if the Court thinks fit, a condition that the

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- disposal shall not be made to a particular person or persons or to a particular class or classes of persons;
- (b) a provision that a specified person is liable to pay to the company any profit made by the person as a result of, or in connection with, the disposal of, or of an interest in, the shares;
 - (c) a provision that a specified person shall, for all purposes connected with the disposal of, or of an interest in, the shares, be deemed to hold the shares or interest as a trustee for the beneficial owner of the shares or interest.
- (8) The Court may direct that, where a share or an interest in a share is not disposed of in accordance with an order of the Court under a relevant provision, the share or interest shall vest in the Commission.
- (9) Where a share or an interest in a share vests in the Commission by an order under a relevant provision or by a direction under subsection (8):
- (a) the Commission may, subject to any directions of the Court, get in, sell or otherwise dispose of, or deal with, the share or interest as it sees fit; and
 - (b) section 601AE (other than paragraph 601AE(2)(a)) applies in relation to the share or interest as if:
 - (i) the share or interest were vested in ASIC under subsection 601AD(2); and
 - (ii) a sale, disposal or dealing with the share or interest under paragraph (a) of this subsection were a disposal or dealing under paragraph 601AE(2)(a).
- (10) The Court may rescind, vary or discharge an order made by it under a relevant provision or suspend the operation of such an order.
- (11) A person shall not contravene an order made under a relevant provision.

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- (12) Subsection (11) does not affect the powers of the Court in relation to the punishment of contempts of the Court.
- (13) In the application of a provision of this section in relation to orders under section 739, the expression *share* has, in that provision, the meaning given by subsection 739(4).

Part 6.11—Miscellaneous

745 Recording of resolutions

The person who records the minute of a resolution passed for the purposes of this Chapter at a meeting of the directors of a body corporate shall record in the minute the name of any director who is absent from the meeting when the resolution is passed, the name of any director who votes against the resolution and the name of any director who is present when the resolution is passed and abstains from voting on the resolution.

746 Announcements of proposed takeover bids

- (1) In this section:
 - (a) a reference to making a takeover bid is a reference to:
 - (i) making takeover offers; or
 - (ii) causing a takeover announcement to be made; and
 - (b) a reference to making a takeover bid in accordance with a public announcement to the effect that a takeover bid is proposed to be made is a reference to making a takeover bid the terms and conditions of which are the same as, or not substantially less favourable to the shareholders in the target company than, the terms and conditions of the takeover bid referred to in the public announcement.
- (2) Subject to subsection (3), a person shall not make a public announcement to the effect that the person proposes, or that the person and another person or other persons together propose, to make takeover offers, or to cause a takeover announcement to be made, if:
 - (a) the person knows that the announcement is false or is recklessly indifferent to whether it is true or false; or
 - (b) the person has no reasonable grounds for believing that the person, or the person and the other person or persons, as the

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case may be, will be able to perform obligations arising under the takeover scheme or takeover announcement, or arising under this Chapter in connection with the takeover scheme or takeover announcement, if a substantial proportion of the takeover offers, or of the offers made under the takeover announcement, as the case may be, are accepted.

- (4) Subject to subsection (5), where a person makes a public announcement to the effect that the person proposes, or that the person and another person or other persons together propose, to make a takeover bid in relation to shares in a company, the person shall, before the end of 2 months after the day on which the announcement was made or such further period as the Commission permits in writing make a takeover bid in relation to shares in that company in accordance with the public announcement.
- (6) A person who:
- (a) makes a public announcement in contravention of subsection (2) and fails, in contravention of subsection (4), to make a takeover bid in accordance with the announcement; and
 - (b) is convicted of an offence in respect of one of those contraventions;
- is not liable to be convicted of an offence in respect of the other contravention.
- (7) In any proceedings, if there is produced a certificate by the Commission stating that the Commission has not, under subsection (4), permitted a further period for a specified person or persons to make a takeover bid in relation to shares in a specified company, it shall be presumed, unless the contrary is proved, that no such further period was permitted.
- (8) A person who makes a public announcement in contravention of subsection (2) or fails, in contravention of subsection (4), to make a takeover bid in accordance with a public announcement (whether or not the person has been convicted of an offence in respect of the contravention) is liable to pay compensation to any other person

The Corporations Law—Section 747

who suffered loss as a result of entering into a transaction with respect to shares in reliance on the public announcement.

- (9) The amount of the compensation that a person is liable to pay under subsection (8) is the difference between the price of the shares at which the transaction was entered into and the price of the shares at which the transaction would have been likely to be entered into if the person had not made the public announcement.
- (10) A person:
- (a) is not guilty of an offence in respect of a contravention of subsection (4); and
 - (b) is not liable to pay compensation under subsection (8);
- in respect of a failure to make a takeover bid in accordance with a public announcement made by the person if it is proved that:
- (c) as a result of circumstances that existed at the time of the making of the public announcement but of which the person had no knowledge and could not reasonably have been expected to have knowledge; or
 - (d) as a result of a change in circumstances after the making of the announcement, other than a change in circumstances caused, whether directly or indirectly, by the person;
- the person could not reasonably have been expected to make the takeover bid.
- (11) Neither section 1314 nor subsection 1324(2) applies in relation to a failure, in contravention of subsection (4) of this section, to make a takeover bid in accordance with a public announcement.

747 Service of documents and publication of notices

- (1) Where a document (other than a document that is required to be signed) is required by a provision of this Chapter to be served on a securities exchange, the document may be served by sending to the securities exchange, by telegraph, telex, facsimile service or other similar means of communication, a message to the effect of the document.

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- (2) Where a document is required by a provision of this Chapter to be served on a securities exchange or lodged on a particular day:
 - (a) if that day is not a trading day of that securities exchange—the document shall be served on that securities exchange on the next day that is a trading day of that securities exchange; or
 - (b) if the office of the Commission is not open on that day—the document shall be lodged at that office on the next day on which that office is open.
- (3) Where a person is required by a provision of this Chapter to lodge, or serve on a securities exchange, a copy of a notice sent by the person, it is not necessary for the copy to include the name or address of the person to whom the notice was sent.
- (4) Where by a provision of this Chapter a person is required to publish a notice in a newspaper and, due to circumstances beyond the control of the person, the notice is not published in accordance with the provision, the provision shall be deemed to have been complied with if the person:
 - (a) did all things that would, but for those circumstances, have resulted in publication of the notice in accordance with the provision; and
 - (b) published the notice on the first practicable date after those circumstances ceased to exist.

Part 6.12—Statements

749 Interpretation of certain clauses in section 750

- (1) This section has effect for the purposes of:
 - (a) clause 12 in Part A in section 750;
 - (b) clause 8 in Part B in section 750;
 - (c) clause 9 in Part C in section 750; and
 - (d) clause 8 in Part D in section 750;and of this section.
- (2) Subsections 237(14), (15) and (19) apply as if:
 - (a) this section and those clauses were provisions of section 237;
 - (b) a reference in those subsections to a company were a reference to the target company; and
 - (c) paragraph (a) of the definition of *prescribed office* in subsection 237(19) included a reference to an office of secretary or executive officer.
- (3) An excluded benefit is a benefit:
 - (a) in relation to the giving of which subsection 237(6) would apply; or
 - (b) that is a payment in relation to which paragraph (e) of the definition of *exempt benefit* in subsection 237(19) would apply;if a reference in subsection 237(6), or in that definition, as the case may be, to a company were a reference to the target company.

750 Part A, B, C and D statements

The following Parts set out the requirements with which Part A statements, Part B statements, Part C statements and Part D statements are to comply:

Part A—Statement to be given by offeror under takeover scheme

1 Offer period

The statement shall set out the period during which the offers are intended to remain open.

2 Particulars of corporate offeror

Where the offeror is or includes a body corporate or bodies corporate, the statement shall:

- (a) specify the names, occupations and addresses of all the directors of the body corporate or of each body corporate;
- (b) contain a summary of the principal activities of the body corporate or of each body corporate; and
- (c) if the body corporate or either or any of the bodies corporate is included in a group of bodies corporate consisting of a holding company and a subsidiary or subsidiaries—contain a summary of the principal activities of the group of bodies corporate.

3 Offeror's entitlement in target

The statement shall:

- (a) set out full particulars of the shares in the target company to which the offeror is entitled or, if there are no such shares, set out a statement to that effect; and
- (b) set out full particulars of marketable securities (other than shares) of the target company to which the offeror is entitled or, if there are no such securities to which the offeror is entitled, set out a statement to that effect.

4 Transactions in target by offeror or associates during previous 4 months

The statement shall set out particulars of all acquisitions or disposals of shares in the target company by the offeror, or any associate of the offeror, in the 4 months ending on the day immediately before the day on which the statement is lodged for registration, including particulars of the price per share in relation to each acquisition or disposal.

5 Transactions in offeror by offeror or associates during previous 4 months

Where the offeror is or includes a body corporate or bodies corporate, the statement shall set out particulars of all acquisitions or disposals of shares in that body corporate or any of those bodies corporate by any person included in, or any associate of, the offeror, in the 4 months ending on the day immediately before the day on which the statement is lodged for registration, including particulars of the price per share in relation to each acquisition or disposal.

6 Alterations to capital structure of offeror or subsidiary during previous 5 years

Where the offeror is or includes a body corporate or bodies corporate and:

- (a) shares may be acquired for a consideration that is or includes marketable securities of that body corporate or of any of those bodies corporate; or
- (b) each offer is subject to a condition requiring the making of a payment (whether by way of making a loan, subscribing for shares or otherwise) by the offeree to that body corporate or any of those bodies corporate;

the statement shall set out, in respect of that body corporate or each of those bodies corporate:

The Corporations Law—Section 7

- (c) full particulars of any alterations in the capital structure of the body corporate during the 5 years immediately before the date on which the statement is lodged for registration and particulars of the dates of any such alterations and the source of any increase in its capital; and
- (d) full particulars of any alterations in the capital structure of any body corporate that, at any time during the 5 years referred to in paragraph (c), was a subsidiary of the body corporate referred to in that paragraph, being alterations occurring at any time during those 5 years when the body corporate was a subsidiary of the body corporate referred to in that paragraph, and particulars of the date on which any such body corporate became a subsidiary or ceased to be a subsidiary, the date of any such alteration in its capital structure and the source of any increase in its capital.

7 Particulars of natural person offeror

Where the offeror is or includes a natural person or natural persons, the statement shall:

- (a) specify the name, address and occupation of that person or of each of those persons;
- (b) set out a summary of the principal business activities of that person or of each of those persons; and
- (c) specify the bodies corporate (if any) of which that person or any of those persons is a director or other officer, it being sufficient, where a person is a director of one or more subsidiaries of the same holding company, to specify that the person holds one or more directorships in a group of companies that may be described by the name of the holding company with the addition of the word “Group”.

8 Proposed acquisition by offeror of other shares, or of options or notes

Where:

- (a) the offeror has sent offers or invitations relating to:

The Corporations Law—Section 9

- (i) the acquisition of shares in the target company (whether voting shares or not) of a different class from the shares to which the takeover offers relate; or
 - (ii) the acquisition of renounceable options or convertible notes granted or issued by the target company;
being offers or invitations that are open or expressed to be open on the day on which the statement is served on the target company; or
 - (b) the offeror proposes to send, while the takeover offers remain open, offers or invitations relating to:
 - (i) the acquisition of shares in the target company (whether voting shares or not) of a different class from the shares to which the takeover offers relate; or
 - (ii) the acquisition of renounceable options or convertible notes granted or issued by the target company;
- the statement shall set out the terms or proposed terms of those offers or invitations.

9 Proposed terms for acquiring non-voting shares, options or notes

Where the offeror intends, if required under subsection 703(4) to give notice to the holders of any non-voting shares in, renounceable options granted by, or convertible notes issued by, the target company, to propose terms for the acquisition of those shares, renounceable options or convertible notes, the statement shall set out those proposed terms.

10 Pre-emption clauses in target's constitution

The statement shall:

- (a) set out particulars of any restriction on the right to transfer shares to which the offers relate contained in the constitution of the target company that has the effect of requiring the holders of the shares, before transferring them, to offer them for purchase to members of the target company or to any other person; and

The Corporations Law—Section 11

- (b) if there is any such restriction, set out the arrangements (if any) being made to enable the shares to be transferred.

11 How cash consideration to be provided

If the consideration for the acquisition of the shares to which the takeover offers relate or for the acquisition of any shares, renounceable options or convertible notes referred to in clause 9 is to be satisfied in whole or in part by the payment of cash, the statement shall set out:

- (a) if the offeror is to provide some or all of the cash from the offeror's own funds—particulars sufficient to identify the cash amounts held by the offeror for or in respect of payment of the consideration; and
- (b) if the offeror is not to provide all of the cash, or is not to provide any of it, from the offeror's own funds:
- (i) particulars sufficient to identify the other person who is, or each of the other persons who are, to provide, whether directly or indirectly, some or all of the cash from that person's or those persons' own funds; and
- (ii) particulars of the arrangements by which that cash will be provided by that other person or those other persons.

12 Proposed benefits to officers of target etc.

Where, in connection with the offers:

- (a) a prescribed benefit (other than an excluded benefit) will or may be given to a person in connection with the retirement of a person from a prescribed office in relation to the target company; or
- (b) a prescribed benefit will or may be given to a prescribed person in relation to the target company in connection with the transfer of the whole or any part of the undertaking or property of the target company;

the statement shall set out particulars with respect to the prescribed benefit, including:

The Corporations Law—Section 13

- (c) in the case of a prescribed benefit that is a payment—the amount of the payment; or
- (d) in any other case—the money value of the prescribed benefit.

13 Other agreements with directors of target

Where there is any other agreement made between the offeror and any of the directors of the target company in connection with or conditional upon the outcome of the offers, the statement shall set out particulars of any such agreement.

14 Change in target's financial position

The statement shall set out whether, so far as is known to the offeror, the financial position of the target company has materially changed since the date of the last balance-sheet laid before the company in general meeting and, if so, full particulars of the change known to the offeror.

15 Agreement by offeror to transfer shares acquired under offers

Where there is any agreement whereby any shares acquired by the offeror pursuant to the offers will or may be transferred to any other person, the statement shall set out:

- (a) the names of the persons who are parties to the agreement, the number, description and amount of the shares that will or may be so transferred and, if the transferee is not a party to the agreement, the name of the transferee; and
- (b) the number, description and amount of any shares in the target company held by or on behalf of each of the persons who are parties to the agreement and, if the transferee is not a party to the agreement, by or on behalf of the transferee or, if no such shares are so held, a statement to that effect.

16 Escalation clauses

Where there is any agreement for the acquisition of shares in the target company by the offeror or by an associate of the offeror,

The Corporations Law—Section 17

being an agreement under which the person, or either or any of the persons, from whom the shares have been or are to be acquired or an associate of that person or of either or any of those persons may, at any time after an offer is sent, become entitled to any benefit, whether by way of receiving an increased price for those shares or by payment of cash or otherwise, that is related to, dependent upon, or calculated in any way by reference to, the consideration payable for shares acquired after the agreement was entered into, the statement shall set out full particulars of that agreement.

17 Other material information

The statement shall set out any other information material to the making of a decision by an offeree whether or not to accept an offer, being information that is known to the offeror and has not previously been disclosed to the holders of shares in the target company.

18 Information required by regulations to be disclosed

If the statement:

- (a) is included in a class of Part A statements in relation to which regulations are in force for the purposes of this paragraph;
- (b) relates to an offer to acquire shares in a class of offers in relation to which regulations are in force for the purposes of this paragraph; or
- (c) relates to an offer to acquire shares where the consideration specified in the offer as the consideration for the acquisition of shares is or includes marketable securities in a class of marketable securities, or is or includes marketable securities of a body corporate in a class of bodies corporate, in relation to which regulations are in force for the purposes of this paragraph;

the statement shall set out the prescribed matters and contain the prescribed reports, being reports each of which either indicates by way of note any adjustments as respects the figures of any profit or loss or assets and liabilities dealt with by the report that appear

The Corporations Law—Section 19

necessary to the person making the report or makes those adjustments and indicates that adjustments have been made.

19 Information about other bodies corporate

Where:

- (a) the consideration to be offered in exchange for shares in the target company consists, in whole or in part, of marketable securities issued, or to be issued, by a body corporate that is not, or is not included in, the offeror; or
- (b) the offer is subject to a condition requiring the making of a payment (whether by way of making a loan, subscribing for shares or otherwise) by the offeree to a body corporate that is not, or is not included in, the offeror;

the statement shall contain the same information as would have to be given under a requirement of any other provision of this Part if the body corporate were the offeror.

20 Offeror's intentions about business, assets and employees of target

- (1) The statement shall set out particulars of the offeror's intentions regarding:
 - (a) the continuation of the business of the target company;
 - (b) any major changes to be made to the business of the target company, including any redeployment of the fixed assets of the target company; and
 - (c) the future employment of the present employees of the target company.
- (2) Without limiting the generality of subclause (1), if the offeror has not made a decision on a matter referred to in paragraph (1)(a), (b) or (c) but is considering a possible course of action, or 2 or more possible courses of action, in relation to that matter, the statement shall set out that fact and specify the course of action or courses of action concerned and the reason why the offeror has not made a decision on the matter.

The Corporations Law—Section 21

21 Requirements where consideration includes marketable securities

- (1) This clause applies only where the consideration to be offered in exchange for shares in the target company consists, in whole or in part, of marketable securities issued, or to be issued, by a body corporate.
- (2) Where the marketable securities are listed for quotation on the stock market of a securities exchange, the statement shall state the fact, specify the securities exchange concerned and specify:
 - (a) the latest recorded sale price before the date on which the statement is lodged for registration;
 - (b) the highest and lowest recorded sale prices during the 3 months ending on the day immediately before that date and the respective dates of the relevant sales; and
 - (c) where the takeover offers have been the subject of a public announcement in newspapers or by any other means before the statement is served on the target company, the latest recorded sale price before the public announcement.
- (3) Where the marketable securities are listed for quotation on, or dealt in on, more than one securities exchange, it is sufficient compliance with paragraphs (2)(a) and (c) if information with respect to the marketable securities is given in relation to the securities exchange at which there has been the greatest number of recorded dealings in the securities in the 3 months ending on the day immediately before the day on which the statement is served on the target company.
- (4) Where the securities are not listed for quotation on the stock market of a securities exchange, the statement shall set out all the information that the offeror has as to the number of the securities that have been sold in the 3 months ending on the day immediately before the day on which the statement is served on the target company and the amount of those securities and the prices at which they were sold and, if the offeror does not have any such information, a statement to that effect.

The Corporations Law—Section 21

- (5) Where marketable securities are to be issued, the information required under subclauses (2), (3) and (4) shall be given in respect of such marketable securities as have been issued and are of the same class as those to be issued.

Part B—Statement to be given by target company to which takeover scheme relates

1 Recommendations in relation to offers

The statement shall set out:

- (a) unless paragraph (b) applies—in relation to each director of the target company:
 - (i) if the director desires to make, and considers himself or herself justified in making, a recommendation in relation to the offers—whether the director recommends the acceptance of offers made or to be made by the offeror or recommends against such acceptance and, in either case, the reasons for so recommending;
 - (ii) if the director is not available to consider the offers—that the director is not so available and the reasons for being not so available; or
 - (iii) in any other case—that the director does not desire to make, or does not consider himself or herself justified in making, a recommendation and the reasons for not so desiring or for so considering; or
- (b) if the target company is being wound up, is under administration, or has executed a deed of company arrangement that has not yet terminated—in relation to each liquidator, each administrator of the company, or each administrator of the deed, as the case may be:
 - (i) if he or she wants to make, and thinks himself or herself justified in making, a recommendation in relation to the offers—whether he or she recommends the acceptance of offers made or to be made by the offerer or recommends against acceptance, and why he or she so recommends; or

The Corporations Law—Section 2

- (ii) otherwise—that he or she does not want to make, or does not think himself or herself justified in making, a recommendation, and why not.

2 Directors' entitlement in target

The statement shall set out the number, description and amount of marketable securities of the target company to which each director of the company is entitled or, in the case of a director who is not entitled to any, that fact.

3 Whether directors intend to accept offers

The statement shall set out in respect of each director of the target company by whom, or on whose behalf, shares in the target company are held:

- (a) whether the director intends to accept any offer that has been or may be made in respect of those shares; or
- (b) that the director has not decided whether to accept such an offer.

4 Directors who did not approve Part B statement

The statement shall set out the name of any director of the target company who voted against the relevant resolution authorising the Part B statement and, if the director so requires, a statement by that director setting out the reasons for so voting.

5 Directors' entitlement in offeror

Where the offeror is or includes a body corporate or bodies corporate, the statement shall set out whether any director of the target company is entitled to any marketable securities of that body corporate or of any of those bodies corporate and, if so, the number, description and amount of those marketable securities.

The Corporations Law—Section 6

6 Transactions in offeror by target or associates during previous 4 months

Where the offeror is or includes a body corporate or bodies corporate, the statement shall set out particulars of all acquisitions or disposals of shares in that body corporate or any of those bodies corporate by the target company, or any associate of the target company, in the 4 months ending on the day immediately before the day on which the Part A statement relating to the offers was served on the target company, including particulars of the price per share in relation to each acquisition or disposal.

7 Transactions in target by associates during previous 4 months

The statement shall set out particulars of all acquisitions or disposals of shares in the target company by any associate of the target company in the 4 months ending on the day immediately before the day on which the Part A statement relating to the offers was served on the target company, including particulars of the price per share in relation to each acquisition or disposal.

8 Proposed benefits to officers of target etc.

Where:

- (a) a prescribed benefit (other than an excluded benefit) will or may be given to a person in connection with the retirement of a person from a prescribed office in relation to the target company; or
- (b) a prescribed benefit will or may be given to a prescribed person in relation to the target company in connection with the transfer of the whole or any part of the undertaking or property of the target company;

the statement shall set out particulars with respect to the prescribed benefit, including:

- (c) in the case of a prescribed benefit that is a payment—the amount of the payment; or
- (d) in any other case—the money value of the prescribed benefit.

9 Other agreements by directors of target

Where there is any other agreement made between any director of the target company and any other person in connection with or conditional upon the outcome of the offers, the statement shall set out particulars of any such agreement.

10 Interest of director of target in contract with offeror

The statement shall set out whether any director of the target company has an interest in any contract entered into by the offeror and, if so, particulars of the nature and extent of each such interest.

11 Sales of shares in target in previous 6 months

If the shares to which the offers relate are not listed for quotation on the stock market of a stock exchange, the statement shall set out all the information that the target company has as to the number of any such shares that have been sold in the 6 months ending on the day immediately before the day on which the Part A statement relating to the offers was served on the target company and the amount of those shares and the prices at which they were sold.

12 Changes in target's financial position

The statement shall set out whether, so far as is known to:

- (a) in the case of a Part B statement that is signed as mentioned in paragraph 647(2)(a)—any of the directors of the target company; or
- (b) in the case of a Part B statement that is signed as mentioned in paragraph 647(2)(b)—the liquidator or official manager, as the case may be;

the financial position of the target company has materially changed since the date of the last balance-sheet of the company, being a balance-sheet that has been laid before the AGM of the company under section 317 or sent to members under section 314 or a corresponding previous law, and, if so, full particulars of any such change or changes.

The Corporations Law—Section 13

13 Other material information

The statement shall set out any other information material to the making of a decision by an offeree whether or not to accept an offer, being information that is known to:

- (a) in the case of a Part B statement that is signed as mentioned in paragraph 647(2)(a)—any of the directors of the target company; or
- (b) in the case of a Part B statement that is signed as mentioned in paragraph 647(2)(b) or (c)—any liquidator or administrator of the company, or any administrator of the deed of company arrangement, as the case may be;

and has not previously been disclosed to the holders of shares in the target company.

Part C—Statement to be given by offeror under takeover announcement

1 Particulars of offers, including offer period

The statement shall set out full particulars of the offers under the takeover announcement, including the period for which the offers will, unless withdrawn, remain open.

2 Particulars of corporate offeror

Where the offeror is or includes a body corporate or bodies corporate, the statement shall:

- (a) specify the names, occupations and addresses of all the directors of the body corporate or of each body corporate;
- (b) contain a summary of the principal activities of the body corporate or of each body corporate; and
- (c) if the body corporate or either or any of the bodies corporate is included in a group of bodies corporate consisting of a holding company and a subsidiary or subsidiaries—contain a summary of the principal activities of the group of bodies corporate.

3 Offeror's entitlement in target

The statement shall:

- (a) set out full particulars of the shares in the target company to which the offeror is entitled, or, if there are no such shares, set out a statement to that effect; and
- (b) set out full particulars of marketable securities (other than shares) of the target company to which the offeror is entitled or, if there are no such securities to which the offeror is entitled, set out a statement to that effect.

The Corporations Law—Section 4

4 Particulars of natural person offeror

Where the offeror is or includes a natural person or natural persons, the statement shall:

- (a) specify the name, address and occupation of that person or of each of those persons;
- (b) set out a summary of the principal business activities of that person or of each of those persons; and
- (c) specify the bodies corporate (if any) of which that person or any of those persons is a director or other officer, it being sufficient, where a person is a director of one or more subsidiaries of the same holding company, to specify that the person holds one or more directorships in a group of companies that may be described by the name of the holding company with the addition of the word “Group”.

5 Transactions in target by offeror or associates during previous 4 months

The statement shall set out particulars of all acquisitions or disposals of shares in the target company by the offeror, or any associate of the offeror, in the 4 months ending on the day immediately before the day of the takeover announcement, including particulars of the price per share in relation to each acquisition or disposal.

6 Transactions in offeror by offeror or associates during previous 4 months

Where the offeror is or includes a body corporate or bodies corporate, the statement shall set out particulars of all acquisitions or disposals of shares in that body corporate or any of those bodies corporate by any person included in, or any associate of, the offeror, in the 4 months ending on the day immediately before the day of the takeover announcement, including particulars of the price per share in relation to each acquisition or disposal.

7 Proposed terms for acquisition of non-voting shares, options or notes

Where the offeror intends, if required under subsection 703(4) to give notice to the holders of any non-voting shares in, renounceable options granted by, or convertible notes issued by, the target company, to propose terms for the acquisition of those shares, options or notes, the statement shall set out those proposed terms.

8 How cash consideration to be provided

The statement shall set out:

- (a) if the offeror is to provide from the offeror's own funds some or all of the cash payable as consideration for the acquisition of shares to which the takeover announcement relates or for the acquisition of any shares, renounceable options or convertible notes referred to in clause 7—particulars sufficient to identify the cash amounts held by the offeror for or in respect of payment of the consideration; and
- (b) if the offeror is not to provide from the offeror's own funds all of the cash payable as consideration for the acquisition of shares to which the takeover announcement relates or for the acquisition of any shares, renounceable options or convertible notes referred to in clause 7, or is not to provide any of that cash from the offeror's own funds:
 - (i) particulars sufficient to identify the other person who is, or each of the other persons who are, to provide, whether directly or indirectly, some or all of the cash from that person's or those persons' own funds; and
 - (ii) particulars of the arrangements by which that cash will be provided by that other person or those other persons.

9 Proposed benefits to officers of target etc.

Where, in connection with the takeover announcement:

The Corporations Law—Section 10

- (a) a prescribed benefit (other than an excluded benefit) will or may be given to a person in connection with the retirement of a person from a prescribed office in relation to the target company; or
- (b) a prescribed benefit will or may be given to a prescribed person in relation to the target company in connection with the transfer of the whole or any part of the undertaking or property of the target company;

the statement shall set out particulars with respect to the prescribed benefit, including:

- (c) in the case of a prescribed benefit that is a payment—the amount of the payment; or
- (d) in any other case—the money value of the prescribed benefit.

10 Other agreements with directors of target

Where there is any other agreement made between the offeror and any of the directors of the target company in connection with or conditional upon the outcome of the takeover announcement, the statement shall set out particulars of any such agreement.

11 Change in target's financial position

The statement shall set out whether, so far as is known to the offeror, the financial position of the target company has materially changed since the date of the last balance-sheet laid before the company in general meeting and, if so, full particulars of the change known to the offeror.

12 Agreement by offeror to transfer shares acquired under offers

Where there is any agreement whereby any shares acquired by the offeror pursuant to the takeover announcement will or may be transferred to any other person, the statement shall set out:

- (a) the names of the persons who are parties to the agreement, the number, description and amount of the shares that will or

The Corporations Law—Section 13

may be so transferred and, if the transferee is not a party to the agreement, the name of the transferee; and

- (b) the number, description and amount of any shares in the target company held by or on behalf of each of the persons who are parties to the agreement and, if the transferee is not a party to the agreement, by or on behalf of the transferee or, if no such shares are so held, a statement to that effect.

13 Escalation clauses

Where there is any agreement for the acquisition of shares in the target company by the offeror or by an associate of the offeror, being an agreement under which the person, or either or any of the persons, from whom the shares have been or are to be acquired or an associate of that person or of either or any of those persons may, at any time after the takeover announcement is made, become entitled to any benefit, whether by way of receiving an increased price for those shares or by payment of cash or otherwise, that is related to, dependent upon, or calculated in any way by reference to, the consideration payable for shares acquired after the agreement was entered into, the statement shall set out full particulars of that agreement.

14 Other material information

The statement shall set out any other information material to the making of a decision by an offeree whether or not to accept an offer under the takeover announcement, being information that is known to the offeror and has not previously been disclosed to the holders of shares in the target company.

15 Offeror's intentions about business, assets and employees of target

- (1) The statement shall set out particulars of the offeror's intentions regarding:
 - (a) the continuation of the business of the target company;

The Corporations Law—Section 15

- (b) any major changes to be made to the business of the target company, including any redeployment of the fixed assets of the target company; and
 - (c) the future employment of the present employees of the target company.
- (2) Without limiting the generality of subclause (1), if the offeror has not made a decision on a matter referred to in paragraph (1)(a), (b) or (c) but is considering a possible course of action, or 2 or more possible courses of action, in relation to that matter, the statement shall set out that fact and specify the course of action or courses of action concerned and the reason why the offeror has not made a decision on the matter.

Part D—Statement to be given by target company to which takeover announcement relates

1 Recommendations in relation to offers

The statement shall set out:

- (a) unless paragraph (b) applies—in relation to each director of the target company:
 - (i) if the director desires to make, and considers himself or herself justified in making, a recommendation in relation to the offers—whether the director recommends the acceptance of offers under the takeover announcement or recommends against such acceptance and, in either case, the reasons for so recommending;
 - (ii) if the director is not available to consider the offers—that the director is not so available and the reasons for being not so available; or
 - (iii) in any other case—that the director does not desire to make, or does not consider himself or herself justified in making, a recommendation and the reasons for not so desiring or for so considering; or
- (b) if the target company is being wound up, is under administration, or has executed a deed of company arrangement that has not yet terminated—in relation to each liquidator, each administrator of the company, or each administrator of the deed, as the case may be:
 - (i) if he or she wants to make, and thinks himself or herself justified in making, a recommendation in relation to the offers—whether he or she recommends the acceptance of offers under the takeover announcement or recommends against acceptance, and why he or she so recommends; or

The Corporations Law—Section 2

- (ii) otherwise—that he or she does not want to make, or does not think himself or herself justified in making, a recommendation, and why not.

2 Directors' entitlement in target

The statement shall set out the number, description and amount of marketable securities of the target company to which each director of the company is entitled or, in the case of a director who is not entitled to any, that fact.

3 Whether directors intend to accept offers

The statement shall set out in respect of each director of the target company by whom, or on whose behalf, shares in the target company are held:

- (a) whether the director intends to accept any offer that has been made in respect of those shares; or
- (b) that the director has not decided whether to accept such an offer.

4 Directors who did not approve Part D statement

The statement shall set out the name of any director of the target company who voted against the relevant resolution authorising the Part D statement and, if the director so requires, a statement by that director setting out the reasons for so voting.

5 Directors' entitlement in offeror

Where the offeror is or includes a body corporate or bodies corporate, the statement shall set out whether any director of the target company is entitled to any marketable securities of that body corporate or of any of those bodies corporate and, if so, the number, description and amount of those marketable securities.

6 Transactions in offeror by target or associates during previous 4 months

Where the offeror is or includes a body corporate or bodies corporate, the statement shall set out particulars of all acquisitions or disposals of shares in that body corporate or any of those bodies corporate by the target company, or any associate of the target company, in the 4 months ending on the day immediately before the day of the takeover announcement, including particulars of the price per share in relation to each acquisition or disposal.

7 Transactions in target by associates during previous 4 months

The statement shall set out particulars of all acquisitions or disposals of shares in the target company by any associate of the target company in the 4 months ending on the day immediately before the day of the takeover announcement, including particulars of the price per share in relation to each acquisition or disposal.

8 Proposed benefits to officers of target etc.

Where:

- (a) a prescribed benefit (other than an excluded benefit) will or may be given to a person in connection with the retirement of a person from a prescribed office in relation to the target company; or
- (b) a prescribed benefit will or may be given to a prescribed person in relation to the target company in connection with the transfer of the whole or any part of the undertaking or property of the target company;

the statement shall set out particulars with respect to the prescribed benefit, including:

- (c) in the case of a prescribed benefit that is a payment—the amount of the payment; or
- (d) in any other case—the money value of the prescribed benefit.

The Corporations Law—Section 9

9 Other agreements by directors of target

Where there is any other agreement made between any director of the target company and any other person in connection with or conditional upon the outcome of the offers under the takeover announcement, the statement shall set out particulars of any such agreement.

10 Interest of director of target in contract with offeror

The statement shall set out whether any director of the target company has an interest in any contract entered into by the offeror and, if so, particulars of the nature and extent of each such interest.

11 Changes in target's financial position

The statement shall set out whether, so far as is known to:

- (a) in the case of a Part D statement that is signed as mentioned in paragraph 683(2)(a)—any of the directors of the target company; or
- (b) in the case of a Part D statement that is signed as mentioned in paragraph 683(2)(b)—the liquidator or official manager, as the case may be;

the financial position of the target company has materially changed since the date of the last balance-sheet of the company, being a balance-sheet that has been laid before the AGM of the company under section 317 or sent to members under section 314 or a corresponding previous law, and, if so, full particulars of any such change or changes.

12 Other material information

The statement shall set out any other information material to the making of a decision by an offeree whether or not to accept an offer made under the takeover announcement, being information that is known to:

The Corporations Law—Section 12

- (a) in the case of a Part D statement that is signed as mentioned in paragraph 683(2)(a)—any of the directors of the target company; or
 - (b) in the case of a Part D statement that is signed as mentioned in paragraph 683(2)(b) or (c)—any liquidator or administrator of the company, or any administrator of the deed of company arrangement, as the case may be;
- and has not previously been disclosed to the holders of shares in the target company.

Part 6.13—Transitional

751 Application

This Part has effect despite anything in Parts 6.1 to 6.12, inclusive.

753 Acquisitions pursuant to Part A statements served before commencement of Chapter

If, before the commencement of this Chapter, a statement in relation to offers to acquire shares in a company, being a statement that constituted a Part A statement for the purposes of a previous law of this jurisdiction corresponding to this Chapter, was served in accordance with that law on the company, this Chapter does not apply in relation to:

- (a) an acquisition of shares in the company as a result of the acceptance of an offer dispatched pursuant to the statement;
- (b) any other acquisition of shares in the company that, because of the service of the statement or the dispatching of offers pursuant to the statement, would not, if this Law had not been enacted, contravene that law; or
- (c) any other act, matter or thing relating to, consequential upon, or otherwise connected with, an acquisition referred to in paragraph (a) or (b).

754 Acquisitions pursuant to takeover announcements made before commencement of Chapter

If, before the commencement of this Chapter, an announcement containing offers to acquire shares in a company, being an announcement that constituted a takeover announcement for the purposes of a previous law of this jurisdiction corresponding to this Chapter, was made in accordance with that law, this Chapter does not apply in relation to:

The Corporations Law—Section 756

- (a) an acquisition of shares in the company as a result of the acceptance of an offer made by the announcement;
- (b) any other acquisition of shares in the company that, because of the making of the announcement, would not, if this Law had not been enacted, contravene that law; or
- (c) any other act, matter or thing relating to, consequential upon, or otherwise connected with, an acquisition referred to in paragraph (a) or (b).

756 Acts of NCSC deemed to be acts of Commission

- (1) Where:
 - (a) the NCSC, or a delegate of the NCSC, has, before the commencement of this Chapter, done, in relation to a particular matter, any act under a previous law of this jurisdiction that corresponds to a provision of this Chapter; and
 - (b) this Chapter applies in relation to that matter;that act has effect, for the purposes of the application of this Chapter in relation to that matter, as if it had been done by the Commission under that provision of this Chapter.
- (2) Without limiting the generality of subsection (1), a reference in that subsection to an act having been done includes a reference to a certificate having been issued, a direction, consent, approval, permission or exemption having been given, a condition having been specified, an extension of time having been granted or a declaration having been made.

757 Acts done before commencement of Chapter

In this Chapter, unless the contrary intention appears, a reference (other than a reference to the service or receipt of a Part A statement or to the making of a takeover announcement) to an act or thing having been done or to an event having occurred includes a reference to such an act or thing having been done or to such an

The Corporations Law—Section 758

event having occurred, as the case may be, before the commencement of this Chapter.

758 Notices of substantial shareholdings

Where:

- (a) a person would, but for this section, be required to give a notice to a company in accordance with section 709; and
 - (b) the person was, immediately before the commencement of this Chapter, a substantial shareholder in the company for the purposes of a previous law of this jurisdiction corresponding to Part 6.7 and had complied with the requirements of that law in relation to the person's shareholding in that company;
- the person is not required to give a notice under section 709 to the company.

759 Information as to beneficial ownership of shares

Part 6.8 does not affect the continued operation of any previous law of this jurisdiction corresponding to that Part in respect of any act, matter or thing that occurred before the commencement of this Chapter.

Chapter 7—Securities

Part 7.1—Interpretation

760 Effect of this Part

The provisions of this Part have effect for the purposes of this Chapter, except so far as the contrary intention appears in this Chapter.

761 Definitions

Unless the contrary intention appears:

authority, in relation to a government, includes an instrumentality or agency;

business rules, in relation to a body corporate, means:

- (a) in the case of a body corporate that conducts, or proposes to conduct, a stock market—any rules, regulations or by-laws that are made by the body corporate, or that are contained in its constitution, and that govern:
 - (i) the activities or conduct of that stock market; or
 - (ii) the activities or conduct of persons in relation to that stock market;other than rules, regulations or by-laws that are listing rules of the body corporate; and
- (b) otherwise—the provisions of the constitution of the body corporate and any other rules, regulations or by-laws made by the body corporate;

comply with, in relation to the business rules or listing rules of a securities exchange, includes give effect to those rules;

eligible exchange means:

The Corporations Law—Section 761

- (a) the Exchange; or
- (b) a securities exchange that is neither the Exchange nor an Exchange subsidiary;

listing rules, in relation to a body corporate that conducts, or proposes to conduct, a stock market, means rules, regulations or by-laws governing or relating to:

- (a) the admission to, or removal from, the official list of the body corporate of bodies corporate, governments, unincorporate bodies or other persons for the purpose of the quotation on the stock market of the body corporate of securities of bodies corporate, governments, unincorporate bodies or other persons and for other purposes; or
- (b) the activities or conduct of bodies corporate, governments, unincorporate bodies and other persons who are admitted to that list;

whether those rules, regulations or by-laws:

- (c) are made by the body corporate or are contained in the constitution of the body corporate; or
- (d) are made by another person and adopted by the body corporate;

marketable parcel, in relation to securities that are listed for quotation on the stock market of a securities exchange, means a marketable parcel of those securities within the meaning of the relevant business rules or listing rules of that securities exchange;

odd lot has the meaning given by section 763;

participating exchange means an eligible exchange that is a member of SEGC;

shares, in relation to a body corporate, includes units in shares in the body;

trading day, in relation to a stock exchange, means:

- (a) in the case of the Exchange—a day on which a stock market of an Exchange subsidiary; or

The Corporations Law—Section 762

(b) in any case—a day on which a stock market of the stock exchange;
is open for trading in securities;

trust account, in relation to a person, means, in the case of a person who holds, or has at any time held, a dealers licence, an account that a condition existing by virtue of section 866 provides or provided for the person to maintain.

762 Conduct

- (1) A reference to engaging in conduct is a reference to doing or refusing to do any act, including the making of, or the giving effect to a provision of, an agreement.
- (2) A reference to conduct, when that expression is used as a noun otherwise than as mentioned in subsection (1), is a reference to the doing of, or the refusing to do, any act, including the making of, or the giving effect to a provision of, an agreement.
- (3) Where, in a proceeding under this Chapter in respect of conduct engaged in by a body corporate, it is necessary to establish the state of mind of the body, it is sufficient to show that a director, servant or agent of the body, 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.
- (4) Conduct engaged in on behalf of a body corporate:
 - (a) by a director, servant or agent of the body 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, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent;shall be deemed to have been engaged in also by the body corporate.

The Corporations Law—Section 763

- (5) Where, in a proceeding under this Chapter in respect of conduct engaged in by a person other than a body corporate, 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.
- (6) Conduct engaged in on behalf of a person 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 first-mentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the servant or agent;shall be deemed to have been engaged in also by the first-mentioned person.
- (7) 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.

763 Odd lot

- (1) A parcel of securities constitutes an odd lot if the number of securities in that parcel is less than one marketable parcel of those securities.
- (2) When the number of securities in a parcel of securities is greater than one marketable parcel of those securities and, after excluding so many of the securities in that parcel as constitute a marketable parcel or marketable parcels of those securities, a number of securities remains, that remaining number of securities constitutes an odd lot.

The Corporations Law—Section 764

764 References to doing acts

In this Chapter, unless the contrary intention appears, a reference to doing any act or thing includes a reference to causing, permitting or authorising the act or thing to be done.

765 Misleading representation

- (1) When a person makes a representation with respect to any future matter (including the doing of, or the refusing to do, any act) and the person does not have reasonable grounds for making the representation, the representation shall be taken to be misleading.
- (2) For the purposes of the application of subsection (1) in relation to a proceeding concerning a representation made by a person with respect to any future matter, the person shall, unless the person adduces evidence to the contrary, be deemed not to have had reasonable grounds for making the representation.
- (3) Subsection (1) shall be deemed not to limit by implication the meaning of a reference to a misleading representation, a representation that is misleading in a material particular or conduct that is misleading or is likely or liable to mislead.

766 Trading in securities

A reference to a securities exchange permitting trading in securities on a stock market of the securities exchange includes a reference to the securities exchange listing the securities for quotation, or otherwise permitting the securities to be quoted, on a stock market of the securities exchange.

Part 7.1A—The Australian Stock Exchange Limited

Division 1—Change of company type

766A Exchange may change its type under this Division

Under this Division, the Exchange may change its type to a public company limited by shares.

Note: A change of type under this Division will override subsection 36B(2) of the *Securities Industry Act 1980*, so far as that subsection deems the Exchange to be a company limited by guarantee.

766B Applying for change of type

Lodging application

- (1) To change its type, the Exchange must lodge an application with the Commission under the Corporations Law of the Capital Territory.

Contents of the application

- (2) The application must be accompanied by the following:
 - (a) a copy of the 18 October 1996 special resolutions dealing with the change of type;
 - (b) a statement signed by the directors of the Exchange that in their opinion the Exchange's creditors are not likely to be materially prejudiced by the change of type and that sets out their reasons for that opinion;
 - (c) the following information:
 - (i) the total number of shares to be issued upon the change of type;
 - (ii) the amount of capital to be applied in paying up each share;

The Corporations Law—Section 766C

- (iii) the amount per share remaining unpaid;
 - (d) a copy of proposed amendments of the constitution, business rules and listing rules of the Exchange;
 - (e) a copy of the Minister's written approval of the proposed amendments.
- (3) The following provisions do not apply to the proposed amendments referred to in paragraph (2)(d):
- (a) section 774;
 - (b) any requirement in the constitution, business rules or listing rules of the Exchange that would normally apply to the making of amendments of the constitution, business rules or listing rules.

766C Change of type

- (1) As soon as practicable after it receives an application in accordance with section 766B, the Commission must publish a notice in the *Gazette*, notifying a date as the date on which the change of type will take effect.
- (2) The change of type takes effect at the beginning of the day notified in the *Gazette*.
- (3) The Commission must appropriately alter the details of the Exchange's registration and give the Exchange a new certificate of registration.
- (4) A court is not to make an order reversing the alteration of the details of the Exchange's registration made by the Commission under subsection (3).

766D Effect of change of type

- (1) The change of type does not:
 - (a) create a new legal entity; or
 - (b) affect the Exchange's existing property, rights or obligations (except as provided by subsection (2)); or

The Corporations Law—Section 766D

- (c) render defective any legal proceedings.
- (2) On the change of type, the following things happen:
- (a) the liability of each member and past member as a guarantor on the winding up of the Exchange is extinguished;
 - (b) the members cease to be members of the Exchange;
 - (c) shares are taken to be issued equally among all persons who satisfy the criteria set out in Articles 83 and 84 of the Exchange that were added by the 18 October 1996 special resolutions dealing with the change of type, and each of those persons becomes a member of the Exchange and is taken to have consented to be a member of the Exchange;
- Note: The Exchange must maintain a register of members that complies with subsection 169(3).
- (d) the proposed amendments of the constitution, business rules and listing rules of the Exchange take effect.
- (3) If shares are issued according to this section, a court is not to make an order reversing the issue of the shares.
- (4) This Division does not, by implication:
- (a) prevent the Exchange from changing its constitution, business rules or listing rules in accordance with this Law; or
 - (b) prevent the Exchange from later changing its type in accordance with this Law; or
 - (c) prevent the Exchange from being registered as a company under the Corporations Law of another jurisdiction, and ceasing to be incorporated under the Corporations Law of this jurisdiction, as provided by sections 147 and 147A.

Division 2—Limitations on holding shares in the Exchange

766E Unacceptable ownership situation

- (1) For the purposes of this Division, an unacceptable ownership situation exists if any one person is entitled to more than 5% of the voting shares in the Exchange.
- (2) For the purposes of this Division, a person's entitlement to voting shares in the Exchange is determined in the same way as a person's percentage entitlement to voting shares in a company is determined for the purposes of Part 6.2.

766F Causing an unacceptable ownership situation

A person or persons (the *acquirers*) are guilty of an offence if:

- (a) the acquirers acquire any shares in the Exchange, or enter into a relevant agreement to acquire shares in the Exchange; and
- (b) the acquisition has the result that:
 - (i) a person who was not previously entitled to more than 5% of the voting shares in the Exchange becomes entitled to more than 5% of the voting shares in the Exchange; or
 - (ii) a person who was previously entitled to more than 5% of the voting shares in the Exchange becomes entitled to a greater percentage of the voting shares in the Exchange; and
- (c) the acquirers knew the acquisition would have that result, or were reckless as to whether the acquisition would have that result.

The Corporations Law—Section 766G

766G Exchange's obligation to avoid unacceptable ownership situation

- (1) The Exchange must take all reasonable steps to ensure that an unacceptable ownership situation does not exist in relation to the Exchange.
- (2) If the Exchange knowingly or recklessly contravenes subsection (1), the Exchange is guilty of an offence.

766H Remedial orders

- (1) If an unacceptable ownership situation exists in relation to the Exchange, the Court may, on application by an eligible applicant, make such orders as the Court considers appropriate for the purpose of ensuring that the unacceptable ownership situation ceases to exist. For this purpose, *eligible applicant* means:
 - (a) the Minister; or
 - (b) the Commission; or
 - (c) the Exchange; or
 - (d) a shareholder of the Exchange.
- (2) The Court's orders may include:
 - (a) an order directing the disposal of shares; or
 - (b) an order restraining the exercise of any rights attached to shares; or
 - (c) an order prohibiting or deferring the payment of any sums due to a person in respect of shares held by the person; or
 - (d) an order that any exercise of rights attached to shares be disregarded; or
 - (e) an order directing any person to do or refrain from doing a specified act, for the purpose of securing compliance with any other order made under this section; or
 - (f) an order containing such ancillary or consequential provisions as the Court thinks just.
- (3) Subsection (2) does not, by implication, limit subsection (1).

The Corporations Law—Section 766I

- (4) Before making an order under this section, the Court may direct that notice of the application be given to such persons as the Court thinks fit or be published in such manner as the Court thinks fit, or both.
- (5) The Court may, by order:
 - (a) rescind, vary or discharge an order made by the Court under this section; or
 - (b) suspend the operation of such an order.

766I This Division extends to things outside Australia etc.

This Division applies, according to its tenor, in relation to:

- (a) natural persons, whether resident in this jurisdiction or in Australia or not and whether Australian citizens or not; and
- (b) all bodies corporate and unincorporated bodies, whether formed or carrying on business in this jurisdiction or in Australia or not; and
- (c) acts and omissions outside this jurisdiction, whether in Australia or not.

Part 7.2—Securities exchange and stock markets

767 Conducting unauthorised stock markets

A person must not:

- (a) establish or conduct; or
- (b) assist in establishing or conducting; or
- (c) hold out that the person conducts;
an unauthorised stock market.

769 Approval of stock exchange

- (1) A body corporate may apply to the Commission in writing for approval by the Minister as a stock exchange.
- (2) Subject to section 102A, the Minister may by writing approve the body as a stock exchange if, and only if, he or she is satisfied that:
 - (b) the body's business rules make satisfactory provision:
 - (i) for the standards of training and experience, and other qualifications, for membership;
 - (ii) for the exclusion from membership of:
 - (A) any person who is not of good character and high business integrity; and
 - (B) any body corporate where a director of the body corporate, a person concerned in the management of the body corporate or a person who has control, or substantial control, of the body corporate is not of good character and high integrity;
 - (iii) for the expulsion, suspension or disciplining of a member for conduct inconsistent with just and equitable principles in the transaction of business or for a contravention of the body's business rules, of this

The Corporations Law—Section 769

- Chapter or of the conditions of a licence held by the member;
- (iv) for the monitoring of compliance with, and for enforcement of, the body's business rules;
 - (v) with respect to the conditions under which securities may be listed for trading on the stock market of the proposed stock exchange;
 - (vi) with respect to the conditions governing dealings in securities by members;
 - (vii) with respect to the class or classes of securities that may be dealt with by members; and
 - (viii) generally for the carrying on of the business of the proposed stock exchange with due regard to the interests of the public;
- (c) the body has made or adopted listing rules and, where the listing rules are adopted, has made provision to the effect that an amendment to the rules so adopted made by another person is of no effect until the body adopts the amendment;
- (d) the listing rules made or adopted by the body make satisfactory provision:
- (i) with respect to conditions under which securities may be traded on the stock market of the proposed stock exchange; and
 - (ii) generally for the protection of the interests of the public;
- (e) either the body will be a participating exchange or there will be enough money in the body's fidelity fund to make the payments out of the fund that may reasonably be expected to be necessary for the purposes of Part 7.9; and
- (f) the interests of the public will be served by the granting of its approval.
- (3) An approval by the Ministerial Council, under a previous law corresponding to subsection (2), of a body corporate as a stock exchange that was in force immediately before the commencement of this Part has effect as if it were an approval by the Minister under that subsection.

The Corporations Law—Section 769A

769A Ongoing requirements to be observed by securities exchange

- (1) A securities exchange must:
 - (a) to the extent reasonably practicable, do all things that are necessary to ensure that each stock market of the exchange is an orderly and fair market; and
 - (b) have adequate arrangements for monitoring and enforcing compliance with its business rules and listing rules; and
 - (c) have adequate arrangements for the expulsion, suspension or disciplining of a member for conduct inconsistent with just and equitable principles in the transaction of business or for a contravention of:
 - (i) the exchange's business rules; or
 - (ii) this Chapter; or
 - (iii) the conditions of a licence held by the member; and
 - (d) have adequate arrangements for the settlement of transactions that result from trading in securities on a stock market of the exchange; and
 - (e) have adequate arrangements for investigating complaints by investors relating to the transaction of the business of investors on a stock market of the exchange.
- (2) A contravention of subsection (1) is not an offence.

769B Minister's directions to comply with ongoing requirements

- (1) If the Minister is of the opinion that a securities exchange is not complying with the requirements of section 769A, the Minister may publish a notice in the *Gazette*, directing the exchange to do specified things that the Minister believes will promote compliance by the exchange with those requirements.
- (2) A securities exchange must comply with a direction under subsection (1).
- (3) If a securities exchange contravenes a direction under subsection (1), the Court, on application by the Commission, may order the exchange to comply with the direction.

The Corporations Law—Section 769C

769C Annual report by securities exchange about compliance with ongoing requirements

- (1) Within 3 months after the end of each of its financial years, a securities exchange must prepare and give the Commission a report on the extent to which the exchange complied with the requirements of section 769A during the financial year. The Commission must give the report to the Minister.
- (2) The report must be accompanied by:
 - (a) any other information and statements prescribed by the regulations; and
 - (b) any audit report required by the Minister under subsection (3).
- (3) The Minister may require a securities exchange to obtain an audit report on the annual report and on any information or statements required under paragraph (2)(a). The audit report must be prepared, as the Minister requires, either by the Commission or by some other person or body nominated by the Minister.

769D Special report by securities exchange about compliance with ongoing requirements

- (1) The Minister may, at any time, require a securities exchange to prepare and give the Commission a special report on the extent to which the exchange is complying with the requirements of section 769A. The Commission must give the report to the Minister.
- (2) The special report must be accompanied by any audit report required by the Minister under subsection (3).
- (3) The Minister may require a securities exchange to obtain an audit report on the special report. The audit report must be prepared, as the Minister requires, either by the Commission or by some other person or body nominated by the Minister.

The Corporations Law—Section 770

- (4) A securities exchange must give the reports to the Commission, within the time required by the Minister.

770 Approval of approved securities organisation

- (1) A body corporate may apply to the Commission in writing for approval by the Minister as an approved securities organisation.
- (2) Subject to section 102A, the Minister may by writing approve the body as an approved securities organisation if, and only if, he or she is satisfied that:
- (b) the body's business rules make satisfactory provision:
 - (i) for efficient, honest, fair, competitive and informed trading in securities on the stock market or stock markets of the proposed approved securities organisation;
 - (ii) for the expulsion, suspension or disciplining of a member for conduct inconsistent with just and equitable principles in the transaction of business or for a contravention of the body's business rules, of this Chapter or of the conditions of a licence held by the member;
 - (iii) for the monitoring of compliance with, and for enforcement of, the body's business rules; and
 - (iv) generally for the carrying on of the business of the organisation with due regard to the interests of the public;

and, without limiting the generality of the foregoing, make satisfactory provision in relation to such of the following matters as appear to the Minister to be relevant in relation to the application:

- (v) the admission of members;
- (vi) dealings in securities by members;
- (vii) the listing of securities for trading on the stock market or stock markets of the organisation;
- (viii) trading in securities on that stock market or those stock markets;

The Corporations Law—Section 770A

- (ix) the clearing and settlement of dealings in securities that result from trading in securities on that stock market or those stock markets;
 - (x) the quotation of securities on, and the reporting of trading in securities on, that stock market or those stock markets;
 - (c) the body has made or adopted listing rules and, where the listing rules are adopted, has made provision to the effect that an amendment of the rules so adopted made by another person is of no effect until the body adopts the amendment;
 - (d) the listing rules made or adopted by the body make satisfactory provision:
 - (i) with respect to conditions under which securities may be traded on the stock market or stock markets of the organisation; and
 - (ii) generally for the protection of the interests of the public;
 - (e) either the body will be a participating exchange or there will be enough money in the body's fidelity fund to make the payments out of the fund that may reasonably be expected to be necessary for the purposes of Part 7.9; and
 - (f) the interests of the public will be served by the granting of its approval.
- (3) An approval by the Ministerial Council, under a previous law corresponding to subsection (2), of a body corporate as an approved securities organisation that was in force immediately before the commencement of this Part has effect as if it were an approval by the Minister under that subsection.

770A Approval of special stock markets for unquoted prescribed interests

- (1) The responsible entity in relation to unquoted interests in a registered scheme may apply to the Commission in writing for approval by the Minister of a stock market on which the interests (whether or not they remain unquoted) may be traded by means of an electronic trading facility.

The Corporations Law—Section 770A

- (2) Subject to section 102A, the Minister may, by writing, approve the stock market if, and only if, the Minister is satisfied that:
- (a) the responsible entity's business rules make satisfactory provision for the fair and orderly conduct of the stock market; and
 - (b) those business rules make satisfactory provision for a person or partnership (the *supervisor*) who or that, having regard to the regulations, is independent and appropriately qualified, to monitor compliance, in relation to the stock market, with the business rules; and
 - (c) the responsible entity has made or will make, and will maintain, satisfactory arrangements (including, for example, insurance) for meeting liabilities of the responsible entity that arise in the course of conducting the stock market; and
 - (d) the stock market will not be used except for trading the interests in the scheme (whether or not they remain unquoted) by means of the electronic trading facility.
- (3) The approval is subject to:
- (a) the conditions (if any) specified in the instrument of approval; and
 - (b) a condition that the responsible entity will comply with the requirements (if any) of the regulations for the lodging of documents containing information relating to the interests in the scheme; and
 - (c) a condition that the supervisor must, if the supervisor becomes aware of a contravention of the responsible entity's business rules, notify the Commission of the contravention within 7 days of becoming aware of it; and
 - (d) a condition that the supervisor must properly perform the duties that the supervisor has under the responsible entity's business rules.
- (4) The Minister may, by writing, revoke the approval if:
- (a) the Minister is no longer satisfied as mentioned in subsection (2); or

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- (b) the Minister is satisfied that a condition mentioned in subsection (3) has been contravened; or
 - (c) the Minister is otherwise satisfied that the approval should be revoked.
- (5) In this section:

unquoted, in relation to interests in a registered scheme, means the interests are not included in any class of securities that are quoted on a stock market of a securities exchange.

770B Section 770A stock markets—separate markets exist in relation to different kinds of prescribed interests

- (1) For the purposes of subsections 770A(1) and (2), separate stock markets exist in relation to different kinds of interests in a registered scheme even though:
- (a) the stock markets are conducted by the same body corporate; and
 - (b) the same business rules of the body corporate apply to the conduct of the stock markets.
- (2) For the purposes of subsection (1):
- (a) unless paragraph (b) applies, the interests in a registered scheme constitute a kind of interest in the scheme; and
 - (b) if a particular scheme relates to a number of different undertakings in relation to interests—the interests in the scheme are taken to be divided into a number of kinds, with each kind consisting of the interests to which a particular one of those undertakings relates.

770C Section 770A stock markets—regulations may make additional provision

The regulations may make provision, in relation to section 770A stock markets, for matters of a kind dealt with in sections 774 to 779 (inclusive) and section 1114.

The Corporations Law—Section 771

771 Exempt stock market

- (1) The Minister may by writing declare a specified stock market to be, subject to any specified conditions, an exempt stock market.
- (2) Without limiting the matters to which the Minister may have regard in considering whether or not to vary or revoke a declaration in force under subsection (1), he or she may, in so considering, have regard to a breach of a condition specified in the declaration.
- (3) A declaration by the Ministerial Council, under a previous law corresponding to subsection (1), of a stock market as an exempt stock market that was in force immediately before the commencement of this Part has effect as if it were a declaration by the Minister under that subsection.

772 Publication of instruments executed under section 769, 770 or 771

The Commission shall cause a copy of an instrument executed under subsection 769(2), 770(2), 770A(2) or 771(1) to be published in the *Gazette*.

772A Business rules bind securities exchange and its members

The business rules of a securities exchange have effect, by force of this section, as a contract under seal:

- (a) between the exchange and each member; and
- (b) between a member and each other member;

under which each of those persons agrees to observe and perform the provisions of the business rules as in force for the time being, so far as those provisions are applicable to that person.

772B Self-listing by securities exchanges

Self-listing allowed

- (1) A body corporate that is a securities exchange may be included in its own official list.

Quotation of securities of securities exchange on its own stock market

- (2) Securities of a securities exchange may be granted quotation on a stock market of the exchange if the exchange has entered into such arrangements as the Commission requires:
- (a) for dealing with possible conflicts of interest that might arise from the quotation of securities of the exchange on a stock market of the exchange; and
 - (b) for the purpose of ensuring the integrity of trading in securities of the exchange.

The exchange must comply with the arrangements.

- (3) An arrangement under subsection (2) may provide for the exchange to pay fees to the Commission (on behalf of the Commonwealth) for services provided by the Commission under the arrangement, or otherwise provided under, or for the purposes of, this section. The fees may be recovered by the Commission as a debt due to the Commonwealth.
- (4) The listing rules of a self-listing exchange must provide for the Commission, instead of the exchange, to make decisions and to take action (or require the exchange to take action on the Commission's behalf) on the following matters:
- (a) the admission of the exchange to its own official list;
 - (b) the removal of the exchange from its own official list;
 - (c) granting, stopping or suspending the quotation of securities of the exchange on a stock market of the exchange.

The Corporations Law—Section 772B

Powers and functions of Commission

- (5) The Commission has such powers and functions as are provided for it in arrangements made for the purposes of subsection (2) or in listing rules made for the purposes of subsection (4).

Note: Under section 776, the Commission may require a securities exchange to provide assistance to the Commission for the performance of the Commission's functions.

Exemptions and modifications for self-listing exchanges

- (6) The Commission may:
- (a) exempt a self-listing exchange from a modifiable provision; or
 - (b) declare that a modifiable provision applies to a self-listing exchange as if specified provisions were omitted, modified or varied as specified in the declaration.
- (7) An exemption or declaration under subsection (6) must be in writing and the Commission must publish notice of it in the *Gazette*.
- (8) An exemption under subsection (6) may apply unconditionally or subject to specified conditions.
- (9) If a self-listing exchange is subject to conditions under subsection (8), it must comply with those conditions.
- (10) The Court, on application by the Commission, may order a self-listing exchange to comply with a condition in a specified way.

Definitions

- (11) In this section:
- modifiable provision*** means:
- (a) section 235 and any of the provisions of Chapters 6 and 7; or
 - (b) regulations made for the purposes of any provision covered by paragraph (a).

The Corporations Law—Section 773

self-listing exchange means a securities exchange whose securities have been granted quotation on a stock market of the exchange.

773 Auction, by licensed auctioneer, of forfeited shares

For the purposes of this Part, a holder of a licence under an Australian law relating to the licensing of auctioneers does not conduct a stock market merely by conducting, on a stock market of a securities exchange, an auction of forfeited shares.

774 Commission to be notified of amendments to rules

- (1) As soon as practicable after:
 - (a) an amendment is made, by way of rescission, alteration or addition, to the business rules of a securities exchange; or
 - (b) a securities exchange makes or adopts an amendment, by way of rescission, alteration or addition, to its listing rules;the securities exchange shall lodge written notice of the amendment.
- (2) The notice shall:
 - (a) set out the text of the amendment;
 - (b) specify the date on which the amendment was made or adopted; and
 - (c) contain an explanation of the purpose of the amendment.
- (3) If no notice is lodged under subsection (1) within 21 days after the amendment is made or adopted, the amendment ceases to have effect.
- (4) As soon as practicable after receiving a notice, the Commission shall send a copy to the Minister.
- (5) Within 28 days after the receipt of a notice by the Commission under subsection (4), the Minister may disallow the whole or a specified part of the amendment to which the notice relates.

The Corporations Law—Section 775

- (6) As soon as practicable after the whole or a part of an amendment is disallowed under subsection (5), the Commission shall give notice of the disallowance to the securities exchange and, upon receipt by the securities exchange of the notice, the amendment, to the extent of the disallowance, ceases to have effect.
- (7) If:
- (a) a notice was duly given by a securities exchange to the NCSC before the commencement of this Part under a previous law corresponding to this section;
 - (b) a period of 28 days after the receipt of the notice by the NCSC had not elapsed before that commencement; and
 - (c) the Ministerial Council had not before that commencement disallowed the whole or a part of the amendment to which the notice related;
- this section (other than paragraph (2)(b)) applies as if the amendment had been made or adopted, as the case may be on the date of commencement of this Part.

775 Power of Commission to prohibit trading in particular securities

- (1A) A reference in this section to trading in securities on a stock market is a reference to trading in securities on a stock market, whether in this jurisdiction or elsewhere.
- (1) Where the Commission forms the opinion that it is necessary to prohibit trading in particular securities of a body corporate on a stock market of a securities exchange in order to protect persons buying or selling the securities or in the interests of the public, the Commission may give written notice to the securities exchange stating that it has formed that opinion and setting out the reasons for that opinion.
- (2) If, after receiving the notice, the securities exchange does not take action to prevent trading in the securities on a stock market of the securities exchange and the Commission is still of the opinion that it is necessary to prohibit trading in the securities on such a stock market, the Commission may, by written notice to the securities

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exchange, prohibit trading in the securities on such a stock market during a period of not more than 21 days.

- (3) Where the Commission gives a notice to a securities exchange under subsection (2), the Commission shall:
 - (a) at the same time send a copy of the notice to the body corporate together with a statement setting out the reasons for the giving of the notice; and
 - (b) as soon as practicable give to the Minister a written report setting out the reasons for the giving of the notice and send a copy of the report to the securities exchange.
- (4) The body corporate may request the Commission in writing to refer the matter to the Minister.
- (5) Where a request is made under subsection (4), the Commission shall immediately refer the matter to the Minister, who may, if he or she thinks fit, direct the Commission to revoke the notice and, if such a direction is given, the Commission shall immediately revoke the notice.
- (6) A securities exchange shall not permit trading in securities on a stock market of the securities exchange in contravention of a notice under subsection (2).
- (7) Where a notice duly given to a securities exchange by the NCSC under a previous law corresponding to subsection (2) was in force immediately before the commencement of this Part and the period for which trading in the securities to which the notice relates on the stock market specified in the notice was prohibited by the notice had not ended before that commencement:
 - (a) the notice shall be deemed to be a notice duly given to that securities exchange on that commencement by the Commission under that subsection and prohibiting trading in those securities on that stock market for the unexpired portion of that period;
 - (b) a copy of the notice and a statement sent to the corporation before that commencement under a previous law

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- corresponding to paragraph (3)(a) shall be deemed to have been duly sent by the Commission under that paragraph;
- (c) a written report given to the Ministerial Council before that commencement under a previous law corresponding to paragraph (3)(b) shall be deemed to have been duly given by the Commission under that paragraph to the Minister and a copy of that report sent to the securities exchange under that corresponding previous law shall be deemed to have been sent by the Commission under that paragraph;
 - (d) any request made by the corporation before that commencement under a previous law corresponding to subsection (4) to refer the matter to the Ministerial Council shall be deemed to have been a request duly made under that subsection to refer the matter to the Minister; and
 - (e) if the matter had been referred by the NCSC to the Ministerial Council before that commencement under a previous law corresponding to subsection (5) the matter shall be deemed to have been referred by the Commission to the Minister under that subsection.

776 Securities exchanges to provide assistance to Commission

- (1) A securities exchange shall provide such assistance to the Commission, or to a person acting on behalf of, or with the authority of, the Commission, as the Commission reasonably requires for the performance of its functions.
- (2) Where a securities exchange reprimands, fines, suspends, expels or otherwise takes disciplinary action against a member of the securities exchange, it shall as soon as practicable lodge written particulars of the name of the member, the reason for and nature of the action taken, the amount of the fine (if any) and the period of the suspension (if any).
- (2A) A securities exchange that believes a person has committed, is committing or is about to commit, a serious contravention of the securities exchange's business rules or listing rules, or the

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Corporations Law of this or any other jurisdiction, must, as soon as practicable, lodge a statement setting out:

- (a) particulars of the contravention that it believes the person has committed, is committing or is about to commit; and
 - (b) its reasons for that belief.
- (2B) Subject to subsection (2C), a securities exchange that makes information about a listed disclosing entity available to a stock market conducted by the securities exchange must, as soon as practicable, give the Commission a document that contains the information.
- (2C) The regulations may provide that subsection (2B) does not apply to information of a specified kind.
- (3) A person authorised by the Commission is entitled at all reasonable times to full and free access for any of the purposes of this Chapter to the trading floor or trading floors of a securities exchange.
- (4) A person shall not refuse or fail, without lawful excuse, to allow a person authorised by the Commission access in accordance with subsection (3) to a trading floor of a securities exchange.
- (5) In this section:

trading floor, in relation to a securities exchange, means a place or facility maintained or provided by the securities exchange for:

- (a) the making or acceptance, by members of the securities exchange, or by such members and other persons, of offers to sell, buy or exchange securities;
- (b) the making, by members of the securities exchange, or by such members and other persons, of offers or invitations that are intended, or may reasonably be expected, to result, whether directly or indirectly, in the making or acceptance of offers to sell, buy or exchange securities; or
- (c) the provision of information concerning the prices at which, or the consideration for which, particular persons, or particular classes of persons, propose, or may reasonably be expected, to sell, buy or exchange securities.

The Corporations Law—Section 777

777 Power of Court to order compliance with or enforcement of business rules or listing rules of securities exchange

- (1) Where a person who is under an obligation to comply with or enforce the business rules or listing rules of a securities exchange fails to comply with or enforce any of those business rules or listing rules, as the case may be, the Court may, on the application of the Commission, the securities exchange or a person aggrieved by the failure and after giving to the person aggrieved by the failure and the person against whom the order is sought an opportunity of being heard, make an order giving directions concerning compliance with, or enforcement of, those business rules or listing rules to:
 - (a) that last-mentioned person; and
 - (b) if that person is a body corporate—the directors of that body corporate.
- (2) For the purposes of subsection (1), a body corporate that is, with its agreement, consent or acquiescence, included in the official list of a securities exchange, or an associate of such a body corporate, shall be deemed to be under an obligation to comply with the listing rules of that securities exchange to the extent to which those rules purport to apply in relation to the body corporate or associate, as the case may be.
- (3) For the purposes of subsection (1), if a disclosing entity that is an undertaking to which interests in a registered scheme relate is, with the responsible entity's agreement, consent or acquiescence, included in the official list of a securities exchange, the responsible entity, or an associate of the responsible entity, is taken to be under an obligation to comply with the listing rules of that securities exchange to the extent to which those rules apply to the responsible entity or associate.
- (4) For the purposes of subsection (1), if a body corporate fails to comply with or enforce provisions of the business rules or listing rules of a securities exchange, a person who holds securities of the

The Corporations Law—Section 778

body corporate that are quoted on a stock market of the securities exchange is taken to be a person aggrieved by the failure.

- (5) Subsection (4) does not limit the circumstances in which a person may be aggrieved by a failure for the purposes of subsection (1).

778 Gaming and wagering laws not applicable to certain contracts and relevant agreements

- (1) Nothing in a law of this jurisdiction about gaming or wagering prevents the entering into of, or affects the validity or enforceability of, an option contract entered into on:
- (a) a stock market of a securities exchange; or
 - (b) an exempt stock market.
- (2) Nothing in a law of this jurisdiction about gaming or wagering prevents the entering into, or affects the validity or enforceability, of a relevant agreement of a kind prescribed for the purposes of paragraph 92A(1)(b).

779 Qualified privilege

- (1) In this section:

delisting or suspension decision means a decision by a securities exchange:

- (a) whether or not to remove an entity from an official list of the exchange; or
- (b) whether or not to stop or suspend quotation of securities on a stock market of the exchange;

disciplinary proceeding, in relation to a securities exchange, means:

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

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disciplining, in relation to a member of a securities exchange, includes expulsion from, or suspension of, membership of the securities exchange;

information means information given orally, in a document or otherwise;

listed entity, in relation to a securities exchange, means an entity included in an official list of the exchange;

member, in relation to a securities exchange, includes a person who is under an obligation to comply with or enforce the business rules of the securities exchange;

rules, in relation to a securities exchange, means the exchange's business rules or listing rules.

- (2) A securities exchange, or a member, officer or employee of a securities exchange, has qualified privilege in respect of a statement made by a person, orally or in writing, in the course of, or otherwise for the purposes of or in connection with, a disciplinary proceeding of the securities exchange.
- (3) Where:
- (a) an Exchange subsidiary is acting on behalf of the Exchange; or
 - (b) an officer or employee of an Exchange subsidiary is acting on behalf of the Exchange or of a member, officer or employee of the Exchange;
- in connection with a disciplinary proceeding of the Exchange, the Exchange subsidiary and an officer or employee of the Exchange subsidiary have qualified privilege in respect of a statement made by a person, orally or in writing, in the course of, or otherwise for the purposes of or in connection with, the disciplinary proceeding.
- (4) A person has qualified privilege in respect of the publication of:
- (a) a statement made by a person, orally or in writing, in the course of, or otherwise for the purposes of or in connection with; or

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- (b) a document prepared, given or produced by a person, in the course of, or otherwise for the purposes of or in connection with;
a disciplinary proceeding of a securities exchange.
- (5) A securities exchange has qualified privilege in respect of the publication of information, or a document, given to the exchange by a listed entity under a provision of this Law or of the exchange's rules.
- (6) Subsection (5) does not apply if:
 - (a) this Law, or the exchange's rules, as the case may be, expressly or impliedly authorised the entity to limit the purposes for which it gave the information or document to the exchange; and
 - (b) when giving the information or document, the entity limited those purposes as so authorised; and
 - (c) the publication is not solely for one or more of the limited purposes.
- (7) A securities exchange has qualified privilege in respect of the publication of:
 - (a) information about a request by the exchange to a listed entity for information in relation to compliance by the entity with, or a contravention by the entity of, this Law or the exchange's rules; or
 - (b) information, or a document, given to the exchange by a listed entity in response to such a request.
- (8) A securities exchange has qualified privilege in respect of the publication of:
 - (a) an oral or written statement describing a delisting or suspension decision or the reasons for, or action taken because of, such a decision; or
 - (b) an oral or written statement to the effect that the exchange is considering whether to make such a decision; or

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- (c) information given, or a document prepared, given or produced, by a person (whether an officer of the exchange or not) in the course of, for the purposes of, or otherwise in connection with, the exchange making such a decision.
- (9) An officer of a securities exchange has qualified privilege in respect of an act:
 - (a) that is done in the course of performing functions or exercising powers as an officer of the exchange; and
 - (b) in respect of which the exchange would have qualified privilege under subsection (5), (7) or (8) if it had done the act.
- (10) Nothing in this section limits the generality of anything else in it.

Part 7.2A—The securities clearing house

779A Interpretation

In this Part, unless the contrary intention appears:

disciplinary proceeding, in relation to the securities clearing house, means:

- (a) a proceeding under the SCH business rules that may result in the disciplining of an SCH participant; or
- (b) an appeal under the SCH business rules from such a proceeding;

disciplining, in relation to a person in the person's capacity as an SCH participant, includes, but is not limited to, taking action that has the effect of revoking or suspending the person's status as an SCH participant.

779B Approval of securities clearing house

- (1) A body corporate may apply to the Commission in writing for approval by the Minister as the securities clearing house.
- (2) Subject to section 102A, if a body so applies, the Minister may by writing approve the body as the securities clearing house if, and only if, he or she is satisfied that:
 - (a) the body's business rules:
 - (i) include satisfactory provisions about:
 - (A) the facilities that the body proposes to provide for the settlement of transactions involving quoted securities or quoted rights; and
 - (B) the facilities that the body proposes to provide for the registration of transfers (within the meaning of Division 3 of Part 7.13) of quoted securities or quoted rights; and

The Corporations Law—Section 779C

- (C) any other facilities that the body proposes to provide (such as facilities in relation to dealings in quoted securities or quoted rights); and
 - (ii) include satisfactory provisions about the disciplining of persons (being persons who will be SCH participants if the approval is given) who contravene the business rules or this Chapter; and
 - (iii) are otherwise satisfactory; and
 - (b) the interests of the public will be served by granting the application.
- (3) An approval comes into force on the day specified in the instrument giving the approval, being the day on which the approval is given or a later day.
 - (4) In exercising his or her powers under subsection (2), the Minister must ensure that no more than one approval is in force at any particular time.
 - (5) The Commission must cause a copy of an instrument under this section to be published in the *Gazette*.

779C Commission to be notified of amendments of business rules

- (1) As soon as practicable after the SCH business rules are amended (whether by way of rescission, alteration or addition), the securities clearing house must give written notice of the amendment to the Commission.
- (2) A notice must:
 - (a) set out the text of the amendment; and
 - (b) specify the day on which the amendment was made; and
 - (c) explain the purpose of the amendment.
- (3) If a notice is not given as required within 21 days after an amendment is made, the amendment ceases to have effect.
- (4) The Commission must send a copy of a notice to the Minister as soon as practicable after receiving it.

The Corporations Law—Section 779D

- (5) The Minister may, within 28 days after the Commission receives a notice, disallow the whole or a specified part of the amendment to which the notice relates.
- (6) If the Minister disallows the whole or a part of an amendment, the Commission must, as soon as practicable, give notice of the disallowance to the securities clearing house and, when the securities clearing house receives the notice, the amendment ceases to have effect to the extent of the disallowance.

779D Securities clearing house to assist Commission

The securities clearing house must provide such assistance to the Commission, or to a person acting on behalf of, or with the authority of, the Commission, as the Commission reasonably requires for the performance of its functions.

779E Securities clearing house to notify Commission of disciplinary action

If the securities clearing house decides to discipline an SCH participant, it must, as soon as practicable, lodge written particulars of the participant's name and of the reason for, and nature of, the disciplinary action taken or to be taken.

779F SCH business rules have effect as contract

- (1) The SCH business rules have effect, by force of this section, as a contract under seal:
 - (a) between the SCH and each issuer; and
 - (b) between the SCH and each SCH participant; and
 - (c) between each issuer and each SCH participant; and
 - (d) between an SCH participant and each other SCH participant;under which each of the persons mentioned in paragraphs (a) to (d) agrees to observe and perform the provisions of the SCH business rules as in force for the time being to the extent, and in the manner, provided by the SCH business rules.

The Corporations Law—Section 779G

(2) In this section:

issuer means an issuing body, within the meaning of Division 3 of Part 7.13, in relation to quoted securities or quoted rights.

779G Power of Court to order compliance with provisions of SCH business rules

(1) If:

- (a) a person is bound to comply with a provision of the SCH business rules; and
- (b) the person contravenes the provision;

then, subject to subsection (2), the Court may, on the application of the securities clearing house, of the Commission, or of a person aggrieved by the contravention, make an order giving directions to the first-mentioned person about complying with the provision.

(2) The Court may not make an order giving directions to a person unless the person has been given an opportunity of being heard.

779H Qualified privilege in respect of disciplinary proceedings

(1) The securities clearing house, or a member, officer or employee of the securities clearing house, or an SCH participant, has qualified privilege in respect of a statement made by a person, orally or in writing, in the course of, or otherwise for the purposes of or in connection with, a disciplinary proceeding of the securities clearing house.

(2) A person has qualified privilege in respect of the publication of:

- (a) a statement made by a person, orally or in writing, in the course of, or otherwise for the purposes of or in connection with; or
- (b) a document prepared, given or produced by a person, in the course of, or otherwise for the purposes of or in connection with;

a disciplinary proceeding of the securities clearing house.

The Corporations Law—Section 779J

779J Provision of settlement facilities not a securities business etc.

- (1) Nothing that the securities clearing house does in the course of, or in connection with, providing facilities for the settlement of transactions constitutes, for the purposes of this Law:
 - (a) a securities business; or
 - (b) an offer of securities for subscription or purchase; or
 - (c) an invitation to subscribe for or buy securities.
- (2) The securities clearing house does not, for the purposes of this Law, have a relevant interest in a share or a security merely because of its provision of facilities for the settlement of transactions.

Part 7.3—Participants in the securities industry

Division 1—Dealers, investment advisers and operators of managed investment schemes

780 Dealers

- (1) A person must not:
 - (a) carry on a securities business; or
 - (b) hold out that the person carries on a securities business; unless the person holds a dealers licence or is an exempt dealer.
- (2) A dealers licence may authorise a person to do either or both of the following:
 - (a) to carry on a securities business
 - (b) to operate:
 - (i) a managed investment scheme; or
 - (ii) managed investment schemes of a particular kind.

Note: Only public companies that hold a dealers licence can be responsible entities for registered managed investment schemes (see section 601FA).

781 Investment advisers

- A person must not:
- (a) carry on an investment advice business; or
 - (b) hold out that the person is an investment adviser; unless the person is a licensee or an exempt investment adviser.

782 Application for a licence

- (1) A person may apply to the Commission, in the prescribed form and manner, for a dealers licence or an investment advisers licence.

The Corporations Law—Section 783

- (2) The Commission may require an applicant for a licence to give the Commission such further information in relation to the application as the Commission thinks necessary.
- (3) An application duly made to the NCSC before the commencement of this Part under a previous law of this jurisdiction corresponding to subsection (1) that had not been dealt with by the NCSC before that commencement shall be deemed to be an application duly made to the Commission under that subsection.

783 Grant of licence to natural person

- (1) This section has effect where a natural person applies for a licence.
- (2) The Commission shall grant the licence if:
 - (a) the application was made in accordance with section 782;
 - (b) the person is not an insolvent under administration;
 - (c) it is satisfied that the person's educational qualifications and experience are adequate having regard to the nature of the duties of a holder of a licence of the kind applied for;
 - (d) it has no reason to believe that the person is not of good fame and character; and
 - (e) it has no reason to believe that the person will not perform those duties efficiently, honestly and fairly.
- (3) Otherwise, the Commission shall refuse the application.
- (4) In determining whether or not it has reason to believe as mentioned in paragraph (2)(d) or (e), the Commission shall have regard to any conviction of the person, during the 10 years ending on the day of the application, of serious fraud.
- (5) A licence granted under a previous law of this jurisdiction corresponding to this section and in force at the commencement of this Part shall be deemed to have been granted under this section.

The Corporations Law—Section 784

784 Grant of licence to body corporate

- (1) This section has effect where a body corporate applies for a licence.
- (2) The Commission shall grant the licence if:
 - (a) the application was made in accordance with section 782;
 - (b) the applicant is not an externally-administered body corporate;
 - (c) the Commission is satisfied that the educational qualifications and experience of each responsible officer of the applicant are adequate having regard to the duties that the officer would perform in connection with the holding of the licence; and
 - (d) the Commission has no reason to believe that the applicant will not perform efficiently, honestly and fairly the duties of a holder of a licence of the kind applied for; and
 - (e) if the licence applied for is a licence to operate a managed investment scheme or schemes, the applicant meets the requirements of subsection (2A), and any additional requirements determined by the ASIC under subsection (2B).
- (2A) For the purpose of paragraph (2)(e), the ASIC must be satisfied that the value of the net tangible assets of the applicant is and will be maintained at a minimum of \$50,000 or, where the value of all scheme property is greater than \$10,000,000, an amount equal to 0.5% of those assets shown in the latest accounts of the scheme lodged with the ASIC, up to a maximum of \$5,000,000.
- (2B) The ASIC may determine additional requirements for the purpose of paragraph (2)(e), including, but not limited to, a requirement that scheme property be held by an agent in particular circumstances.
- (2C) In this section:

net tangible assets means the total tangible assets of the applicant, including any guarantee approved by the ASIC, less any adjusted

The Corporations Law—Section 785

liabilities as shown in the latest accounts of the applicant lodged with the ASIC.

- (2D) The ASIC, or a member of the ASIC, may exempt an applicant from the requirements of subsection (2A). This power may not be delegated. The ASIC is to provide details of any exemptions granted under this section in its annual report.
- (3) Otherwise, the Commission shall refuse the application.
- (4) In determining whether or not it has reason to believe as mentioned in paragraph (2)(d), the Commission shall have regard, in relation to each responsible officer of the applicant, to:
- (a) whether or not the officer is an insolvent under administration;
 - (b) any conviction of the officer, during the 10 years ending on the day of the application, of serious fraud;
 - (c) any reason the Commission has to believe that the officer is not of good fame and character; and
 - (d) any reason the Commission has to believe that the officer will not perform efficiently, honestly and fairly the duties that the officer would perform in connection with the holding of the licence.
- (5) A licence granted under a previous law of this jurisdiction corresponding to this section and in force at the commencement of this Part shall be deemed to have been granted under this section.

785 Effect of certain provisions

- (1) Sections 783 and 784 apply subject to sections 102A, 836, 837 and 839 and the regulations.
- (2) Nothing in subsection 783(4) or 784(4) limits the matters to which the Commission may have regard:
- (a) in deciding on an application for a licence; or
 - (b) in connection with performing or exercising any other function or power under this Part.

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786 Conditions of licence

- (1) A licence is subject to:
 - (a) such conditions and restrictions as are prescribed; and
 - (b) subject to section 837, such conditions and restrictions as the Commission imposes when granting the licence or at any time when the licence is in force.
- (2) Without limiting the generality of subsection (1), conditions and restrictions referred to in paragraph (1)(a) or (b) may include:
 - (a) conditions and restrictions relating to the limitation of the liability that may be incurred by the holder of a dealers licence in connection with a business of dealing in securities;
 - (b) conditions and restrictions relating to the incurring and disclosure of liabilities arising otherwise than in connection with a business of dealing in securities;
 - (c) conditions and restrictions relating to the financial position of the holder of a dealers licence, whether in relation to the business of dealing in securities carried on by the holder or otherwise;
 - (d) a condition requiring the holder of a dealers licence or of an investment advisers licence to lodge and maintain with the Commission a security approved by the Commission for such amount not exceeding the prescribed amount as is, from time to time, determined by the Commission in relation to the holder of that licence;
 - (e) conditions about what the holder of a licence is to do, by way of supervision and otherwise, in order to prevent the holder's representatives from contravening:
 - (i) a securities law; or
 - (ii) another condition of the licence; and
 - (f) conditions about what the holder of a licence is to do to ensure that each representative of the holder has adequate qualifications and experience having regard to what the representative will do on the holder's behalf in connection with a securities business or investment advice business carried on by the holder.

- (3) Without limiting the generality of paragraph (2)(c), the conditions referred to in that paragraph may include:
- (a) a condition that the assets of the holder of a dealers licence include, or do not include, assets of a particular kind or kinds; and
 - (b) a condition that the sum of the values of the assets of a particular kind or kinds included in the assets of the holder of a dealers licence be not less than, or not more than, an amount ascertained in accordance with the condition.
- (4) A condition referred to in paragraph (3)(b) may provide for the values of assets of a dealer for the purposes of the application of that condition to be ascertained in a manner specified in, or determined in accordance with, the condition.
- (5) The provision that may be made in a condition referred to in paragraph (3)(b) for ascertaining the amount referred to in that paragraph may be, but is not limited to, a provision that the amount shall be:
- (a) a specified percentage of the sum of the values of all the assets of the holder of a dealers licence;
 - (b) a specified percentage of the sum of the values of all the assets of the holder of the dealers licence that are included in a specified class or classes of those assets;
 - (c) a specified percentage of the sum of the amounts of all the liabilities of the holder of the dealers licence; or
 - (d) a specified percentage of the sum of the amounts of all the liabilities of the holder of the dealers licence that are included in a specified class or classes of those liabilities.
- (6) A reference in this section to the assets of the holder of a dealers licence is a reference to all the assets of the holder of the licence, whether or not the assets are used in, or in connection with, the business of dealing in securities carried on by the holder.
- (7) Subject to section 837, the Commission may, at any time, revoke or vary conditions or restrictions imposed under paragraph (1)(b).

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- (8) Where the Commission imposes, or varies or revokes, conditions or restrictions under this section in relation to a licence granted to a member of a securities exchange, the Commission shall inform the securities exchange and, if the member is a partner in a member firm, the member firm.
- (9) Where a security is lodged with the Commission pursuant to a condition to which a licence is subject in accordance with paragraph (2)(d), the security may be applied by the Commission in such circumstances, for such purposes and in such manner as is prescribed.

786A Security given under previous law

- (1) This section applies where, immediately before the commencement of this Part:
 - (a) a licence granted under a previous law of this jurisdiction corresponding to section 783 or 784 was in force; and
 - (b) the licensee maintained a security, under a condition to which the licence was subject in accordance with a previous law of this jurisdiction corresponding to paragraph 786(2)(d), with the local authority within the meaning of that previous law.
- (2) After that commencement, the security has effect, with such modifications as are prescribed or the circumstances require, as if:
 - (a) it were a security lodged and maintained under a condition to which the licence is subject in accordance with paragraph 786(2)(d); and
 - (b) the Commission were substituted for the local authority as a party to the security; and
 - (c) a reference in the security to the local authority were a reference to the Commission.
- (3) Without limiting subsection 786(9), regulations for the purposes of that subsection may provide for the security to be applied in connection with an act done, an omission or event occurring, or a matter arising, before that commencement.

787 Licensee to notify breach of licence condition

- (1) Within 1 day after the happening of an event constituting a contravention of a condition of a licence, the licensee must lodge a written notice setting out particulars of the event.
- (2) It is a defence to a charge arising under subsection (1) if it is proved that:
 - (a) when the licensee was required to lodge the notice, the licensee was unaware of a fact or occurrence that gave rise to the requirement; and
 - (b) in a case where the licensee has since become aware of that fact or occurrence—the licensee lodged the notice as soon as practicable after becoming so aware.

788 Giving information and statements to Commission

- (1) The holder of a dealers licence must lodge such written information or statements in relation to the securities business carried on, or the managed investment scheme operated, by the licensee as the Commission from time to time directs.
- (2) If the Commission requires the holder of a dealers licence to cause a statement specified in a direction given under subsection (1) to be audited by a registered company auditor before it is lodged, the licensee must comply with the requirement.
- (3) The Commission may extend the period for compliance with a direction given under subsection (1).

789 Register of Licence Holders

- (1) The Commission shall keep a Register of Licence Holders for the purposes of this Chapter.
- (2) The Commission shall include in the Register, in relation to each licence, a copy of:
 - (a) the licence; and

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- (b) each instrument that imposes conditions on the licence, or revokes or varies conditions of the licence, after the licence is granted.
- (3) The Commission shall enter in the Register, in relation to each licence:
- (a) the name of the licensee;
 - (b) if the licensee is a body corporate—the name of each director, and of each secretary, of the body;
 - (c) the day on which the licence was granted;
 - (d) in relation to each business to which the licence relates:
 - (i) the address of the principal place at which the business is carried on;
 - (ii) the addresses of the other places (if any) at which the business is carried on; and
 - (iii) if the business is carried on under a name or style other than the name of the holder of the licence—that name or style;
 - (e) particulars of any suspension of the licence; and
 - (f) any other prescribed matters.
- (4) Where a person no longer holds a particular licence, the Commission shall remove from the Register the documents included in it, and the particulars entered in it, in relation to that licence.
- (5) A person may inspect and make copies of, or take extracts from, the Register.

790 Notifying change in particulars

The holder of a licence must, within 21 days after:

- (a) in the case of a dealers licence—the licensee ceases to carry on the business to which the licence relates;
- (b) in the case of an investment advisers licence—the licensee ceases to act as, or to hold himself, herself or itself out to be, an investment adviser; or

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(c) there is a change in a matter particulars of which are required by virtue of paragraph 789(3)(a), (b), (d) or (f) to be entered, in relation to the licence, in the Register of Licence Holders; lodge written particulars, in the prescribed form, of that fact, or of that change, as the case may be.

791 Annual statement of licensee

- (1) The holder of a licence must lodge, in respect of each year or part of a year during which the licence is in force, a statement in the prescribed form that:
 - (a) sets out the number of persons who, when the statement is lodged, hold proper authorities from the licensee; and
 - (b) contains any other prescribed information.
- (2) A person who has been, but is no longer, a licensee shall lodge, in respect of each year or part of a year during which the licence was in force, a statement in the prescribed form that:
 - (a) sets out the number of persons who, when the person last ceased to be a licensee, held proper authorities from the licensee; and
 - (b) contains any other prescribed information.

792 Time for lodging annual statement

- (1) A person required by subsection 791(1) to lodge a statement must lodge the statement:
 - (a) if the licence is a dealers licence—during the period within which a profit and loss statement and balance sheet referred to in section 860 are required to be lodged; or
 - (b) otherwise—within 1 month immediately before the anniversary of the date on which the licence was granted.
- (2) A person required by subsection 791(2) to lodge a statement must lodge the statement within 1 month after ceasing to be a licensee.

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- (3) A person who fails to lodge a statement required by section 791 within the period specified in subsection (1) or (2), as the case requires, contravenes this section.

793 Commission may extend period for lodging statement

- (1) The Commission may extend the period for lodging a statement under section 791.
- (2) Where an extension was granted by the NCSC before the commencement of this Part under a previous law corresponding to this section for the purposes of a previous law corresponding to section 791 and the period as extended ends after the commencement of this Part, the extension shall be deemed to have been granted by the Commission under this section.

Division 2—Agreements with unlicensed persons

Subdivision A—Agreements affected

794 Certain persons not clients

A reference in this Division to a client does not include a reference to a person who is:

- (a) a dealer;
- (b) an investment adviser; or
- (c) one of 2 or more persons who together constitute a dealer or investment adviser.

795 Agreements with unlicensed persons

- (1) Subdivision B applies where, during a period when a person (in this section and Subdivision B called the *non-licensee*) is unlicensed, the non-licensee and a client of the non-licensee enter into an agreement that:
 - (a) constitutes, or relates to, a dealing or proposed dealing in securities; or
 - (b) relates to advising the client about securities, or giving the client securities reports.
- (2) Subdivision B applies to an agreement mentioned in subsection (1) whether or not anyone else is a party to the agreement.
- (3) A person is unlicensed during a period when the person:
 - (a) in contravention of section 780, carries on, or holds out that the person carries on, a securities business; or
 - (b) in contravention of section 781, carries on an investment advice business or holds out that the person is an investment adviser.

Subdivision B—Effect on agreements

798 Client may give notice of rescission

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

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- (a) the notice will result under section 799 in rescission of the agreement; or
- (b) the Court will, if the notice so results, be empowered to make a particular order, or any order at all, under section 800.

799 Effect of notice under section 798

A notice given under section 798 rescinds the agreement unless rescission of the agreement would prejudice a right, or an estate in property, acquired by a person (other than the non-licensee) in good faith, for valuable consideration and without notice of the facts entitling the client to give the notice.

799A Client may apply to Court for partial rescission

- (1) If the client gives a notice under section 798 but the notice does not rescind the agreement because rescission of it would prejudice a right or estate of the kind referred to in section 799, the client may, within a reasonable period after giving the notice, apply to the Court for an order under subsection (4) of this section.
- (2) The Court may extend the period for making an application under subsection (1).
- (3) If an application is made under subsection (1), the Court may make such orders expressed to have effect until the determination of the application as it would have power to make if the notice had rescinded the agreement under section 799 and the application were for orders under section 800.
- (4) On an application under subsection (1), the Court may make an order:
 - (a) varying the agreement in such a way as to put the client in the same position, as nearly as can be done without prejudicing such a right or estate acquired before the order is made, as if the agreement had not been entered into; and
 - (b) declaring the agreement to have had effect as so varied at and after the time when it was originally made.

The Corporations Law—Section 800

- (5) If the Court makes an order under subsection (4), the agreement shall be taken for the purposes of section 800 to have been rescinded under section 799.
- (6) An order under subsection (4) does not affect the application of section 802 or 804 in relation to the agreement as originally made or as varied by the order.

800 Court may make consequential orders

- (1) Subject to subsection (2), on rescission of the agreement under section 799, the Court, on the application of the client or the non-licensee, may make such orders as it would have power to make if the client had duly rescinded the agreement for misrepresentation by the non-licensee.
- (2) The Court is not empowered to make a particular order under subsection (1) if the order would prejudice a right, or an estate in property, acquired by a person (other than the non-licensee) in good faith, for valuable consideration and without notice of the facts entitling the client to give the notice.

801 Agreement unenforceable against client

- (1) This section:
 - (a) applies while both of the following are the case:
 - (i) the client is entitled to give a notice under section 798;
 - (ii) a notice so given will result under section 799 in rescission of the agreement; and
 - (b) applies after the agreement is rescinded under section 799; but does not otherwise apply.
- (2) The non-licensee is not entitled, as against the client:
 - (a) to enforce the agreement, whether directly or indirectly; or
 - (b) to rely on the agreement, whether directly or indirectly and whether by way of defence or otherwise.

802 Non-licensee not entitled to recover commission

- (1) Without limiting the generality of section 801, this section:
 - (a) applies while the client is entitled to give a notice under section 798; and
 - (b) applies after the client so gives a notice, even if the notice does not result under section 799 in rescission of the agreement;
but does not otherwise apply.
- (2) The non-licensee is not entitled to recover by any means (including, for example, set-off or a claim on a *quantum meruit*) any brokerage, commission or other fee for which the client would, but for this section, have been liable to the non-licensee under or in connection with the agreement.

803 Onus of establishing non-application of section 801 or 802

For the purposes of determining, in a proceeding in a court, whether or not the non-licensee is, or was at a particular time, entitled as mentioned in subsection 801(2) or 802(2), it shall be presumed, unless the contrary is proved, that section 801 or 802, as the case may be, applies, or applied at that time, as the case may be.

804 Client may recover commission paid to non-licensee

- (1) Without limiting the generality of section 800, if the client gives a notice under section 798, the client may, even if the notice does not result under section 799 in rescission of the agreement, recover from the non-licensee as a debt the amount of any brokerage, commission or other fee that the client has paid to the non-licensee under or in connection with the agreement.
- (2) The Commission may, if it considers that it is in the public interest to do so, bring an action under subsection (1) in the name of, and for the benefit of, the client.

805 Remedies under this Division additional to other remedies

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

Division 3—Representatives

806 Representatives of dealers

A natural person shall not do an act as a representative of a dealer (other than an exempt dealer) unless:

- (a) the dealer holds a dealers licence; and
- (b) the person holds a proper authority from the dealer.

807 Representatives of investment advisers

A natural person shall not do an act as a representative of an investment adviser (other than an exempt investment adviser) unless:

- (a) the investment adviser:
 - (i) is also a dealer and holds a dealers licence; or
 - (ii) holds an investment advisers licence; and
- (b) the person holds a proper authority from the investment adviser.

808 Defence

It is a defence to a prosecution for a contravention of section 806 or 807 constituted by an act done by a person as a representative of another person if it is proved that:

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

809 Body corporate not to act as representative

A body corporate shall not do an act as a representative of a dealer or of an investment adviser.

810 Licensee to keep register of holders of proper authorities

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

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

811 Licensee to notify Commission of location and contents of register

- (1) In this section:

register, in relation to a licensee, means a register that the licensee keeps for the purposes of section 810.

- (2) Within 14 days after establishing a register, the licensee must lodge written notice of where the register is kept.

The Corporations Law—Section 812

- (3) As soon as practicable after changing the place where a register is kept, the licensee must lodge written notice of the new place where the register is kept.
- (4) Within 2 business days after the day on which a person begins to hold a particular proper authority from a licensee, the licensee must, whether or not the person has previously held a proper authority from the licensee, lodge:
 - (a) a copy of the first-mentioned proper authority; and
 - (b) a written notice stating that the person began to hold that proper authority on that day.
- (5) The licensee must lodge a written notice, within the period provided by subsection (6):
 - (a) setting out the information that the register is required to contain by paragraph 810(3)(b), (c), (d) or (e); and
 - (b) stating that the information has been, or is to be, entered in the register.
- (6) A notice under subsection (5) must be lodged within the period within which subsection 810(5) requires the information to be entered in the register.
- (7) Within 2 business days after a person ceases to hold a proper authority from a licensee, the licensee must, unless at the end of those 2 business days the person again holds a proper authority from the licensee, lodge a written notice stating that the person has ceased to hold such a proper authority.

812 Inspection and copying of register

- (1) In this section:

register in relation to a licensee, means a register that the licensee keeps for the purposes of section 810.
- (2) A licensee must ensure that a register is open for inspection without charge.

The Corporations Law—Section 813

- (3) Where a person requests a licensee in writing to give to the person a copy of the whole, or of a specified part, of a register, the licensee must comply with the request within 2 business days after:
- (a) if the licensee requires the person to pay for the copy an amount of not more than the prescribed amount—receiving the amount from the person; or
 - (b) in any other case—receiving the request.

813 Disclosure to non-dealer

A person (in this section called the *representative*) shall not do as a representative of another person (in this section called the *principal*) an act by virtue of which the principal deals in securities with a non-dealer on the principal's own account unless the representative has informed the non-dealer that the principal is acting in the transaction as principal and not as agent.

814 Commission may require production of authority

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

815 Commission may give licensee information about representative

- (1) Where the Commission believes on reasonable grounds that:
- (a) a person (in this section called the *holder*) holds, or will hold, a proper authority from a licensee;

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- (b) having regard to that fact, the Commission should give to the licensee particular information that the Commission has about the person; and
 - (c) the information is true;the Commission may give the information to the licensee.
- (2) Where the Commission gives information under subsection (1), the licensee or an officer of the licensee may, for a purpose connected with:
 - (a) the licensee making a decision about what action (if any) to take in relation to the holder, having regard to, or to matters including, the information; or
 - (b) the licensee taking action pursuant to such a decision;or for 2 or more such purposes, and for no other purpose, give to another person, make use of, or make a record of, some or all of the information.
- (3) A person to whom information has been given, in accordance with subsection (2) or this subsection, for a purpose or purposes may, for that purpose or one or more of those purposes, and for no other purpose, give to another person, make use of, or make a record of, that information.
- (4) Subject to subsections (2) and (3), a person shall not give to another person, make use of, or make a record of, information given by the Commission under subsection (1).
- (4A) Subsection 8(3) does not apply in relation to a reference in subsection (2), (3) or (4) of this section to a provision of this section.
- (5) A person has qualified privilege in respect of an act done by the person as permitted by subsection (2) or (3).
- (6) A person to whom information is given in accordance with this section shall not:
 - (a) give any of the information to a court; or

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- (b) produce in a court a document that sets out some or all of the information;
- except:
- (c) for a purpose connected with:
- (i) the licensee making a decision about what action (if any) to take in relation to the holder, having regard to, or to matters including, some or all of the information;
 - (ii) the licensee taking action pursuant to such a decision; or
 - (iii) proving in a proceeding in that court that particular action taken by the licensee in relation to the holder was so taken pursuant to such a decision;
- or for 2 or more such purposes, and for no other purpose;
- (d) in a proceeding in that court, in so far as the proceeding relates to an alleged contravention of this section;
- (e) in a proceeding in respect of an ancillary offence relating to an offence against this section; or
- (f) in a proceeding in respect of the giving to a court of false information being or including some or all of the first-mentioned information.
- (7) A reference in this section to a person taking action in relation to another person is a reference to the first-mentioned person:
- (a) taking action by way of making, terminating or varying the terms and conditions of a relevant agreement; or
 - (b) otherwise taking action in relation to a relevant agreement;
- in so far as the relevant agreement relates to the other person being employed by, or acting for or by arrangement with, the first-mentioned person in connection with a securities business or investment advice business carried on by the first-mentioned person.
- (8) In addition, and without prejudice, to the effect it has of its own force, subsection (6) has by force of this subsection the effect it would have if:
- (a) the reference in it to information being given in accordance with this section were a reference to information being given

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in accordance with section 815 of the Corporations Law of this jurisdiction; and

- (b) a reference in it to a court were a reference to a court of an external Territory or of a country outside Australia and the external Territories; and
- (c) paragraphs (6)(d) and (e) were omitted.

816 Holder of authority may be required to return it

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

Division 4—Liability of principals for representatives' conduct

817 Conduct engaged in as a representative

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

818 Liability where identity of principal unknown

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

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

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

The Corporations Law—Section 819

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

The Corporations Law—Section 820

820 Presumptions about certain matters

(1) Where it is proved, for the purposes of a proceeding in a court, that a person (in this subsection called the *representative*) engaged in particular conduct, whether within or outside this jurisdiction, while the person was a representative of:

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

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

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

as the case may be.

(2) Where, for the purposes of establishing in a proceeding in a court that section 819 applies, it is proved that a person did, or omitted to do, a particular act because the person believed at a particular time in good faith that certain matters were the case, then, unless the contrary is proved for those purposes, it shall be presumed for those purposes that it is reasonable to expect that a person in the first-mentioned person's circumstances would so believe and would do, or omit to do, as the case may be, that act because of that belief.

821 No contracting out of liability for representative's conduct

(1) For the purposes of this section, a liability of a person:

- (a) in respect of conduct engaged in by another person as a representative of the first-mentioned person; or
- (b) arising under section 819 because another person has engaged in, proposed to engage in, or represented that the other person proposed to engage in, particular conduct;

The Corporations Law—Section 822

is a liability of the first-mentioned person in respect of the other person.

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

822 Effect of Division

- (1) Where 2 or more persons are liable under this Division in respect of the same conduct or the same loss or damage, they are so liable jointly and severally.
- (2) Nothing in section 817, 818, or 819:
 - (a) affects a liability arising otherwise than by virtue of this Division;
 - (b) notwithstanding paragraph (a) of this subsection, entitles a person to be compensated twice in respect of the same loss or damage; or
 - (c) makes a person guilty of an offence.

Division 5—Excluding persons from the securities industry

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

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

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

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

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

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

825A Power to revoke responsible entity's licence without a hearing

ASIC may, by written order, revoke a licence held by the responsible entity of a registered scheme if it is satisfied that the members of the scheme have suffered, or are likely to suffer, loss or damage because the responsible entity has contravened this Law.

826 Power to revoke licence after a hearing

- (1) Subject to section 837, the Commission may, by written order, revoke a licence if:
- (a) the application for the licence contained matter that was false in a material particular or materially misleading;
 - (b) there was an omission of material matter from the application for the licence;
 - (c) the licensee contravenes a securities law;
 - (d) the licensee contravenes a condition of the licence;
 - (e) the licensee is a natural person and the Commission has reason to believe that he or she is not of good fame and character;
 - (f) the licensee is a body corporate and the Commission is satisfied that the educational qualifications or experience of a person who:
 - (i) is an officer of the body; and
 - (ii) was not an officer of the body when the licence was granted;are or is inadequate having regard to the duties that the officer performs, or will perform, in connection with the holding of the licence;
 - (g) the licensee is a body corporate and the Commission is satisfied that:
 - (i) an officer of the body performs, or will perform, in connection with the holding of the licence, duties that are or include duties (in this paragraph called the *different duties*) other than those having regard to which the Commission was satisfied, before granting the licence, that the officer's educational qualifications and experience were adequate; and
 - (ii) the officer's educational qualifications or experience are or is inadequate having regard to the different duties;
 - (h) the licensee is a body corporate and:
 - (i) a licence held by a director, secretary or executive officer of the body is suspended or revoked; or

The Corporations Law—Section 827

- (ii) an order is made under section 830 against such a director, secretary or executive officer;
 - (j) the Commission has reason to believe that the licensee has not performed efficiently, honestly and fairly the duties of a holder of a dealers licence or an investment advisers licence, as the case requires; or
 - (k) the Commission has reason to believe that the licensee will not perform those duties efficiently, honestly and fairly.
- (2) In determining whether or not it has reason to believe as mentioned in paragraph (1)(e) or (k) in relation to a licensee, the Commission is not precluded from having regard to a matter that arose before the time when the licence was granted unless the Commission was aware of the matter at that time.

827 Power to suspend licence instead of revoking it

- (1) Subject to section 837, where:
- (a) section 824, 825 or 825A empowers the Commission to revoke a licence otherwise than because the licensee has asked for the revocation; or
 - (b) the Commission is empowered by virtue of paragraph 826(1)(c), (d), (f), (g), (h), (j) or (k) to revoke a licence;
- the Commission may, if it considers it desirable to do so, instead:
- (c) by written order, suspend the licence for a specified period; or
 - (d) by written order, prohibit the licensee, either permanently or for a specified period, from doing specified acts, being acts that section 780 or 781 would prohibit the licensee from doing if he, she or it did not hold the licence.
- (2) The Commission may at any time, by written order, vary or revoke an order in force under this section.
- (3) For the purposes of sections 780, 781, 806 and 807, a licensee shall be deemed not to hold the licence at any time during a period for which the licence is suspended.

- (4) Where an order in force under this section prohibits the licensee as mentioned in paragraph (1)(d):
- (a) the licensee shall not contravene the order; and
 - (b) in relation to the doing by a person, as a representative of the licensee, of an act specified in the order, sections 806 and 807 apply, or apply during the period specified in the order, as the case requires, as if the licensee did not hold the licence.

828 Power to make banning order where licence revoked or suspended

Subject to section 837, where the Commission:

- (a) revokes under section 824;
- (b) revokes by virtue of paragraph 826(1)(a), (b), (c), (d), (j) or (k);
- (c) revokes by virtue of paragraph 826(1)(e);
- (d) suspends by virtue of paragraph 827(1)(a); or
- (e) suspends by virtue of paragraph 827(1)(b);

a licence held by a natural person, it may also make a banning order against the person.

829 Power to make banning order against unlicensed person

Subject to section 837, the Commission may make a banning order against a natural person (other than a licensee) if:

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

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- (i) a representative of a dealer; or
- (ii) a representative of an investment adviser; or
- (g) the Commission has reason to believe that he or she will not perform efficiently, honestly and fairly the duties of:
 - (i) a representative of a dealer; or
 - (ii) a representative of an investment adviser.

830 Nature of banning order

- (1) Where this Division empowers the Commission to make a banning order against a person, the Commission may, by written order, prohibit the person:
 - (a) in any case—permanently; or
 - (b) except where the Commission is empowered by virtue of paragraph 828(c) or 829(e) to make the order—for a specified period;from doing an act as:
 - (c) a representative of a dealer;
 - (d) a representative of an investment adviser; or
 - (e) a representative of a dealer or of an investment adviser;whichever the order specifies.
- (2) The Commission shall not vary or revoke a banning order except under section 831, 832, or 833.

831 Exceptions to banning order

- (1) An order made against a person under subsection 830(1) may include a provision that permits the person, subject to such conditions (if any) as are specified, to do, or to do in specified circumstances, specified acts that the order would otherwise prohibit the person from doing.
- (2) Subject to section 837, the Commission may, at any time, by written order, vary a banning order against a person:
 - (a) by adding a provision that permits the person as mentioned in subsection (1);

The Corporations Law—Section 832

- (b) by varying such a provision in relation to conditions, circumstances or acts specified in the provision;
- (c) by omitting such a provision and substituting another such provision; or
- (d) by omitting such a provision.

832 Variation or revocation of banning order on application

- (1) Subject to sections 833 and 837, this section has effect where a person applies to the Commission to vary or revoke a banning order relating to the person.
- (2) If:
 - (a) the person is not an insolvent under administration;
 - (b) the Commission has no reason to believe that the person is not of good fame and character; and
 - (c) the Commission has no reason to believe that the person will not perform efficiently, honestly and fairly the duties of:
 - (i) a representative of a dealer; or
 - (ii) a representative of an investment adviser;the Commission shall, by written order:
 - (d) if only one of subparagraphs (c)(i) and (ii) applies—vary the banning order so that it no longer prohibits the person from doing an act as a representative of a dealer, or of an investment adviser, as the case may be; or
 - (e) in any other case—revoke the banning order.
- (3) Otherwise, the Commission shall refuse the application.
- (4) In determining whether or not it has reason to believe as mentioned in paragraph (2)(b) or (c), the Commission shall have regard to any conviction of the person, during the 10 years ending on the day of the application, of serious fraud.
- (5) Nothing in subsection (4) limits the matters to which the Commission may have regard:
 - (a) in deciding on the application; or

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- (b) in connection with performing or exercising any other function or power under this Part.

833 Revocation of banning order in certain cases

Where:

- (a) section 832 requires the Commission to vary a banning order so that it no longer has a particular operation; and

- (b) the order has no other operation;

the Commission shall, by written order, instead revoke the banning order.

834 Effect and publication of orders under this Division

- (1) An order by the Commission under this Division takes effect when served on the person to whom the order relates.

- (2) As soon as practicable on or after the day on which an order by the Commission under this Division takes effect, the Commission shall publish in the *Gazette* a notice that sets out a copy of:

- (a) if the order is made under section 824, 825, 826, 827 or 830 or revokes a banning order—the first-mentioned order; or

- (b) if the order varies a banning order—the banning order as in force immediately after the first-mentioned order takes effect;

and states that the first-mentioned order, or the banning order as so in force, as the case may be, took effect on that day.

- (3) Where:

- (a) but for this subsection, subsection (2) would require publication of a notice setting out a copy of a banning order as in force at a particular time;

- (b) the banning order as so in force includes a provision that permits a person as mentioned in subsection 831(1); and

- (c) in the Commission's opinion, the notice would be unreasonably long if it set out a copy of the whole of that provision;

the notice may, instead of setting out a copy of that provision, set out a summary of the provision's effect.

835 Contravention of banning order

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

836 Banned person ineligible for licence

The Commission shall not grant a dealers licence or an investment advisers licence to a person if a banning order prohibits the person (except as permitted by the order) from doing an act as a representative of a dealer, or of an investment adviser, as the case may be.

837 Opportunity for hearing

- (1) The Commission shall not:
 - (a) refuse, otherwise than by virtue of section 836 or subsection 839(1), an application for a licence;
 - (b) impose conditions on a licence;
 - (c) vary the conditions of a licence;
 - (d) revoke or suspend a licence otherwise than by virtue of section 824 or 825, 825 or 825A or paragraph 827(1)(a);
 - (e) make, otherwise than by virtue of paragraph 828(a) or (d) or 829(a), (b) or (c), an order under section 830 against a person;
 - (f) make under subsection 831(2) an order varying a banning order against a person; or
 - (g) refuse an application by a person under section 832;unless the Commission complies with subsection (2) of this section.
- (2) The Commission shall give the applicant, licensee or person, as the case may be, an opportunity:

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- (a) to appear at a hearing before the Commission that takes place in private; and
- (b) to make submissions and give evidence to the Commission in relation to the matter.

838 Disqualification by the Court

- (1) Where the Commission:
 - (a) revokes under section 824 or 825, 825 or 825A or subsection 826(1) a licence held by a person; or
 - (b) makes under section 830 against a person an order that is to operate otherwise than only for a specified period;the Commission may apply to the Court for an order or orders under this section in relation to the person.
- (2) On an application under subsection (1), the Court may make one or more of the following:
 - (a) an order disqualifying the person, permanently or for a specified period, from holding:
 - (i) a dealers licence;
 - (ii) an investment advisers licence; or
 - (iii) a dealers licence or an investment advisers licence; whichever the order specifies;
 - (b) an order prohibiting the person, permanently or for a specified period, from doing an act as:
 - (i) a representative of a dealer;
 - (ii) a representative of an investment adviser; or
 - (iii) a representative of a dealer or of an investment adviser; whichever the order specifies;
 - (c) such other order as it thinks fit;or may refuse the application.
- (3) The Court may revoke or vary an order in force under subsection (2).

839 Effect of orders under section 838

- (1) The Commission shall not grant a dealers licence or an investment advisers licence to a person whom an order in force under section 838 disqualifies from holding a dealers licence or an investment advisers licence, as the case may be.
- (2) A person shall not contravene an order that:
 - (a) is of a kind referred to in paragraph 838(2)(b);
 - (b) is in force under section 838; and
 - (c) relates to the person.

840 Effect of previous orders under laws corresponding to section 838

- (1) This section applies where, immediately before the commencement of section 838, a person was, for the purposes of subsection 60(5) of the *Securities Industry Act 1980* or a corresponding previous law of this or any other jurisdiction, disqualified, or deemed to be disqualified, either permanently or for a period, because of an order of an Australian court, from holding a licence under that Act or a corresponding previous law.
- (2) As from that commencement, the order has effect for the purposes of this Law as if it were:
 - (a) in force under subsection 838(2);
 - (b) an order disqualifying the person, permanently or for that period, as the case may be, from holding a dealers licence or an investment advisers licence; and
 - (c) an order prohibiting the person, permanently or for that period, as the case may be, from doing an act as a representative of a dealer or of an investment adviser.
- (3) The effect that the order has by force of subsection (2) is in addition to, and does not prejudice, its effect otherwise than by force of that subsection.

Part 7.4—Conduct of securities business

Division 1—Regulation of certain activities

841 Certain representations prohibited

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

842 Issue of contract notes

- (1) This section applies:
 - (a) in relation to a dealer (other than an exempt dealer) in relation to a transaction of sale or purchase of securities; or
 - (b) in relation to an exempt dealer, in relation to a transaction of sale or purchase of securities that is entered into in the course of a securities business that the exempt dealer carries on in the capacity of personal representative of a dead dealer.
- (2) A dealer shall, in respect of a transaction of sale or purchase of securities, immediately give a contract note that complies with subsection (3) to:
 - (a) where the transaction took place in the ordinary course of business on a stock market and the dealer entered into the transaction otherwise than as principal—the person for whom the dealer entered into the transaction;
 - (b) where the transaction did not take place in the ordinary course of business on a stock market and the dealer entered into the transaction otherwise than as principal—the person for whom the dealer entered into the transaction and the person with whom the dealer entered into the transaction; and

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- (c) where the transaction did not take place in the ordinary course of business on a stock market and the dealer entered into the transaction as principal—the person with whom the dealer entered into the transaction.
- (3) A contract note given by a dealer under subsection (2) shall specify:
- (a) the name or style under which the dealer carries on business as a dealer and the address of the principal place at which the dealer so carries on business;
 - (b) each securities exchange (if any) of which the dealer is a member;
 - (c) if the dealer is dealing as principal with a person who is not the holder of a dealers licence—that the dealer is so dealing;
 - (d) the name of the person to whom the dealer gives the contract note;
 - (e) the day on which the transaction took place and, if the transaction did not take place in the ordinary course of business on a stock market, a statement to that effect;
 - (f) the number, or amount and description, of the securities that are the subject of the contract;
 - (g) the price per unit of the securities;
 - (h) the amount of the consideration;
 - (j) the amount of commission charged;
 - (k) the amounts of all stamp duties or other duties and taxes payable in connection with the contract; and
 - (m) if an amount is to be added to, or deducted from, the settlement amount in respect of the right to a benefit bought or sold together with the securities—the first-mentioned amount and the nature of the benefit.
- (4) A dealer shall not include in a contract note given under subsection (2), as the name of the person with or for whom the dealer has entered into the transaction, a name that the dealer knows, or could reasonably be expected to know, is not the name by which that person is ordinarily known.

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- (5) A reference in this section to a dealer dealing, or entering into a transaction, as principal includes a reference to a person:
 - (a) dealing or entering into a transaction on behalf of an associate of the dealer;
 - (b) dealing in securities on behalf of a body corporate in which the dealer has a controlling interest; or
 - (c) where the dealer carries on business as a dealer in partnership—dealing in securities on behalf of a body corporate in which the dealer’s interest and the interests of the dealer’s partners together constitute a controlling interest.
- (6) For the purposes of this section:
 - (a) a dealer who is a member of a securities exchange shall not be taken to have entered into a transaction as principal merely because the transaction was entered into with another dealer who is a member of a securities exchange; and
 - (b) a transaction takes place in the ordinary course of business on a stock market if it takes place in prescribed circumstances or is a transaction that is a prescribed transaction for the purposes of this section.
- (7) Despite Division 2 of Part 1.2, a person is not an associate of another person for the purposes of this section merely because the first-mentioned person is:
 - (a) a partner of the other person otherwise than because the first-mentioned person carries on a business of dealing in securities in partnership with the other person; or
 - (b) a director of a body corporate of which the other person is also a director, whether or not the body corporate carries on a business of dealing in securities.

843 Dealings and transactions on a dealer’s own account

- (2) Subject to subsection (5), a dealer shall not, on the dealer’s own account, deal in securities with a non-dealer without first informing the non-dealer that the dealer is acting in the transaction as principal and not as agent.

The Corporations Law—Section 844

- (3) A dealer who, on the dealer's own account, enters into a transaction of sale or purchase of securities with a non-dealer shall state in the contract note that the dealer is acting in the transaction as principal and not as agent.
- (4) Subject to subsections (5) and (6), a dealer who, on the dealer's own account (otherwise than merely because the dealer enters into a transaction on behalf of an associate of the dealer), enters into a transaction of sale or purchase of securities with a non-dealer shall not charge the non-dealer brokerage, commission or any other fee in respect of the transaction.
- (5) Subsections (2) and (4) do not apply in relation to a transaction of sale or purchase of an odd lot of securities that is entered into by a dealer who is a member of a securities exchange and specialises in transactions relating to odd lots of securities.
- (7) Where a dealer contravenes subsection (2), (3) or (4) in relation to a contract, then:
- (a) if the contract is for the sale of securities by the dealer to a person—the person may, if the person has not disposed of them; or
 - (b) if the contract is for the purchase of securities by the dealer from a person—the person may;
- rescind the contract by written notice given to the dealer within 14 days after the person receives the contract note.
- (8) Nothing in subsection (7) affects any right that a person has apart from that subsection.

844 Dealer to give priority to clients' orders

- (2) A dealer shall not, except as permitted by subsection (3), enter into, as principal or on behalf of an associate of the dealer, a transaction of purchase or sale of securities that are permitted to be traded on a stock market of a securities exchange if a client of the dealer who is not an associate of the dealer has instructed the dealer to buy or

The Corporations Law—Section 845

sell, as the case may be, securities of the same class and the dealer has not complied with the instruction.

- (3) Subsection (2) does not apply in relation to the entering into of a transaction by a dealer as principal or on behalf of an associate of the dealer if:
- (a) the instructions from the client concerned required the purchase or sale of securities on behalf of the client to be effected only on specified conditions relating to the price at which the securities were to be bought or sold and the dealer has been unable to buy or sell the securities because of those conditions; or
 - (b) the transaction is entered into in prescribed circumstances.

845 Dealings by employees of holders of licences

- (1) A person who is a dealer or an investment adviser and an employee of that person shall not, as principals, jointly buy or subscribe for, or agree to buy or subscribe for, securities.
- (2) A person who is a partner in a partnership that carries on a securities business or an investment advice business and an employee of the partnership shall not, as principals, jointly buy or subscribe for, or agree to buy or subscribe for, securities.
- (3) A person who is a dealer or investment adviser, or who is a partner in a partnership that carries on a securities business or an investment advice business, shall not give credit to an employee of the person or partnership, as the case may be, or to a person who the first-mentioned person knows is an associate of such an employee if:
 - (a) the credit is given for the purpose of enabling or assisting the person to whom the credit is given to buy or subscribe for securities; or
 - (b) the person giving the credit knows or has reason to believe that the credit will be used for the purpose of buying or subscribing for securities.

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- (4) A person who is an employee of a sole trader or member firm in connection with a business of dealing in securities carried on by the sole trader or member firm shall not, as principal, buy or agree to buy securities or rights or interests in securities unless the sole trader or member firm acts as the agent of the person in respect of the transaction.
- (5) A reference in subsection (1) or (3) to an employee of a person who is a dealer or investment adviser includes, in the case of a body corporate that is a dealer or investment adviser, a reference to an officer of the body.
- (6) The reference in subsection (4) to an employee of a sole trader or member firm includes, in the case of a sole trader that is a body corporate or a member firm a partner in which is a body corporate, a reference to an officer of the body.

Division 2—Short selling of securities

846 Short selling

- (1) Subject to this section and the regulations, a person shall not sell securities to a buyer unless, at the time of the sale:
 - (a) the person has or, where the person is selling as agent, the person's principal has; or
 - (b) the person believes on reasonable grounds that the person has, or where the person is selling as agent, the person's principal has;
a presently exercisable and unconditional right to vest the securities in the buyer.
- (2) For the purposes of subsection (1):
 - (a) a person who, at a particular time, has a presently exercisable and unconditional right to have securities vested in the person or in accordance with the directions of the person has at that time a presently exercisable and unconditional right to vest the securities in another person; and
 - (b) a right of a person to vest securities in another person is not conditional merely because the securities are charged or pledged in favour of another person to secure the repayment of money.
- (3) Subsection (1) does not apply in relation to:
 - (a) a sale of securities by the holder of a dealers licence who is a member of a securities exchange and specialises in transactions relating to odd lots of securities, being a sale made by the holder as principal solely for the purpose of:
 - (i) accepting an offer to buy an odd lot of securities; or
 - (ii) disposing of a parcel of securities that is less than one marketable parcel of securities by means of a sale of one marketable parcel of those securities;
 - (b) a sale of securities as part of an arbitrage transaction;

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(c) a sale of securities by a person who before the time of sale has entered into a contract to buy those securities and who has a right to have those securities vested in the person that is conditional only upon all or any of the following:

- (i) payment of the consideration in respect of the purchase;
- (ii) the receipt by the person of a proper instrument of transfer in respect of the securities;
- (iii) the receipt by the person of the documents that are, or are documents of title to, the securities;

(d) a sale of securities where:

- (i) the person who sold the securities is not an associate of the body corporate that issued or made available the securities;
- (ii) arrangements are made before the time of the sale that will enable delivery of securities of the class sold to be made to the buyer within 3 business days after the date of the transaction effecting the sale; and
- (iii) if the sale is made on the stock market of a securities exchange:

- (A) the price per unit in respect of the sale is not below the price at which the immediately preceding ordinary sale was effected; and
- (B) the price per unit is above the price at which the immediately preceding ordinary sale was made unless the price at which the immediately preceding ordinary sale was made was higher than the next preceding different price at which an ordinary sale had been made;

and the securities exchange is informed as soon as practicable that the sale has been made short in accordance with this subparagraph; or

(e) a sale of securities where:

- (i) the securities are included in a class of securities in relation to which there is in force a declaration, made by the board of a securities exchange as provided by the business rules of the securities exchange, to the effect

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- that the class is a class of securities to which this paragraph applies;
- (ii) the sale is made as provided by the business rules of the securities exchange; and
 - (iii) at the time of the sale, neither the person who sold the securities, nor any person on behalf of whom the first-mentioned person sold the securities, was an associate, in relation to the sale, of the body corporate that issued or made available the securities.
- (4) A person who requests a holder of a dealers licence to make a sale of securities that would contravene subsection (1) but for paragraph (3)(b), (d) or (e) shall, when making the request, inform the holder of the licence that the sale is a short sale.
- (5) A person who, on a stock market of a securities exchange, makes, whether as principal or agent, a sale of securities that would contravene subsection (1) but for paragraph (3)(d) shall endorse on any document evidencing the sale that is given to the person who, whether as principal or agent, buys the securities a statement that the sale was a short sale.
- (6) For the purposes of this section, a person who:
- (a) purports to sell securities;
 - (b) offers to sell securities;
 - (c) holds himself, herself or itself out as entitled to sell securities; or
 - (d) instructs a dealer to sell securities;
- shall be deemed to sell the securities.

847 Power of Commission to prohibit short selling in certain cases

- (1) Where the Commission forms the opinion that it is necessary to prohibit securities, or a particular class of securities, from being sold on a stock market of a securities exchange in a manner that, but for paragraph 846(3)(e), would contravene subsection 846(1), in order to protect persons who might suffer financial loss if they were to buy or sell those securities in that manner or in order to

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protect the public interest, the Commission may give written notice to the securities exchange stating that it has formed that opinion and setting out the reasons for that opinion.

- (2) If, after receiving such a notice:
- (a) the securities exchange does not take action to prevent the selling on a stock market of the securities exchange of the securities, or class of securities, specified in the notice in the manner referred to in subsection (1); and
 - (b) the Commission is still of the opinion that it is necessary to prohibit the selling on that stock market of the securities, or class of securities, in that manner;
- the Commission may, by a further written notice given to the securities exchange, prohibit the selling on that stock market of the securities, or class of securities, in that manner during a period of not more than 21 days.
- (3) As soon as practicable after giving a notice to a securities exchange under subsection (2), the Commission shall give to the Minister a written report setting out the reasons for the giving of the notice and send a copy of the report to the securities exchange.
- (4) On receiving the report, the Minister may direct the Commission to revoke the notice given under subsection (2), and, if such a direction is given, the Commission shall immediately revoke the notice.
- (5) A securities exchange shall not permit the selling of securities on a stock market of the securities exchange in a way that contravenes a notice given under subsection (2).
- (6) Where a notice duly given to a securities exchange by the NCSC under a previous law corresponding to subsection (2) in relation to securities or a class of securities was in force immediately before the commencement of this Part and the period for which selling of the securities or class of securities on the stock market specified in the notice in the manner so specified was prohibited by the notice had not ended before that commencement:

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- (a) the notice shall be deemed to be a notice duly given to that securities exchange on that commencement by the Commission under that subsection and prohibiting selling on that stock market of those securities or that class of securities in that manner for the unexpired portion of that period; and
- (b) a written report given to the Ministerial Council before that commencement under a previous law corresponding to subsection (3) shall be deemed to have been duly given by the Commission under that subsection to the Minister and a copy of the report sent to the securities exchange under that corresponding previous law shall be deemed to have been sent by the Commission under that subsection.

Division 3—Recommendations about securities

848 Recommendation made by partner or officer

For the purposes of this Division (other than section 851):

- (a) a recommendation made by a partner shall be deemed to have been made by each partner in the partnership; and
- (b) a recommendation made by a director, executive officer or secretary of a body corporate shall be deemed to have also been made by the body corporate.

849 Client to be told if adviser's interests may influence recommendation

- (1) This section applies where a securities adviser makes a securities recommendation to a person (in this section called the *client*) who may reasonably be expected to rely on it.
- (2) The securities adviser shall:
 - (a) if the recommendation is made orally—when making the recommendation, disclose to the client orally; or
 - (b) if the recommendation is made in writing—set out in that writing, in such a way as to be no less legible than the other material in that writing;particulars of:
 - (c) any commission or fee, or any other benefit or advantage, whether pecuniary or not and whether direct or indirect, that the securities adviser or an associate has received, or will or may receive, in connection with the making of the recommendation or a dealing by the client in securities as a result of the recommendation; and
 - (d) any other pecuniary or other interest, whether direct or indirect, of the securities adviser or an associate, that may reasonably be expected to be capable of influencing the securities adviser in making the recommendation.

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- (3) Subsection (2) does not apply in relation to a commission or fee that the securities adviser has received, or will or may receive, from the client.
- (4) If by making the recommendation the securities adviser does an act as a representative of another person, then:
 - (a) without limiting the generality of Division 2 of Part 1.2, the other person is an associate for the purposes of subsection (2); and
 - (b) subsection (2) does not apply in relation to a commission or fee that the other person has received, or will or may receive, from the client.
- (5) For the purposes of Division 2 of Part 1.2, the making of securities recommendations is the matter to which a reference to an associate in subsection (2) relates.
- (6) Despite Division 2 of Part 1.2 and subsection (5), a person (in this subsection called the *alleged associate*) is not an associate for the purposes of subsection (2) merely because of being:
 - (a) a partner of the securities adviser otherwise than because of carrying on a securities business in partnership with the securities adviser; or
 - (b) a director of a body corporate of which the securities adviser is also a director, whether or not the body carries on a securities business;unless the securities adviser and the alleged associate act jointly, or otherwise act together, or under an arrangement between them, in relation to making securities recommendations.

850 Defences to alleged breach of subsection 849(2)

- (1) Where:
 - (a) a person:
 - (i) when making a recommendation orally, fails to disclose; or

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- (ii) when making a recommendation in writing, fails to set out in that writing;
as required by subsection 849(2), particulars of a matter; and
 - (b) it is proved that the person was not, and could not reasonably be expected to have been, aware of that matter when making the recommendation;
the failure is not a contravention of that subsection.
- (2) Where:
- (a) a dealer or investment adviser, or a representative of a dealer or investment adviser:
 - (i) when making a recommendation orally, fails to disclose;
or
 - (ii) when making a recommendation in writing, fails to set out in that writing;
as required by subsection 849(2), particulars of a matter;
 - (b) in the case of a representative of a dealer or investment adviser—by making the recommendation, the representative does an act as a representative of the dealer or investment adviser;
 - (c) it is proved that the dealer or investment adviser had in operation, throughout a period beginning before the decision to make the recommendation was made and ending after the recommendation was made, arrangements to ensure that:
 - (i) the natural person who made the decision knew nothing about that matter before the end of that period; and
 - (ii) no advice with respect to the making of the recommendation was given to the person by anyone who knew anything about that matter; and
 - (d) it is also proved that:
 - (i) the person in fact knew nothing about that matter before the end of that period; and
 - (ii) no such advice was so given;the failure is not a contravention of that subsection.
- (3) Neither of subsections (1) and (2) limits the generality of the other.

851 Adviser must have reasonable basis for recommendation

- (1) A securities adviser who:
 - (a) makes a securities recommendation to a person who may reasonably be expected to rely on it; and
 - (b) does not have a reasonable basis for making the recommendation to the person;contravenes this section.
- (2) For the purposes of subsection (1), a securities adviser does not have a reasonable basis for making a securities recommendation to a person unless:
 - (a) in order to ascertain that the recommendation is appropriate having regard to the information the securities adviser has about the person's investment objectives, financial situation and particular needs, the securities adviser has given such consideration to, and conducted such investigation of, the subject matter of the recommendation as is reasonable in all the circumstances; and
 - (b) the recommendation is based on that consideration and investigation.
- (3) A person who contravenes subsection (1) is not guilty of an offence.

852 Adviser who breaches this Division liable to compensate client

This section applies where:

- (a) a securities adviser contravenes section 849 or 851 in relation to a securities recommendation to a person (in this section called the *client*);
- (b) the client, in reliance on the recommendation, does, or omits to do, a particular act;
- (c) it is reasonable, having regard to the recommendation and all other relevant circumstances, for the client to do, or omit to do, as the case may be, that act in reliance on the recommendation; and

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- (d) the client suffers loss or damage as a result of that act or omission.
- (2) Subject to subsections (3) and (4), the securities adviser is liable to pay damages to the client in respect of that loss or damage.
- (3) In the case of a contravention of section 849, the securities adviser is not so liable if it is proved that a reasonable person in the client's circumstances could be expected to have done, or omitted to do, as the case may be, that act in reliance on the recommendation even if the securities adviser had complied with that section in relation to the recommendation.
- (4) In the case of a contravention of section 851, the securities adviser is not so liable if it is proved that the recommendation was, in all the circumstances, appropriate having regard to the information that, when making the recommendation, the securities adviser had about the client's investment objectives, financial situation and particular needs.

853 Qualified privilege for adviser when complying with this Division

A securities adviser who:

- (a) makes a securities recommendation in relation to securities to a person who may reasonably be expected to rely on it; and
- (b) in so making the recommendation, contravenes neither of subsections 849(2) and 851(1);

has qualified privilege in respect of a statement the securities adviser makes to the person, whether orally or in writing, in the course of, or in connection with, so making the recommendation.

Part 7.5—Dealers' financial statements and audit

854 Interpretation

In this Part, unless the contrary intention appears:

- (a) a reference to a licence is a reference to a dealers licence; and
- (ba) a reference to a licensee is a reference to a person who holds a dealers licence; and
- (b) a reference to a book, security, trust account or business of or in relation to a dealer who carries on business in partnership is a reference to such a book, security, trust account or business of or in relation to the partnership.

855 Application of Part

- (1) This Part applies in relation to a licensee in relation to his, her or its securities business, whether carried on in this jurisdiction or elsewhere.
- (2) This Part does not affect, and shall be deemed never to have affected, the operation of Chapter 2M in relation to a company that is the holder of a dealers licence or in relation to a securities business that is carried on by such a company.

856 Dealers' financial records

- (1) This section applies where a person (in this section called the *dealer*) holds a licence.
- (2) The dealer must:
 - (a) keep such financial records as correctly record and explain the transactions and financial position of the securities business carried on by the dealer; and
 - (b) keep those records (in this section called *the records*) as provided by this section.

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- (3) The records shall be kept in such a way as will enable true and fair profit and loss statements and balance sheets to be prepared from time to time.
- (4) The records shall be kept in such a way as will enable profit and loss statements and balance sheets of the securities business carried on by the dealer to be conveniently and properly audited.
- (5) The records shall be kept in writing in the English language or in such a manner as will enable them to be readily accessible and readily converted into writing in the English language.
- (6) The records shall be kept in sufficient detail to show particulars of:
 - (a) all money received or paid by the dealer, including money paid to, or disbursed from, a trust account;
 - (b) all purchases and sales of securities made by the dealer, the charges and credits arising from them, and the names of the buyer and seller of each of those securities;
 - (c) all income received from commissions, interest, and other sources, and all expenses, commissions, and interest paid, by the dealer;
 - (d) all the assets and liabilities (including contingent liabilities) of the dealer;
 - (e) all securities that are the property of the dealer, showing by whom the securities, or the documents of title to the securities, are held and, where they are held by some other person, whether or not they are held as security against loans or advances;
 - (f) all securities that are not the property of the dealer and for which the dealer or a nominee controlled by the dealer is accountable, showing by whom, and for whom, the securities or the documents of title to the securities are held and the extent to which they are either held for safe custody or deposited with a third party as security for loans or advances made to the dealer;
 - (g) all purchases and sales of options made by the dealer and all fees (being option money) arising from them;

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- (h) all arbitrage transactions entered into by the dealer; and
 - (j) all underwriting transactions entered into by the dealer.
- (7) The records shall be kept in sufficient detail to show separately particulars of every transaction by the dealer.
 - (8) The records shall specify the day on which, or the period during which, each transaction by the dealer took place.
 - (9) The records shall contain copies of acknowledgments of the receipt of securities or of documents of title to securities received by the dealer from clients for sale or safe custody clearly showing the name or names in which the particular securities are registered.
 - (10) The records shall be kept in sufficient detail to show separately particulars of all transactions by the dealer with, or for the account of:
 - (a) clients of the dealer, excluding, where the dealer carries on business in partnership, the partners of the firm;
 - (b) the dealer or, where the dealer carries on business in partnership, the partners of the firm;
 - (c) other dealers; and
 - (d) employees of the dealer.
 - (11) An entry in the records shall, unless the contrary is proved, be deemed to have been made by, or with the authority of, the dealer.
 - (12) Where any of the records is not kept in writing in the English language, the dealer shall, if required to convert the financial records concerned into writing in the English language by a person who is entitled to examine the record, comply with the requirement within a reasonable time.
 - (13) The dealer does not contravene this section merely because some or all of the records are kept as a part of, or in conjunction with, the records relating to any other business that is carried on by the dealer.

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- (14) Where any of the records are kept outside Australia, the dealer shall:
- (a) cause to be sent to and kept at a place in Australia such particulars with respect to the business dealt with in those records as will enable true and fair profit and loss statements and balance sheets to be prepared; and
 - (b) if required by the Commission to produce those records at a place in Australia, comply with the requirement not later than 28 days after the requirement is made.
- (15) Nothing in this section limits the generality of anything else in it.

857 Appointment of auditor by dealer

- (1) A licensee must, within 1 month after beginning to hold the licence, appoint as auditor or auditors to audit the licensee's financial statements:
- (a) a person or persons; or
 - (b) a firm or firms; or
 - (c) a person or persons and a firm or firms;
- other than a person who, or a firm that, is ineligible by virtue of this section to act as auditor of the licensee.
- (2) Subject to this section, a person is ineligible to act as auditor of the holder of a licence if:
- (a) the person is not a registered company auditor;
 - (b) the person, or a body corporate in which the person is a substantial shareholder for the purposes of Part 6.7, is indebted in an amount exceeding \$5,000 to the holder or, if the holder is a body corporate, to a related body corporate; or
 - (c) the person is:
 - (i) in the case of a holder who is a natural person—a partner or employee of the holder; or
 - (ii) in the case of a holder that is a body corporate:
 - (A) an officer of the body corporate;

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- (B) a partner, employer or employee of an officer of the body corporate; or
 - (C) a partner or employee of an employee of an officer of the body corporate.
- (3) Subject to this section, a firm is ineligible at a particular time to act as auditor of the holder of a licence, unless:
- (a) at least one member of the firm is a registered company auditor who is ordinarily resident in a State or Territory;
 - (b) where the business name under which the firm is carrying on business is not registered under a prescribed law of a State or Territory—there has been lodged a return in the prescribed form showing, in relation to each member of the firm, the member's full name and the member's address as at that time;
 - (c) no member of the firm, and no body corporate in which any member of the firm is a substantial shareholder for the purposes of Part 6.7, is indebted in an amount exceeding \$5,000 to the holder or, where the holder is a body corporate, to a related body corporate;
 - (d) no member of the firm is:
 - (i) in the case of a holder who is a natural person—a partner or employee of the holder; or
 - (ii) in the case of a holder that is a body corporate:
 - (A) an officer of the body corporate;
 - (B) a partner, employer or employee of an officer of the body corporate; or
 - (C) a partner or employee of an employee of an officer of the body corporate; and
 - (e) in the case of a holder that is a body corporate, no officer of the body corporate receives any remuneration from the firm for acting as a consultant to it on accounting or auditing matters.
- (4) For the purposes of paragraphs (2)(b) and (3)(c), disregard a debt owed by a natural person to a body corporate if:

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- (a) the body corporate is:
 - (i) an Australian ADI; or
 - (ii) a body corporate registered under the *Life Insurance Act 1995*; and
 - (b) the debt arose because of a loan that the body corporate or entity made to the person in the ordinary course of its ordinary business; and
 - (c) the person used the amount of the loan to pay the whole or part of the purchase price of premises that the person uses as their principal place of residence.
- (5) For the purposes of subsections (2) and (3), a person shall be deemed to be an officer of a body corporate if:
- (a) in any case—the person is an officer of a related body corporate; or
 - (b) except where the Commission, if it thinks fit in the circumstances of the case, directs that this paragraph shall not apply in relation to the person in relation to the body corporate—the person has, at any time within the immediately preceding 12 months, been an officer or promoter of the body corporate or of a related body corporate.
- (6) For the purposes of this section, a person is not an officer of a body corporate merely because of being or having been the liquidator of that body corporate or of a related body corporate.
- (7) For the purposes of this section, a person is not an officer of a body corporate merely because of having been appointed as auditor of that body corporate or of a related body corporate or, for any purpose relating to taxation, a public officer of a body corporate or merely because of being or having been authorised to accept on behalf of the body corporate or a related body corporate service of process or any notices required to be served on the body corporate or related body corporate.
- (8) Subject to this section, a person or firm shall not, while ineligible by virtue of this section to act as auditor of the holder of a licence:

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- (a) consent to be appointed as auditor of the holder;
 - (b) act as auditor of the holder; or
 - (c) prepare a report that an auditor of the holder is to prepare under this Chapter.
- (9) The appointment of a firm as auditor of the holder of a licence shall be deemed to be an appointment of all persons who are members of the firm and are registered company auditors, whether resident in Australia or not, at the date of the appointment.
- (10) Where a firm that has been appointed as auditor of the holder of a licence is re-constituted because of the death, retirement or withdrawal of a member or members or because of the admission of a new member or new members, or both:
- (a) a person who was deemed under subsection (9) to be an auditor of the holder and has so retired or withdrawn from the firm as previously constituted shall be deemed to have resigned as auditor of the holder as from the day of the person's retirement or withdrawal but, unless that person was the only member of the firm who was a registered company auditor and, after the retirement or withdrawal of that person, there is no member of the firm who is a registered company auditor, section 858 does not apply to that resignation;
 - (b) a person who is a registered company auditor and is so admitted to the firm shall be deemed to have been appointed as an auditor of the holder as from the date of the admission; and
 - (c) the reconstitution of the firm does not affect the appointment of the continuing members of the firm who are registered company auditors as auditors of the holders;
- but nothing in this subsection affects the operation of subsection (3).
- (11) Except as provided by subsection (10), the appointment of the members of a firm as auditors of the holder of a licence that is deemed by subsection (9) to have been made because of the appointment of the firm as auditor of the holder is not affected by the dissolution of the firm.

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- (12) A report or notice that purports to be made or given by a firm appointed as auditor of the holder of a licence is not duly made or given unless it is signed in the firm name and in his or her own name by a member of the firm who is a registered company auditor.
- (13) Where a person or firm is appointed as an auditor of the licensee under subsection (1) (other than an appointment that is deemed to be made by virtue of subsection (10)) or under subsection (16), the licensee shall within 14 days after the appointment lodge a written notice stating that the licensee has made the appointment and specifying the name of the person or firm.
- (14) A person shall not:
 - (a) if the person has been appointed auditor of the holder of a licence—knowingly disqualify himself or herself while the appointment continues from acting as auditor of the holder; or
 - (b) if the person is a member of a firm that has been appointed auditor of the holder of a licence—knowingly disqualify the firm while the appointment continues from acting as auditor of the holder.
- (15) An auditor of the holder of a licence holds office until death, until removal or resignation from office in accordance with section 858 or until becoming prohibited by subsection (8) from acting as auditor of the holder.
- (16) Within 14 days after a vacancy occurs in the office of an auditor of a licensee, if there is no surviving or continuing auditor of the licensee, the licensee shall appoint a person or persons, a firm or firms or a person or persons and a firm or firms to fill the vacancy, other than a person who, or a firm that, is ineligible by virtue of this section to act as auditor of the licensee.
- (17) While a vacancy in the office of an auditor continues, the surviving or continuing auditor or auditors (if any) may act.

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- (18) A licensee must not appoint a person or firm as auditor of the licensee unless that person or firm has, before the appointment, consented by written notice given to the licensee to act as auditor and has not withdrawn the consent by written notice given to the licensee.
- (19) This section does not apply in relation to a body corporate (except a proprietary company) in relation to which section 327 applies.

858 Removal and resignation of auditors

- (1) A licensee:
 - (a) shall remove an auditor of the licensee from office if the auditor becomes ineligible by virtue of section 857 to act as auditor of the licensee; and
 - (b) may, with the Commission's consent, remove an auditor of the licensee from office.
- (2) An auditor of the holder of a licence may, by written notice given to the holder, resign as auditor of the holder if:
 - (a) the auditor has, by written notice given to the Commission, applied for consent to the resignation and, at or about the same time as the auditor gave notice to the Commission, gave written notice to the holder of the application; and
 - (b) the auditor has received the consent of the Commission.
- (3) The Commission shall, as soon as practicable after receiving an application from an auditor under subsection (2), notify the auditor and the holder whether it consents to the resignation.
- (4) A statement by an auditor in an application under subsection (2) or in answer to an inquiry by the Commission relating to the reasons for the application:
 - (a) is not admissible in evidence in any civil or criminal proceedings in a court of this jurisdiction against the auditor other than proceedings for a contravention of section 1308; and

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- (b) may not be made the ground of a prosecution (other than a prosecution for a contravention of section 1308), action or suit against the auditor;
and a certificate by the Commission that the statement was made in the application or in answer to an inquiry by the Commission is conclusive evidence that the statement was so made.
- (5) Subject to subsection (6), the resignation of an auditor takes effect on:
- (a) the date (if any) specified for the purpose in the notice of resignation;
 - (b) the date on which the Commission gives its consent to the resignation; or
 - (c) the date (if any) fixed by the Commission for the purpose; whichever last occurs.
- (6) Where, on the retirement or withdrawal from a firm of a member, the firm will no longer be capable, because of paragraph 857(3)(a), of acting as auditor of the holder of a licence, the member so retiring or withdrawing shall, if not disqualified from acting as auditor of the holder, be deemed to be the auditor of the holder until the member obtains the consent of the Commission to the retirement or withdrawal.
- (7) This section does not apply in relation to a body corporate (except a proprietary company) in relation to which section 329 applies.

859 Fees and expenses of auditors

The reasonable fees and expenses of an auditor of the holder of a licence are payable by the holder.

860 Dealer's accounts

- (1) In this section:

financial year, in relation to a licensee, means:

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- (a) where the licensee is not a body corporate—the year ending on 30 June; and
- (b) where the licensee is a body corporate—the financial year of the body corporate;

prescribed day, in relation to a financial year of a licensee, means:

- (a) where the licensee is not a body corporate—the day that is 2 months after the end of that financial year; or
- (b) where the licensee is a body corporate—the day that is 3 months after the end of that financial year;

or where, in either case, an extension of time is approved under subsection (3), the day on which the period of the extension ends.

- (2) A licensee must, in respect of each financial year, other than a financial year that ended before the date of commencement of this section or ended on or after that date but before the date on which the licensee started to carry on business as a dealer, prepare a true and fair profit and loss statement and balance sheet on the basis of such accounting principles (if any) and containing such information and matters as are prescribed and lodge them before the prescribed day for that financial year, together with an auditor's report containing the prescribed information and matters.
- (3) The Commission may, on application made by the holder of a licence and the holder's auditor before the end of the period of 2 months or, as the case requires, the period of 3 months referred to in the definition of **prescribed day** in subsection (1) or, if that period has been extended by an approval or approvals previously given under this subsection, before the end of the period as so extended, approve an extension of the period.
- (4) An approval under subsection (3) may be given subject to such conditions (if any) as the Commission imposes.
- (5) Where an approval under subsection (3) in relation to a licensee is given subject to conditions, the licensee must comply with those conditions.

The Corporations Law—Section 861

861 Auditor to report to Commission on certain matters

(1) Where an auditor, in the performance of duties as auditor of the holder of a licence, becomes aware of a prescribed matter, the auditor shall, within 7 days after becoming aware of the matter, lodge a written report on the matter and send a copy of the report to the holder and to each securities exchange of which the holder is a member.

(2) In this section:

prescribed matter means a matter that, in the opinion of the auditor:

- (a) has adversely affected, is adversely affecting or may adversely affect the ability of the holder to meet the holder's obligations as a dealer; or
- (b) constitutes or may constitute a contravention of section 856, 866, 867, 868, 869, 870, 871, 872 or 873, or Part 7.7 or of a condition of the licence.

862 Securities exchange to report to Commission on certain matters

(1) Where, in relation to a dealer who is a member of a securities exchange, the securities exchange becomes aware of a prescribed matter, the securities exchange shall, as soon as practicable after becoming aware of the matter, lodge a written report on the matter and send a copy of the report to the dealer.

(2) In this section:

prescribed matter, in relation to a dealer, means a matter that, in the opinion of the securities exchange concerned:

- (a) has adversely affected, is adversely affecting or may adversely affect the ability of the dealer to meet the dealer's obligations as a dealer; or
- (b) constitutes or may constitute a contravention of section 856, 866, 867, 868, 869, 870, 871, 872 or 873, or Part 7.7 or of a condition of a licence held by the dealer.

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863 Qualified privilege for auditor

- (1) An auditor of the holder of a licence has qualified privilege in respect of:
 - (a) a statement that the auditor makes, orally or in writing, in the course of his or her duties as auditor; or
 - (b) the lodging of a report, or the sending of a report to the holder, or to a securities exchange, under section 861.
- (2) A person has qualified privilege:
 - (a) in respect of the publishing of a document prepared by an auditor of the holder of a licence in the course of the auditor's duties or required by or under this Chapter to be lodged, whether or not the document has been lodged; or
 - (b) in respect of the publishing of a statement made by such an auditor as mentioned in subsection (1).

864 Securities exchange may impose additional obligations on members

Nothing in this Part or in Part 7.6 prevents a securities exchange from imposing on a member of that securities exchange any obligations or requirements (other than obligations or requirements inconsistent with this Chapter or with a condition of a licence held by the member) that the securities exchange thinks fit with respect to:

- (a) the audit of books (including the audit of books by an auditor appointed by the securities exchange);
- (b) the information to be furnished in reports from auditors; or
- (c) the keeping of books.