

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 1274‑1493,

Schedules 2-4 and 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.**

**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 30 June 2000 (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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An Act to make a law for the government of the Australian Capital Territory in relation to corporations, securities and the futures industry, and for other purposes

Part 1—Preliminary

1 Short title

This Act may be cited as the *Corporations Act 1989*.

2 Commencement

(1) Subject to this section, the provisions of this Act commence on a day or days to be fixed by Proclamation.

(2) This Part commences on the day on which section 6 of the *Corporations Legislation Amendment Act 1990* commences.

3 Object

(1) The object of this Act (other than Part 8) is to make a law for the government of the Australian Capital Territory in relation to corporations, securities, the futures industry and some other matters.

(2) This Act has effect, and is to be interpreted, accordingly.

(3) Despite subsection (1) of this section and subsection 8(1) of this Act, neither this Act nor the Corporations Law of the Australian Capital Territory is, for the purposes of subsection 22(3) of the *Acts Interpretation Act 1901*, an Act providing for the administration or government of a Territory.

4 Interpretation

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

***applicable provision***, in relation to a jurisdiction, means a provision of:

(a) the Corporations Law, or Corporations Regulations, of that jurisdiction; or

(b) the ASC Law, or ASC Regulations, of that jurisdiction; or

(c) in the case of the Capital Territory—a Commonwealth law as applying, of its own force or because of another Commonwealth law, in relation to:

(i) an offence against; or

(ii) an act, matter or thing arising under or in respect of;

a provision that, because of any other application or applications of this definition, is an applicable provision of the Capital Territory or any other jurisdiction; or

(d) in the case of a jurisdiction other than the Capital Territory—a Commonwealth law as applying, because of a law of that jurisdiction, in relation to:

(i) an offence against; or

(ii) an act, matter or thing arising under or in respect of;

a provision that, because of any other application or applications of this definition, is an applicable provision of that or any other jurisdiction.

***ASC Law*** and ***ASC Regulations*** have the meaning provided for by Division 2 of Part 1 of the *Australian Securities and Investments Commission Act 1989*.

***Capital Territory*** means the Australian Capital Territory and the Jervis Bay Territory.

***Commonwealth administrative laws*** means the provisions of the following Acts:

(a) the *Administrative Appeals Tribunal Act 1975*;

(b) the *Administrative Decisions (Judicial Review) Act 1977*;

(c) the *Freedom of Information Act 1982*;

(d) the *Ombudsman Act 1976*;

(e) the *Privacy Act 1988*;

and the provisions of the regulations under those Acts.

***Commonwealth law*** means any of the written or unwritten laws of the Commonwealth, including laws about the exercise of prerogative powers, rights and privileges, other than the Corporations Law of the Capital Territory, the ASC Law of the Capital Territory or provisions prescribed by regulations under section 73.

***jurisdiction*** means a State or the Capital Territory.

***modifications*** includes additions, omissions and substitutions.

***State*** includes the Northern Territory.

***Territory*** does not include the Northern Territory.

(2) For the purposes of this Act, the Jervis Bay Territory is taken to be part of the Australian Capital Territory.

Part 2—The Corporations Law, and the Corporations Regulations, of the Capital Territory

5 Application in the Capital Territory of the Corporations Law

The Corporations Law set out in section 82 as in force for the time being:

(a) applies as a law for the government of the Capital Territory; and

(b) as so applying, may be referred to as the Corporations Law of the Capital Territory.

6 Application of regulations in force under section 22

(1) The regulations in force for the time being under section 22:

(a) apply as regulations in force for the purposes of the Corporations Law of the Capital Territory; and

(b) as so applying, may be referred to as the Corporations Regulations of the Capital Territory.

(2) Subject to subsection (3) of this section, where regulations under section 22 are expressed to take effect from a specified day that is earlier than the day when they are notified in the *Gazette* under subsection 48(1) of the *Acts Interpretation Act 1901*, subsection (1) of this section has effect, and is taken always to have had effect, as if those regulations had taken effect from the specified day.

(3) To the extent that a provision of the Corporations Regulations of the Capital Territory is taken because of a particular application of subsection (2) to have effect, or to have had effect, before the day of notification of the regulations referred to in that subsection, the provision does not operate so as to:

(a) affect a private person’s rights as at that day so as to disadvantage that person; or

(b) impose a liability on a private person in respect of anything done or omitted to be done before that day.

(4) In subsection (3):

***private person*** means a person other than:

(a) the Commonwealth, a State or the Capital Territory; or

(b) an authority of the Commonwealth, of a State or of the Capital Territory.

(5) Subsection (3) does not affect any other operation that the provision has because of subsection (2) or otherwise.

(6) Since subsections (3), (4) and (5) deal differently with the topic dealt with by subsection 48(2) of the *Acts Interpretation Act 1901*, that subsection does not apply in relation to regulations under section 22 of this Act.

7 Interpretation of some expressions in the Corporations Law, and the Corporations Regulations, of the Capital Territory

In the Corporations Law, and the Corporations Regulations, of the Capital Territory:

***Act of this jurisdiction*** means:

(a) in section 919, 942, 1236 or 1351 of that Law—an Act of the Parliament; and

(b) in section 111C of that Law—an Act of the Parliament or an Act or Ordinance of the Capital Territory; and

(c) otherwise—an Act or Ordinance of the Capital Territory.

***the Minister for this jurisdiction*** means the Minister.

***this jurisdiction*** means the Capital Territory.

8 Corporations Law of the Capital Territory taken to be an Act

(1) Except as provided in this section or as prescribed by regulations under section 73, the Corporations Law of the Capital Territory is taken for all purposes to be an Act.

(2) Part 1.2 of the Corporations Law of the Capital Territory has effect to the exclusion of the *Acts Interpretation Act 1901*.

(3) Subject to subsection (2), the *Acts Interpretation Act 1901* as amended and in force at the commencement of this section applies, and that Act as amended and in force at any later time does not apply, in relation to the Corporations Law of the Capital Territory.

(4) The *Acts Interpretation Act 1901* does not apply in relation to an application order under section 111A of that Law.

(5) An application order under section 111A of the Corporations Law of the Capital Territory is not a statutory rule within the meaning of the *Statutory Rules Publication Act 1903*.

9 Certain laws not to be affected by later Commonwealth laws

(1A) In this section:

***reserved law*** means:

(a) this Act; or

(b) the Corporations Law, or Corporations Regulations, of the Capital Territory; or

(c) the ASC Law, or ASC Regulations, of the Capital Territory.

(1) An Act enacted, or an instrument made under an Act, after the commencement of this section is not to be interpreted as amending or repealing, or otherwise altering the effect or operation of, a provision of a reserved law.

(2) Subsection (1) does not affect the interpretation of an Act, or of an instrument made under an Act, so far as that Act provides expressly for that Act or instrument, as the case may be, to have effect despite a specified provision of a reserved law, or despite any provision of a specified reserved law.

10 Relationship between the Corporations Law, and the Corporations Regulations, of the Capital Territory and the laws of the Capital Territory

(1) In this section:

***the Law*** means the Corporations Law, and the Corporations Regulations, of the Capital Territory.

(2) The object of this section is to avoid or resolve inconsistencies between the Law and the laws of the Capital Territory.

(3) Subject to this section, the Law has effect despite anything in a law of the Capital Territory.

(4) Regulations under section 73:

(a) may provide that specified laws of the Capital Territory have effect despite the Law or specified provisions of the Law; and

(b) may provide that the Law, or specified provisions of the Law, has or have effect with such modifications as the regulations prescribe.

(5) Regulations that are made under section 73 and take effect within 12 months after the commencement of this section may amend or repeal laws of the Capital Territory.

(6) Regulations in force because of subsection (4) or (5) have effect accordingly.

(7) Nothing in subsection (2) affects the validity of regulations purporting to be made under section 73.

11 Operation of particular Acts of the Capital Territory

(1) Section 477 of the Corporations Law of the Capital Territory has effect as provided by section 39 of the *Workmen’s Compensation Supplementation Fund Act 1980* of that Territory in relation to the liquidator of a corporation that is an insurer within the meaning of that Act.

(2) Division 6 of Part 5.6 of the Corporations Law of the Capital Territory has effect subject to section 40 of the *Workmen’s Compensation Supplementation Fund Act 1980* of that Territory.

(3) Part 5.7 of the Corporations Law of the Capital Territory does not apply to:

(a) a society registered under the *Co‑operative Societies Act 1939* of that Territory; or

(b) a body corporate constituted under the *Unit Titles Act 1970* of that Territory.

(4) An Act of the Capital Territory may provide that, where an incorporated association is being wound up under Part 5.7 of the Corporations Law of the Capital Territory, specified provisions of the Act apply, and where such an Act so provides, that Part has effect subject to the specified provisions.

(5) An Act of the Capital Territory may provide that Part 5.7 of the Corporations Law of the Capital Territory applies, subject to the modifications and adaptations prescribed by the Act, in relation to the winding up of an incorporated association, and where such an Act so provides, that Part applies accordingly.

(6) In subsection (4) or (5):

***incorporated association*** means an association, society, institution or body incorporated under the *Associations Incorporation Act 1953* of the Capital Territory.

(7) The Corporations Law of the Capital Territory has effect subject to sections 23 and 24 of the *Trustee Companies Act 1947* of that Territory.

(8) Nothing in this section limits, or is limited by, anything in section 10.

Part 3—Citing the Corporations Law and the Corporations Regulations

12 Simpler citation of Corporations Law, and Corporations Regulations, of the Capital Territory

(1) The Corporations Law of the Capital Territory may be referred to simply as the Corporations Law.

(2) The Corporations Regulations of the Capital Territory may be referred to simply as the Corporations Regulations.

(3) This section has effect subject to section 14.

13 References to Corporations Law, and Corporations Regulations, of other jurisdictions

(1) This section has effect for the purposes of an Act, a law of the Capital Territory, or an instrument made under an Act or under such a law.

(2) Where a law of a jurisdiction other than the Capital Territory that corresponds to section 5 provides that the Corporations Law set out in section 82 as in force for the time being applies as law of that jurisdiction, the Corporations Law of that jurisdiction is the Corporations Law so set out, applying as law of that jurisdiction.

(3) Where a law of a jurisdiction other than the Capital Territory that corresponds to section 6 provides that the regulations in force for the time being under section 22 apply for the purposes of the Corporations Law of that jurisdiction, the Corporations Regulations of that jurisdiction are those regulations as so applying.

14 References to Corporations Law and Corporations Regulations

(1) The object of this section is to help ensure that the Corporations Law of the Capital Territory operates, so far as possible, as if that Law, together with the Corporations Law of each jurisdiction other than the Capital Territory, constituted a single national Corporations Law applying of its own force throughout Australia.

(2) Subject to this section, a reference in an instrument to the Corporations Law, or to the Corporations Regulations, is to be taken, for the purposes of the laws of the Commonwealth and of the laws of the Capital Territory:

(a) to be a reference to the Corporations Law, or to the Corporations Regulations, of the Capital Territory; and

(b) to include a separate reference to the Corporations Law, or to the Corporations Regulations, of each jurisdiction other than the Capital Territory.

(3) Subsection (2) has effect except so far as the contrary intention appears in the instrument, or the context of the reference otherwise requires.

(4) Without limiting subsection (3), subsection (2) does not apply in relation to a reference expressed as a reference to the Corporations Law, or to the Corporations Regulations, of a jurisdiction.

(5) In this section:

***instrument*** means:

(a) an Act or an instrument made under an Act; or

(b) a law of the Capital Territory or an instrument made under such a law; or

(c) an award or other industrial determination or order, or an industrial agreement; or

(d) any other order (whether executive, judicial or otherwise); or

(e) a notice, certificate or licence; or

(f) an agreement; or

(g) an application made, information laid, affidavit sworn, or warrant issued, for any purpose; or

(h) an indictment, presentment, summons or writ; or

(j) any other pleading in, or process issued in connection with, a legal or other proceeding; or

(k) any other document whatever.

15 Saving of citation provisions of other jurisdictions

Subject to section 14, section 12 is not intended to prevent a law of a jurisdiction other than the Capital Territory from:

(a) providing that the Corporations Law, or the Corporations Regulations, of that jurisdiction may be referred to simply as the Corporations Law, or the Corporations Regulations; or

(b) providing for how a reference to the Corporations Law, or to the Corporations Regulations, is to be interpreted for the purposes of the laws of that jurisdiction.

Part 4—Application of the Corporations Law to the Crown

16 Interpretation

To avoid doubt, a reference in this Part to the Crown in a particular right includes a reference to an instrumentality or agency (whether a body corporate or not) of the Crown in that right.

17 Corporations Law of the Capital Territory

(1) Chapter 5 (except Part 5.8) of the Corporations Law of the Capital Territory binds the Crown in right of the Commonwealth, of each of the States, of the Capital Territory, of the Northern Territory and of Norfolk Island.

(1A) Chapters 6, 6A, 6B, 6C and 6D of the Corporations Law of the Capital Territory:

(a) bind the Crown in right of the Commonwealth; and

(b) do not bind the Crown in right of any State, of the Capital Territory, of the Northern Territory or of Norfolk Island.

(2) To avoid doubt, Chapter 7 of the Corporations Law of the Capital Territory does not bind the Crown in right of the Commonwealth, of any State, of the Capital Territory, of the Northern Territory or of Norfolk Island.

18 Corporations Law of other jurisdictions

(1) Chapter 5 (except Part 5.8) of the Corporations Law of each jurisdiction other than the Capital Territory binds the Crown in right of the Commonwealth, of the Capital Territory and of Norfolk Island.

(2) Chapters 6, 6A, 6B, 6C and 6D of the Corporations Law of each jurisdiction other than the Capital Territory bind the Crown in right of the Commonwealth.

19 Crown not liable to prosecution

Nothing in this Part, or in the Corporations Law, renders the Crown in any right liable to be prosecuted for an offence.

20 This Part overrides the prerogative

Where, because of this Part, a provision of a law of a State binds the Crown in right of the Commonwealth, of the Capital Territory or of Norfolk Island, the Crown in that right is subject to that provision despite any prerogative right or privilege.

Part 5—Power to make regulations for the purposes of the Corporations Law

21 Interpretation

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

***prescribed*** means prescribed by the regulations.

***the Law*** means the Corporations Law of the Capital Territory.

***the regulations*** means the regulations made under section 22.

(2) An expression has in this Part the meaning it would have if this Part were in Chapter 9 of the Law.

22 The Corporations Regulations

The Governor‑General may make regulations, not inconsistent with this Act or the Law, prescribing matters:

(a) required or permitted by the Law to be prescribed by regulations within the meaning of the Law; or

(b) necessary or convenient to be prescribed by such regulations for carrying out or giving effect to the Law;

and, in particular, may make regulations:

(c) for or in relation to the keeping of registers by the Commission, the lodging of documents with the Commission, the registration of documents by the Commission, the time and manner of lodging or registration, and the requirements with which documents lodged or to be lodged are to comply; and

(d) prescribing forms for the purposes of the Law and the method of verifying any information required by or in those forms; and

(e) prescribing the manner in which, the persons by whom, and the directions or requirements in accordance with which, the forms prescribed for the purposes of the Law, or any of them, are required or permitted to be signed, prepared, or completed, and generally regulating the signing, preparation and completion of those forms, or any of them; and

(f) for or in relation to the convening of, conduct of, and procedure and voting at, meetings of creditors, meetings of contributories and meetings of holders of debentures, and joint meetings of creditors and members of companies, the number of persons required to constitute a quorum at any such meeting, the sending of notices of meetings to persons entitled to attend at meetings, the lodging of copies of notices of, and of resolutions passed at, meetings, and generally regulating the conduct of, and procedure at, any such meeting; and

(g) prescribing the persons by whom, and the circumstances and manner in which, proxies may be appointed and generally regulating the appointment and powers of proxies; and

(h) for or in relation to the proving of debts in the winding up of a company, the manner of proving debts and the time within which debts are required or permitted to be proved and generally regulating the proving of debts; and

(j) prescribing the manner in which a liquidator appointed by the Court may:

(i) exercise powers and perform functions under subsection 478(1) of the Law; and

(ii) exercise any powers conferred, and perform any duties imposed, on the liquidator by regulations made for the purposes of subsection 488(1) of the Law; and

(k) prescribing the manner in which a liquidator in a voluntary winding up may exercise powers and perform functions under section 506 of the Law; and

(m) prescribing times for the lodging of any documents; and

(n) for or in relation to the publication of advertisements offering the services of dealers or investment advisers or offering securities for purchase or sale, and the form and content of those advertisements; and

(p) for or in relation to the publication of advertisements offering the services of futures brokers or futures advisers or offering to deal in futures contracts, and the form and content of those advertisements; and

(q) for or in relation to the form of balance‑sheets and profit and loss statements required by the Law to be prepared by dealers or futures brokers; and

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

(s) for or in relation to the furnishing to the Commission of information in addition to, or in variation of, the information contained in a prescribed form lodged with it; and

(t) for or in relation to the times within which information required to be furnished to the Commission under the Law shall be so furnished; and

(u) for or in relation to the manner in which:

(i) orders made under the Law may be served on persons affected by the orders; and

(ii) documents that are required or permitted by the Law to be served on a person may be so served; and

(w) prescribing penalties not exceeding $1,000 for contraventions of the regulations.

23 Regulations may provide for application orders to specify matters

The regulations may require or permit matters to be specified, for the purposes of the regulations, by or in application orders.

24 Scope of particular regulations

Except as otherwise expressly provided in this Act or the Law, the regulations may be of general or specially limited application or may differ according to differences in time, locality, place or circumstance.

25 Power to prescribe fees

The regulations may prescribe fees (including fees that are taxes) for chargeable matters.

26 Aspects of the power to prescribe fees

(1) The regulations may provide for a fee for a chargeable matter to be determined by reference to a prescribed matter or prescribed matters, whether or not the prescribed matter, or any of the prescribed matters, has a direct or indirect connection with the chargeable matter.

(2) A fee prescribed as a stated amount shall not exceed $5,000.

(3) Two or more fees may be prescribed for the same chargeable matter.

(4) In this section:

***fee*** includes a fee that is a tax.

27 Effect of certain provisions

Neither of section 24 and subsection 26(1) limits the generality of the other or of section 25.

28 Verifying or certifying documents

The regulations may:

(a) where documents required by or under the Law to be lodged in accordance with the Law are required to be verified or certified and no manner of verification or certification is prescribed by or under the Law—require that the documents or any of them be verified or certified by statement in writing made by such persons as are prescribed by the regulations; and

(b) where no express provision is made in the Law for verification or certification of documents—require that the documents be verified or certified by statement in writing by such persons as are prescribed.

29 Documents lodged by an agent

The regulations may provide, in such cases as are prescribed, that, if a document that is required by or under the Law to be lodged is signed or lodged on behalf of a person by an agent duly authorised by writing, there must be:

(a) lodged with; or

(b) endorsed on; or

(c) annexed to;

that document, the original, or a verified copy, of the authority.

30 Exemptions from Chapter 6D, 7 or 8

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

(a) do not have effect in relation to a specified person or class of persons; or

(b) have effect in relation to a specified person or class of persons to such extent only as is prescribed; or

(c) do not have effect in relation to a specified transaction or class of transactions; or

(d) do not have effect in relation to a specified transaction or class of transactions entered into by a specified person or class of persons;

and may provide that a contravention of a prescribed term or condition is an offence against the regulations.

31 Penalty notices

(1) The regulations:

(a) may prescribe offences against the Law (not being offences the penalties applicable to which include a term of imprisonment or a pecuniary penalty that exceeds $1,000), or offences against the regulations, for the purposes of section 1313 of the Law; and

(b) must, in relation to each offence that is prescribed under this subsection:

(i) prescribe the particulars of that offence that are to be given in a notice served on a person under that section in relation to the offence; and

(ii) prescribe the amount of the penalty (being not more than half the amount of the penalty applicable to the offence) that is payable in respect of the offence under a notice served on a person under that section in relation to the offence.

(2) In subsection (1), a reference to a penalty applicable to an offence is a reference to the penalty that is applicable to that offence because of any of the provisions of section 1311 of the Law.

(3) The particulars of an offence required to be prescribed by subparagraph (1)(b)(i) may be prescribed by being set out in the form prescribed for the purposes of section 1313 of the Law in relation to the offence.

Part 7—Imposition of fees and taxes

33 Fees (including taxes) for chargeable matters

This section imposes the fees (including fees that are taxes) that the Corporations Regulations of the Capital Territory prescribe.

34 Contributions and levies for fidelity funds of securities exchanges

(1) This section imposes:

(a) the contribution payable under subsection 902(1) of the Corporations Law of the Capital Territory by a person who wishes to be admitted to membership of a securities exchange, or to a partnership in a member firm recognised by a securities exchange; and

(b) the annual contribution payable under subsection 902(2) of that Law by a member of a securities exchange; and

(c) any levy payable under section 904 of that Law by a member of a securities exchange.

(2) An expression has in subsection (1) the meaning it would have if this section were in Part 7.9 of the Corporations Law of the Capital Territory.

35 Levies for National Guarantee Fund

This section imposes any levy that is payable under section 938, 940 or 941 of the Corporations Law of the Capital Territory.

36 Contributions and levies for fidelity funds of futures organisations

(1) This section imposes:

(a) the contribution payable under subsection 1234(1) of the Corporations Law of the Capital Territory by a person who wishes to be admitted to membership of a futures organisation; and

(b) the annual contribution payable under subsection 1234(2) of that Law by a contributing member of a futures organisation; and

(c) any levy payable under section 1235 of that Law by a contributing member of a futures organisation.

(2) An expression has in subsection (1) the meaning it would have if this section were in Part 8.6 of the Corporations Law of the Capital Territory.

Part 8—National administration and enforcement of the Corporations Law

Division 1—Preliminary

37 Object

The object of this Part is to help ensure that:

(a) the Corporations Law of the Capital Territory, and the Corporations Law of each jurisdiction other than the Capital Territory, are administered and enforced on a national basis, in the same way as if those Laws constituted a single law of the Commonwealth; and

(b) the ASC Law of the Capital Territory, and the ASC Law of each jurisdiction other than the Capital Territory, are administered and enforced on a national basis, in the same way as if those Laws constituted a single law of the Commonwealth.

38 Interpretation

In this Part:

***authority***, in relation to the Commonwealth, includes:

(a) a body corporate, or an unincorporated body, established for a public purpose by or in accordance with an Act; and

(b) a court, tribunal or authority established by or in accordance with an Act;

for example:

(c) the Administrative Appeals Tribunal; and

(d) the Australian Federal Police;

***corresponding law*** means:

(a) an Act of a jurisdiction (other than the Capital Territory) that corresponds to this Act; or

(b) regulations made under such an Act; or

(c) the Corporations Law, Corporations Regulations, ASC Law, or ASC Regulations, or any other applicable provision, of such a jurisdiction; or

(d) rules of court made because of such an Act;

***officer***, in relation to the Commonwealth, includes:

(a) a Minister; and

(b) a person holding:

(i) an office established by or under an Act; or

(ii) an appointment made under an Act; or

(iii) an appointment made by the Governor‑General or a Minister but not under an Act; and

(c) a person who is a member or officer of an authority of the Commonwealth; and

(d) a person who is in the service or employment of the Commonwealth, or of an authority of the Commonwealth, or is employed or engaged under an Act;

for example:

(e) a member or special member of the Australian Federal Police; and

(f) the Director of Public Prosecutions; and

(g) the Ombudsman; and

(h) the Privacy Commissioner; and

(j) a Special Prosecutor.

39 Effect of Part

(1) Divisions 2 and 2A have effect subject to this Act (in particular Part 9), the Corporations Law of the Capital Territory and the *Australian Securities and Investments Commission Act 1989*.

(2) The provisions of:

(a) subsections 42(2), (3) and (4) and sections 43 and 44; and

(b) subsections 45B(2), (3) and (4) and sections 45C and 45D;

and any other provision of this Act that has effect for the purposes of any of those provisions, extend to each external Territory.

(3) Nothing in this Part limits the generality of anything else in it.

Division 2—Offences against applicable provisions

40 Object

(1) The object of this Division is to further the object of this Part by providing for an offence against an applicable provision of another jurisdiction to be treated in the Capital Territory as if it were an offence against a law of the Commonwealth.

(2) The purposes for which an offence is to be treated as mentioned in subsection (1) include, for example (but without limitation):

(a) the investigation and prosecution of offences; and

(b) the arrest, custody, bail, trial and conviction of offenders or persons charged with offences; and

(c) proceedings relating to a matter referred to in paragraph (a) or (b); and

(d) appeals and review relating to criminal proceedings and to proceedings of the kind referred to in paragraph (c); and

(e) the sentencing, punishment and release of persons convicted of offences; and

(f) fines, penalties and forfeitures; and

(g) liability to make reparation in connection with offences; and

(h) proceeds of crime; and

(i) spent convictions.

42 Application of Commonwealth laws in relation to offences against applicable provisions of other jurisdictions

(1) The Commonwealth laws apply, as laws for the government of the Capital Territory, in relation to an offence against the applicable provisions of another jurisdiction as if those provisions were laws of the Commonwealth and were not laws of that other jurisdiction.

(2) The Commonwealth laws that extend to an external Territory apply, as laws for the government of that Territory, in relation to an offence against the applicable provisions of a jurisdiction other than the Capital Territory as if those provisions were laws of the Commonwealth and were not laws of that jurisdiction.

(3) A Commonwealth law, as applying because of subsection (1) or (2), does not require, prohibit, empower, authorise, or otherwise provide for, the doing of an act outside the Capital Territory, or the external Territory concerned, as the case may be.

(4) The effect that a Commonwealth law has because of subsection (1) or (2) is additional to, and does not prejudice, the effect that the Commonwealth law otherwise has.

43 Functions and powers under Commonwealth laws as applying because of section 42

(1) This section applies to a Commonwealth law that confers on an officer or authority of the Commonwealth a function or power in relation to an offence against an applicable provision of the Capital Territory.

(2) The Commonwealth law, as applying because of subsection 42(1) or (2), confers on that officer or authority the same function or power in relation to an offence against the corresponding applicable provision of a jurisdiction other than the Capital Territory.

(3) The function or power referred to in subsection (2) may only be performed or exercised in the Capital Territory, or in the external Territory concerned, as the case may be.

(4) In performing or exercising the function or power referred to in subsection (2), the officer or authority must act as nearly as practicable as the officer or authority would act in performing or exercising the same function or power in relation to an offence against the corresponding applicable provision of the Capital Territory.

44 References in a Commonwealth law to a provision of a Commonwealth law

A reference in a Commonwealth law to a provision of that or another Commonwealth law is taken, for the purposes of the first‑mentioned law as applying because of subsection 42(1) or (2), to be a reference to that provision as applying because of that subsection.

45 How offences against applicable provisions of other jurisdictions are to be treated

(1) For the purposes of a law of the Commonwealth or a law of the Capital Territory, an offence against the applicable provisions of a jurisdiction other than the Capital Territory:

(a) is taken to be an offence against the laws of the Commonwealth, in the same way as if those provisions were laws of the Commonwealth; and

(b) is taken not to be an offence against the laws of that jurisdiction.

(2) Subsection (1) has effect for the purposes of a law:

(a) only in so far as it is within the authority of the Parliament to provide in relation to that law as mentioned in paragraph (1)(a); and

(b) except as prescribed by regulations under section 73.

Division 2A—Administrative law

45A Object

The object of this Division is to further the object of this Part by providing that the Commonwealth administrative laws apply in the Capital Territory and the external Territories, in relation to the applicable provisions of a jurisdiction other than the Capital Territory, in the same way as if those provisions were laws of the Commonwealth.

45B Application of Commonwealth administrative laws in relation to applicable provisions of other jurisdictions

(1) The Commonwealth administrative laws apply, as laws for the government of the Capital Territory, in relation to any act, matter or thing arising under or in respect of the applicable provisions of another jurisdiction as if those provisions were laws of the Commonwealth and were not laws of that other jurisdiction.

(2) The Commonwealth administrative laws that extend to an external Territory apply, as laws for the government of that Territory, in relation to any act, matter or thing arising under or in respect of the applicable provisions of a jurisdiction other than the Capital Territory as if those provisions were laws of the Commonwealth and were not laws of that jurisdiction.

(3) A Commonwealth administrative law, as applying because of subsection (1) or (2), does not require, prohibit, empower, authorise, or otherwise provide for, the doing of an act outside the Capital Territory, or the external Territory concerned, as the case may be.

(4) The effect that a Commonwealth administrative law has because of subsection (1) or (2) is additional to, and does not prejudice, the effect that the Commonwealth administrative law otherwise has.

45C Functions and powers under Commonwealth administrative laws as applying because of section 45B

(1) This section applies to a Commonwealth administrative law that confers on an officer or authority of the Commonwealth a function or power in relation to an act, matter or thing arising under or in respect of an applicable provision of the Capital Territory.

(2) The Commonwealth administrative law, as applying because of subsection 45B(1) or (2), confers on that officer or authority the same function or power in relation to an act, matter or thing arising under or in respect of the corresponding applicable provision of a jurisdiction other than the Capital Territory.

(3) The function or power referred to in subsection (2) may only be performed or exercised in the Capital Territory, or in the external Territory concerned, as the case may be.

(4) In performing or exercising the function or power referred to in subsection (2), the officer or authority must act as nearly as practicable as the officer or authority would act in performing or exercising the same function or power in relation to an act, matter or thing arising under or in respect of the corresponding applicable provision of the Capital Territory.

45D References in a Commonwealth administrative law to a provision of such a law

A reference in a Commonwealth administrative law to a provision of that or another Commonwealth administrative law is taken, for the purposes of the first‑mentioned law as applying because of subsection 45B(1) or (2), to be a reference to that provision as applying because of that subsection.

45E How acts etc. under applicable provisions of other jurisdictions are to be treated

(1) For the purposes of a law of the Commonwealth or of a law of the Capital Territory, an act, matter or thing arising under or in respect of the applicable provisions of a jurisdiction other than the Capital Territory:

(a) is taken to be an act, matter or thing arising under or in respect of the laws of the Commonwealth, in the same way as if those provisions were laws of the Commonwealth; and

(b) is taken not to be an act, matter or thing arising under or in respect of the laws of that jurisdiction.

(2) Subsection (1) has effect for the purposes of a law:

(a) only in so far as it is within the authority of the Parliament to provide in relation to that law as mentioned in paragraph (1)(a); and

(b) except as prescribed by regulations under section 73.

Division 3—Performance of functions that corresponding laws of States confer on Commonwealth authorities and officers

46 Ministers

A Minister has such functions and powers as are expressed to be conferred on him or her by or under a corresponding law.

47 Prescribed functions and powers

(1) Regulations under section 73 may provide that prescribed authorities and officers of the Commonwealth have prescribed functions and powers that are expressed to be conferred on them by or under corresponding laws.

(2) Regulations under section 73 may provide for and in relation to the doing of acts in the Capital Territory by authorities and officers of the Commonwealth in the performance of functions, and the exercise of powers, that are prescribed because of subsection (1) of this section.

(3) Regulations in force because of this section have effect accordingly.

48 *Gazette* notices under corresponding laws

Where a provision of a corresponding law is expressed to require or permit a document, or a copy of a document, to be published in the *Gazette,* the document or copy is to be so published in accordance with that provision.

Part 9—Jurisdiction and procedure of courts

Division 1—Vesting and cross‑vesting of civil jurisdiction

49 Operation of Division

(1) This Division provides in relation to:

(a) the jurisdiction of courts in respect of civil matters arising under the Corporations Law of the Capital Territory; and

(b) the jurisdiction of the courts of the Capital Territory in respect of civil matters arising under any Corporations Law of a State; and

(ba) the jurisdiction of courts in civil matters in respect of decisions made by officers of the Commonwealth to prosecute persons for offences against the Corporations Law of a State or the Capital Territory and related criminal justice process decisions;

and so provides to the exclusion of:

(c) the *Jurisdiction of Courts (Cross‑vesting) Act 1987*; and

(d) section 39B of the *Judiciary Act 1903*.

(2) Nothing in this Division affects any other jurisdiction of any court.

50 Interpretation

(1) In this Division:

***civil matter*** means a matter other than a criminal matter.

***Corporations Law*** has the extended meaning given by subsection (2).

***Family Court*** means the Family Court of Australia.

***Full Court***, in relation to a Supreme Court of a State or Territory, includes any court of the State or Territory to which appeals lie from a single judge of that Supreme Court.

***judgment*** means a judgment, decree or order, whether final or interlocutory.

***lower court*** means a court of a State or Territory that is not a superior court.

***officer of the Commonwealth*** has the same meaning as in paragraph 75(v) of the Constitution.

***State Family Court*,** in relation to a State, means a court of that State to which section 41 of the *Family Law Act 1975* applies because of a Proclamation made under subsection 41(2) of that Act.

***superior court*** means the Federal Court of Australia, the Supreme Court of a State or Territory, the Family Court or a State Family Court.

***superior court matter*** means a civil matter that the Corporations Law clearly intends (for example, by use of the expression “the Court”) to be dealt with only by a superior court.

(2) In this Division:

(a) a reference to the Corporations Law of the Capital Territory includes a reference to:

(i) the Corporations Regulations of the Capital Territory; and

(ii) the ASC Law of the Capital Territory; and

(iii) the ASC Regulations of the Capital Territory; and

(iv) any other applicable provisions (as defined in section 4) of the Capital Territory; and

(v) this Act; and

(vi) regulations made under section 73 of this Act or section 252 of the ASC Law of the Capital Territory; and

(vii) rules of court made by the Federal Court, the Supreme Court of the Capital Territory, or the Family Court, because of a provision of this Act; and

(viii) rules of court applied by the Supreme Court, or a State Family Court, of a State when exercising jurisdiction conferred by this Division (including jurisdiction conferred by virtue of any previous application or applications of this subparagraph); and

(b) a reference to the Corporations Law of a State is a reference to the Corporations Law of that State within the meaning of the law of that State corresponding to this Division.

51 Jurisdiction of Federal Court and State and Territory Supreme Courts

(1) Jurisdiction is conferred on the Federal Court of Australia with respect to civil matters arising under the Corporations Law of the Capital Territory.

(2) Subject to section 9 of the *Administrative Decisions (Judicial Review) Act 1977*, jurisdiction is conferred on the Supreme Court of each State and the Capital Territory with respect to civil matters arising under the Corporations Law of the Capital Territory.

(3) The jurisdiction conferred on a Supreme Court by subsection (2) is not limited by any limits to which any other jurisdiction of that Supreme Court may be subject.

(4) This section has effect subject to section 51AA.

51A Jurisdiction of Family Court and State Family Courts

(1) Jurisdiction is conferred on the Family Court with respect to civil matters arising under the Corporations Law of the Capital Territory.

(2) Subject to section 9 of the *Administrative Decisions (Judicial Review) Act 1977*, jurisdiction is conferred on each State Family Court with respect to civil matters arising under the Corporations Law of the Capital Territory.

(3) The jurisdiction conferred on a State Family Court by subsection (2) is not limited by any limits to which any other jurisdiction of the State Family Court may be subject.

(4) This section has effect subject to section 51AA.

51AA Jurisdiction of courts: decisions to prosecute and related criminal justice process decisions made by Commonwealth officers

(1) If a decision to prosecute a person for an offence against the Corporations Law of a State or the Capital Territory has been made by an officer or officers of the Commonwealth and the prosecution is proposed to be commenced in a court of a State or the Capital Territory:

(a) neither the Federal Court nor the Family Court has jurisdiction with respect to any matter in which a person seeks a writ of mandamus or prohibition or an injunction against the officer or officers in relation to that decision; and

(b) jurisdiction with respect to any such matter is conferred on the Supreme Court of the State or Territory in which the prosecution is proposed to be commenced.

(2) Subject to subsection (3), at any time when:

(a) a prosecution for an offence against the Corporations Law of a State or the Capital Territory is before a court of a State or the Capital Territory; or

(b) an appeal arising out of such a prosecution is before a court of a State or the Capital Territory;

the following apply:

(c) neither the Federal Court nor the Family Court has jurisdiction with respect to any matter in which the person who is or was the defendant in the prosecution seeks a writ of mandamus or prohibition or an injunction against an officer or officers of the Commonwealth in relation to a related criminal justice process decision;

(d) jurisdiction with respect to any such matter is conferred on the Supreme Court of the State or Territory in which the prosecution or appeal is before a court.

(3) Subsection (2) does not apply where a person has applied for a writ of mandamus or prohibition, or an injunction, against an officer or officers of the Commonwealth in relation to a related criminal justice process decision before the commencement of a prosecution for an offence against a law of the Commonwealth, or of a State or a Territory.

(4) Where subsection (3) applies, the prosecutor may apply to the court for a permanent stay of the proceedings referred to in that subsection and the court may grant such a stay if the court determines that:

(a) the matters that are the subject of the proceedings are more appropriately dealt with in the criminal justice process; and

(b) a stay of proceedings will not substantially prejudice the person.

(5) Subsections (1), (2), (3) and (4) have effect despite anything in this Act or in any other law. In particular:

(a) neither this Act, nor any other law, has the effect of giving the Federal Court or the Family Court jurisdiction contrary to subsection (1) or (2); and

(b) neither section 9 of the *Administrative Decisions (Judicial Review) Act 1977*, nor any other law, has the effect of removing from the Supreme Court of a State or the Capital Territory the jurisdiction given to that Court by subsection (1) or (2).

(6) In this section:

***appeal*** includes an application for a new trial and a proceeding to review or call in question the proceedings, decision or jurisdiction of a court or judge.

***related criminal justice process decision***, in relation to an offence, means a decision (other than a decision to prosecute) made in the criminal justice process in relation to the offence, including:

(a) a decision in connection with the investigation, committal for trial or prosecution of the defendant; and

(b) a decision in connection with the appointment of investigators or inspectors for the purposes of such an investigation; and

(c) a decision in connection with the issue of a warrant, including a search warrant or a seizure warrant; and

(d) a decision requiring the production of documents, the giving of information or the summoning of persons as witnesses; and

(e) a decision in connection with an appeal arising out of the prosecution.

51B Jurisdiction of lower courts

(1) Subject to section 9 of the *Administrative Decisions (Judicial Review) Act 1977*, jurisdiction is conferred on the lower courts of each State and the Capital Territory with respect to civil matters, other than superior court matters, arising under the Corporations Law of the Capital Territory.

(2) The jurisdiction conferred on a lower court by subsection (1):

(a) is subject to the court’s general jurisdictional limits, so far as they relate to the amounts, or the value of property, with which the court may deal; but

(b) is not subject to the court’s other jurisdictional limits.

52 Appeals

(1) An appeal may not be instituted from a decision of the Federal Court to a court of a State or of the Capital Territory, or to the Family Court.

(2) An appeal may not be instituted from a decision of a court of the Capital Territory to a court of a State or to the Family Court.

(3) An appeal may not be instituted from a decision of a court (not being a State Family Court) of a State to the Federal Court, to a court of the Capital Territory or of another State, to the Family Court or to a State Family Court of that State.

(4) An appeal may not be instituted from a decision of the Family Court to the Federal Court or to a court of a State or of the Capital Territory.

(5) An appeal may not be instituted from a decision of a State Family Court of a State to the Federal Court, to a court of the Capital Territory or of another State, or (except in accordance with the law of the State under which the State Family Court is constituted) to the Supreme Court of that State.

53 Transfer of proceedings by the Federal Court and State and Territory Supreme Courts

(1) This section applies to a proceeding with respect to a civil matter arising under the Corporations Law of the Capital Territory in a court having jurisdiction under section 51.

(2) Where it appears to the court that, having regard to the interests of justice, it is more appropriate for the proceeding, or an application in the proceeding, to be determined by another court having jurisdiction in the matters for determination in the proceeding or application, the first‑mentioned court may transfer the proceeding or application to that other court.

53A Transfer of proceedings by Family Court and State Family Courts

(1) This section applies to a proceeding with respect to a civil matter arising under the Corporations Law of the Capital Territory in a court (in this section called the ***first court***) having jurisdiction under section 51A.

(2) If it appears to the first court that:

(a) the proceeding arises out of, or is related to, another proceeding pending in the Federal Court, or in another court of a State or of the Capital Territory, and that the court in which the other proceeding is pending is the most appropriate court to determine the first‑mentioned proceeding; or

(b) having regard to:

(i) whether, in the first court’s opinion, apart from this Division or a law of a State corresponding to this Division, the proceeding, or a substantial part of it, would have been incapable of being instituted in the first court; and

(ii) the extent to which, in the first court’s opinion, the matters for determination in the proceeding are matters not within the first court’s jurisdiction apart from this Division or such a law; and

(iii) the interests of justice;

the Federal Court, or another court of a State or of the Capital Territory, is the most appropriate court to determine the proceeding; or

(c) it is otherwise in the interests of justice that the Federal Court, or another court of a State or of the Capital Territory, determine the proceeding;

the first court must transfer the proceeding to the Federal Court, or to that other court, as the case may be.

(3) Subject to subsection (2), if it appears to the first court that:

(a) the proceeding arises out of, or is related to, another proceeding pending in another court having jurisdiction under section 51A in the matters for determination in the first‑mentioned proceeding, and that the other court is the most appropriate court to determine the first‑mentioned proceeding; or

(b) it is otherwise in the interests of justice that the proceeding be determined by another court having jurisdiction under section 51A in the matters for determination in the proceeding;

the first court must transfer the proceeding to the other court.

(4) If:

(a) the first court transfers the proceeding to another court; and

(b) it appears to the first court that:

(i) there is another proceeding pending in the first court that arises out of, or is related to, the first‑mentioned proceeding; and

(ii) it is in the interests of justice that the other court also determine the other proceeding;

the first court must also transfer the other proceeding to the other court.

53AA Transfer of proceedings in lower courts

(1) This section applies to a proceeding with respect to a civil matter arising under the Corporations Law of the Capital Territory in a lower court (the ***first court***) having jurisdiction under section 51B.

(2) If it appears to the first court that, having regard to the interests of justice, it is more appropriate for the proceeding, or an application in the proceeding, to be determined by another court (the ***second court***) having jurisdiction in the matters for determination in the proceeding or application, the first court may take action under whichever of subsections (3) and (4) applies.

(3) If the second court is also a lower court, the first court may transfer the proceeding or application to the second court.

(4) If the second court is a superior court, the first court may transfer the proceeding or application to the relevant Supreme Court and recommend that the proceeding or application be transferred by the Supreme Court to the second court.

(5) The relevant Supreme Court is not bound to comply with a recommendation under subsection (4) and it may instead decide:

(a) to deal with the proceeding or application itself; or

(b) to transfer the proceeding or application to some other court (which could be the first court).

(6) Nothing in this section allows the relevant Supreme Court to transfer the proceeding or application to another court otherwise than in accordance with section 53 and the other requirements of this Division.

(7) In this section:

***relevant Supreme Court*** means the Supreme Court of the State or Territory of which the first court is a court.

53B Further matters for a court to consider when deciding whether to transfer a proceeding

In deciding whether to transfer under section 53, 53A or 53AA a proceeding or application, a court must have regard to:

(a) the principal place of business of any body corporate concerned in the proceeding or application; and

(b) the place or places where the events that are the subject of the proceeding or application took place; and

(c) the other courts that have jurisdiction to deal with the proceeding or application..

53C Transfer may be made at any stage

A court may transfer under section 53, 53A or 53AA a proceeding or application:

(a) on the application of a party made at any stage; or

(b) of the court’s own motion.

53D Transfer of documents

Where, under section 53, 53A or 53AA, a court transfers a proceeding, or an application in a proceeding, to another court:

(a) the Registrar or other proper officer of the first‑mentioned court must transmit to the Registrar or other proper officer of the other court all documents filed in the first‑mentioned court in respect of the proceeding or application, as the case may be; and

(b) the other court must proceed as if:

(i) the proceeding had been originally instituted in the other court; and

(ii) the same proceedings had been taken in the other court as were taken in the first‑mentioned court; and

(iii) in a case where an application is transferred—the application had been made in the other court.

54 Conduct of proceedings

(1) Subject to sections 60, 61 and 61A, where it appears to a court that, in determining a matter for determination in a proceeding, the court will, or will be likely to, be exercising relevant jurisdiction, the rules of evidence and procedure to be applied in dealing with that matter are to be such as the court considers appropriate in the circumstances, being rules that are applied in a superior court in Australia or in an external Territory.

(2) Where a proceeding is transferred or removed to a court (in this subsection called the ***transferee court***) from another court (in this subsection called the ***transferor court***), the transferee court must deal with the proceeding as if, subject to any order of the transferee court, the steps that had been taken for the purposes of the proceeding in the transferor court (including the making of an order), or similar steps, had been taken in the transferee court.

(3) In this section:

***relevant jurisdiction*** means:

(a) jurisdiction conferred on the Federal Court of Australia or the Family Court with respect to civil matters arising under the Corporations Law of the Capital Territory; or

(b) jurisdiction conferred on the Federal Court of Australia or the Family Court with respect to civil matters arising under the Corporations Law of a State, being jurisdiction that is being exercised by the Federal Court or the Family Court, as the case may be, sitting in the Capital Territory; or

(c) jurisdiction conferred on a court of the Capital Territory with respect to civil matters arising under the Corporations Law of a State; or

(d) jurisdiction conferred on a court of a State with respect to civil matters arising under the Corporations Law of the Capital Territory.

55 Courts to act in aid of each other

All courts having jurisdiction in civil matters arising under the Corporations Law of the Capital Territory and the officers of, or under the control of, those courts must severally act in aid of, and be auxiliary to, each other in all such matters.

56 Exercise of jurisdiction pursuant to cross‑vesting provisions

(1) Nothing in this or any other Act is intended to override or limit the operation of a provision of a law of a State or Territory relating to cross‑vesting of jurisdiction with respect to matters arising under the Corporations Law of the State or Territory.

(2) The Federal Court, the Family Court or a court of the Capital Territory may:

(a) exercise jurisdiction (whether original or appellate) conferred on it by a law of a State corresponding to this Division with respect to matters arising under the Corporations Law of a State; and

(b) hear and determine a proceeding transferred to it under such a provision.

57 Rights of appearance

A person who is entitled to practise as a barrister or a solicitor, or as both a barrister and a solicitor, in a court has, if a proceeding (in this subsection referred to as the ***transferred proceeding***) in that court is transferred to another court under this Division or a law of a State that corresponds to this Division, the same entitlements to practise in relation to:

(a) the transferred proceeding; and

(b) any other proceeding out of which the transferred proceeding arises or to which the transferred proceeding is related, being another proceeding that is to be determined together with the transferred proceeding;

in the other court that the person would have if the other court were a federal court exercising federal jurisdiction.

58 Limitation on appeals

An appeal does not lie from a decision of a court:

(a) in relation to the transfer of a proceeding under this Division; or

(b) as to which rules of evidence and procedure are to be applied pursuant to subsection 54(1).

59 Enforcement of judgments etc.

(1) A judgment of the Federal Court, the Family Court or a court of the Capital Territory that is given, in whole or in part, in the exercise of jurisdiction conferred by this Division, or by a law of a State that corresponds to this Division, is enforceable in the Capital Territory as if the judgment had been given by that court entirely in the exercise of the jurisdiction of that court apart from this Division or any such law.

(2) Where:

(a) a provision of a law of the Commonwealth or of the Capital Territory (not being a law in relation to the enforcement of judgments) refers to a thing done by the Federal Court, the Family Court, the Supreme Court of the Capital Territory or of a State, a State Family Court or a particular lower court of the Capital Territory or of a State; and

(b) that thing is done by another court in the exercise of jurisdiction conferred by this Division or a law of a State corresponding to this Division;

the reference in that provision to the Federal Court, the Family Court, the Supreme Court of the Capital Territory or of that State, that State Family Court or that lower court, as the case may be, is taken as a reference to that other court.

60 Rules of the Federal Court

(1) The power to make rules of court conferred by section 59 of the *Federal Court of Australia Act 1976* extends to making rules of court, not inconsistent with the Corporations Law of the Capital Territory:

(a) with respect to proceedings, and the practice and procedure, of the Federal Court of Australia under that Law; and

(b) with respect to any matter or thing that is:

(i) required or permitted by that Law to be prescribed by rules within the meaning of that Law; or

(ii) necessary or convenient to be prescribed by such rules for carrying out or giving effect to that Law; and

(c) without limitation, with respect to costs, and with respect to rules about meetings ordered by the Federal Court of Australia.

(2) When the Federal Court is exercising jurisdiction with respect to matters arising under the Corporations Law of a State, being jurisdiction conferred by a law of a State that corresponds to this Division, that Court must apply the rules of court made under subsection (1), with such alterations as are necessary.

(3) In this section:

***Corporations Law of the Capital Territory*** does not include rules of court.

61 Rules of the Supreme Court

(1) The Judges of the Supreme Court of the Capital Territory or a majority of them may make rules of court, not inconsistent with the Corporations Law of the Capital Territory:

(a) with respect to proceedings, and the practice and procedure, of that court under that Law; and

(b) with respect to any matter or thing that is:

(i) required or permitted by that Law to be prescribed by rules within the meaning of that Law; or

(ii) necessary or convenient to be prescribed by such rules for carrying out or giving effect to that Law; and

(c) without limitation, with respect to costs, and with respect to rules as to meetings ordered by that Court.

(1A) When a lower court of the Capital Territory is exercising jurisdiction with respect to matters arising under the Corporations Law of the Capital Territory, the court must apply the rules of court made under subsection (1), with such alterations as are necessary.

(2) When a court of the Capital Territory is exercising jurisdiction with respect to matters arising under the Corporations Law of a State, being jurisdiction conferred by a law of a State that corresponds to this Division, that court must apply the rules of court made under subsection (1), with such alterations as are necessary.

(3) When a court of a State is exercising jurisdiction with respect to matters arising under the Corporations Law of the Capital Territory, being jurisdiction conferred by this Division, that court must apply the rules of court made under the law of the State corresponding to subsection (1), with such alterations as are necessary.

(4) In this section:

***Corporations Law of a State*** does not include rules of court.

***Corporations Law of the Capital Territory*** does not include rules of court.

61A Rules of the Family Court

(1) The power to make rules of court conferred by section 123 of the *Family Law Act 1975* extends to making rules of court, not inconsistent with the Corporations Law of the Capital Territory:

(a) with respect to proceedings, and the practice and procedure, of the Family Court under that Law; and

(b) with respect to any matter or thing that is:

(i) required or permitted by that Law to be prescribed by rules within the meaning of that Law; or

(ii) necessary or convenient to be prescribed by such rules for carrying out or giving effect to that Law; and

(c) without limitation, with respect to costs, and with respect to rules about meetings ordered by the Family Court.

(2) When the Family Court is exercising jurisdiction with respect to matters arising under the Corporations Law of a State, being jurisdiction conferred by a law of a State that corresponds to this Division, that Court must apply the rules of court made under subsection (1), with such alterations as are necessary.

(3) When a State Family Court of a State is exercising jurisdiction with respect to matters arising under the Corporations Law of the Capital Territory, being jurisdiction conferred by this Division, that Court must apply the rules of court made under the law of the State corresponding to subsection (1), with such alterations as are necessary.

(4) In this section:

***Corporations Law of a State*** does not include rules of court.

***Corporations Law of the Capital Territory*** does not include rules of court.

Division 2—Vesting and cross‑vesting of criminal jurisdiction

62 Operation of Division

This Division provides in relation to:

(a) the jurisdiction of courts in respect of criminal matters arising under the Corporations Law of the Capital Territory; and

(b) the jurisdiction of the courts of the Capital Territory in respect of criminal matters arising under the Corporations Law of any jurisdiction;

and so provides to the exclusion of sections 68, 70 and 70A of the *Judiciary Act 1903*.

63 Interpretation

(1) In this Division:

***magistrate*** means a magistrate who is remunerated by salary or otherwise.

(2) In this Division:

(a) a reference to the Corporations Law of the Capital Territory includes a reference to:

(i) the Corporations Regulations of the Capital Territory; and

(ii) the ASC Law of the Capital Territory; and

(iii) the ASC Regulations of the Capital Territory; and

(iv) any other applicable provisions (as defined in section 4) of the Capital Territory; and

(v) this Act; and

(vi) regulations made under section 73 of this Act or section 252 of the ASC Law of the Capital Territory; and

(vii) rules of court made by the Federal Court because of a provision of this Act, and rules of court applied by the Supreme Court of the Capital Territory, or of a State, when exercising jurisdiction conferred by this Division (including jurisdiction conferred by virtue of any previous application or applications of this subparagraph); and

(b) a reference to the Corporations Law of a State is a reference to the Corporations Law of that State within the meaning of the law of that State corresponding to this Division.

64 Jurisdiction of Courts

(1) Subject to this section, the several courts of each State and the Capital Territory exercising jurisdiction:

(a) with respect to:

(i) the summary conviction; or

(ii) the examination and commitment for trial on indictment; or

(iii) the trial and conviction on indictment;

of offenders or persons charged with offences against the laws of the State or Capital Territory, and with respect to:

(iv) their sentencing, punishment and release; or

(v) their liability to make reparation in connection with their offences; or

(vi) the forfeiture of property in connection with their offences; or

(vii) the proceeds of their crimes; and

(b) with respect to the hearing and determination of:

(i) proceedings connected with; or

(ii) appeals arising out of; or

(iii) appeals arising out of proceedings connected with;

any such trial or conviction or any matter of a kind referred to in subparagraph (a)(iv), (v), (vi) or (vii);

have the equivalent jurisdiction with respect to offenders or persons charged with offences against the Corporations Law of the Capital Territory.

(2) Where a provision of a law of a State corresponding to subsection (1) is expressed to confer jurisdiction with respect to offenders or persons who are charged with offences against the Corporations Law of that State upon a court of the Capital Territory, the court may exercise that jurisdiction.

(3) The jurisdiction conferred by subsection (1) is not to be exercised with respect to the summary conviction, or examination and commitment for trial, of any person except by a magistrate.

(4) The jurisdiction conferred by subsection (1) includes jurisdiction in accordance with provisions of a relevant law of a State or the Capital Territory, and:

(a) the reference in paragraph (1)(b) to “any such trial or conviction” includes a reference to any conviction or sentencing in accordance with the provisions of a relevant law; and

(b) unless the contrary intention appears, a reference to jurisdiction conferred by subsection (1) includes a reference to such included jurisdiction.

(5) A person may be dealt with in accordance with a relevant law even if, apart from this section, the offence concerned:

(a) would be required to be prosecuted on indictment; or

(b) would be required to be prosecuted either summarily or on indictment.

(6) For the purposes of the application of a relevant law as provided by subsection (4):

(a) a reference in that law to an indictable offence is taken to include a reference to an offence that may be prosecuted on indictment; and

(b) in order to determine the sentence that may be imposed on a person by a court pursuant to the relevant law, the person is taken to have been prosecuted and convicted on indictment in that court.

(7) Subject to subsections (9) and (10), the jurisdiction conferred on a court of a State or the Capital Territory by subsection (1) is conferred despite any limits as to locality of the jurisdiction of that court under the law of that State or of the Capital Territory.

(8) Subject to subsection (9), the jurisdiction conferred on a court of the Capital Territory by a law of a State corresponding to subsection (1) may be exercised despite any limits as to locality of the jurisdiction of that court under the law of the Capital Territory.

(9) Where:

(a) jurisdiction is conferred on a court of the Capital Territory in relation to the summary conviction of persons charged with offences against the Corporations Law of this or another jurisdiction by subsection (1) or a corresponding provision of a law of a State; and

(b) the court is satisfied that it is appropriate to do so, having regard to all the circumstances including the public interest;

the court may decline to exercise that jurisdiction in relation to an offence committed in a State.

(10) The jurisdiction conferred on a court of a State by subsection (1) in relation to:

(a) the examination and commitment for trial on indictment; and

(b) the trial and conviction on indictment;

of offenders or persons charged with offences against the Corporations Law of the Capital Territory is conferred only in relation to:

(c) offences committed outside Australia; and

(d) offences committed, begun or completed within the State concerned.

(11) In this section:

***Australia*** does not include the coastal sea.

***relevant law*** means a law providing that where, in proceedings before a court, a person pleads guilty to a charge for which he or she could be prosecuted on indictment, the person may be committed, to a court having jurisdiction to try offences on indictment, to be sentenced or otherwise dealt with without being tried in that last‑mentioned court.

65 Laws to be applied

(1) Subject to this Division, the laws of the Capital Territory respecting:

(a) the arrest and custody in the Territory of offenders or persons charged with offences; and

(b) criminal procedure in the Territory in relation to such persons;

apply in the Territory, so far as they are applicable, to persons who are charged with offences against the Corporations Law of the Capital Territory or of a State in respect of whom jurisdiction is conferred on a court of the Capital Territory by this Division or a corresponding law of a State.

(2) Subject to this Division, the laws of a State respecting:

(a) the arrest and custody in that State of offenders or persons charged with offences; and

(b) criminal procedure in that State in relation to such persons;

apply in that State, so far as they are applicable, to persons who are charged with offences against the Corporations Law of the Capital Territory in respect of whom jurisdiction is conferred on a court of that State by this Division.

(3) The application of laws by subsections (1) and (2) is in addition to, and not in derogation from, the application of laws effected by Part 8 or the corresponding law of a State.

(4) In this section:

***criminal procedure*** means the procedure for:

(a) the summary conviction; and

(b) the examination and commitment for trial on indictment; and

(c) the trial and conviction on indictment; and

(d) the hearing and determination of appeals arising out of any such trial or conviction or out of any related proceedings;

of offenders or persons charged with offences, and includes the procedure for holding accused persons to bail;

***laws of a State*** means the laws that apply in relation to offenders, or persons charged with offences, against the Corporations Law of the State concerned.

Part 10—The National Guarantee Fund

66 Interpretation

In this Part:

***SEGC*** means a body corporate in relation to which a nomination as the Securities Exchanges Guarantee Corporation is in force under subsection 67(1).

67 Minister to nominate SEGC

(1) Subject to subsection (3), the Minister may nominate in writing as the Securities Exchanges Guarantee Corporation a body corporate (whenever incorporated) that is, for the purposes of the Corporations Law of the Capital Territory, a company limited by guarantee.

(2) The Commission must cause a copy of a nomination by the Minister under subsection (1) to be published in the *Gazette*.

(3) The Minister may only nominate a body corporate under subsection (1) if he or she is satisfied that:

(a) the Exchange is a member of the body corporate; and

(b) none of the members of the body corporate is a person other than an eligible exchange; and

(c) the body corporate’s constitution provides that no person, other than a person of a kind referred to in paragraph (b), may become or remain a member of the body corporate; and

(d) the body corporate will, if nominated under subsection (1), be able to perform and exercise SEGC’s functions and powers under the Fund provisions adequately and with due regard to the interests of the public; and

(e) the body corporate has obtained, or will within a reasonable period after being nominated under subsection (1) obtain, indemnity insurance in respect of its liabilities for:

(i) negligence in; and

(ii) defalcation, or fraudulent misuse of property, by an officer, employee or agent of the body corporate in connection with;

the performance or exercise of SEGC’s functions or powers under the Fund provisions, or has made or will make other satisfactory provisions for meeting those liabilities; and

(f) the body corporate’s business rules make satisfactory provision:

(i) for ensuring the safety of property received by the body corporate; and

(ii) generally for the protection of the interests of the public.

(4) An expression has in subsection (3) the meaning it would have if this section were in Part 7.10 of the Corporations Law of the Capital Territory.

(5) The body corporate that, immediately before the commencement of this Part, was the National Securities Exchanges Guarantee Corporation for the purposes of Part IXA of the *Securities Industry Act 1980* is taken to have been nominated, at that commencement, under subsection (1).

68 SEGC’s functions and powers under Part 7.10 of the Corporations Law

(1) In addition to the legal capacity and powers it has because of section 124 of the Corporations Law of the Capital Territory, SEGC has such functions and powers as are conferred, or expressed to be conferred, on it by this Part or by Part 7.10 of the Corporations Law.

(2) Section 125 of the Corporations Law of the Capital Territory does not apply in relation to a function or power conferred, or expressed to be conferred, as mentioned in subsection (1) of this section.

69 Establishment of National Guarantee Fund

As soon as practicable after the commencement of this Part, SEGC must establish a fund, to be known as the National Guarantee Fund.

Part 11—Miscellaneous

70 National business names register

Where the Minister is satisfied that the Commission has access to electronic records of information containing, in relation to a jurisdiction or jurisdictions, names registered from time to time as business names in that jurisdiction or those jurisdictions, the Minister may, by notice published in the *Gazette* identifying the records concerned, declare that he or she is so satisfied.

72 Companies Liquidation Account

(1) In this section:

***relevant money*** means:

(a) money that, immediately before the commencement of this section, stood to the credit of the Companies Liquidation Account established by section 428 of the *Companies Act 1981*; and

(b) money that, after the commencement of this section, is paid into the Companies Liquidation Account under provisions of the *Companies Act 1981* that are taken to continue in force after the commencement of Chapter 5 of the Corporations Law for the purposes of windings up started before the commencement of that Chapter.

(2) Relevant money is to be dealt with in accordance with section 427 of the *Companies Act 1981*.

73 Regulations for the purposes of this Act

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

(a) required or permitted by this Act (other than Part 5) to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act (other than Part 5).

Part 12—Transitional

74 Co‑operative Scheme Acts

For the purposes of this Part, the following are the Co‑operative Scheme Acts:

*Companies Act 1981*

*Companies (Fees) Act 1981*

*Companies (Fees: Taxation Component) Act 1989*

*Companies (Acquisition of Shares) Act 1980*

*Companies (Acquisition of Shares—Fees) Act 1980*

*Companies (Acquisition of Shares—Fees: Taxation Component) Act 1989*

*Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980*

*Companies (Transitional Provisions) Act 1981*

*Securities Industry Act 1980*

*Securities Industry (Fees) Act 1980*

*Securities Industry (Fees: Taxation Component) Act 1989*

*Futures Industry Act 1986*

*Futures Industry (Fees) Act 1986*

*Futures Industry (Fees: Taxation Component) Act 1989.*

75 National scheme laws of the Capital Territory

For the purposes of this Part, the national scheme laws of the Capital Territory are:

(a) this Act; and

(b) the Corporations Law of the Capital Territory; and

(c) the ASC Law of the Capital Territory.

76 National scheme laws prevail over Co‑operative Scheme Acts

(1) This section provides for the national scheme laws of the Capital Territory to supersede the Co‑operative Scheme Acts, which are to continue to operate of their own force only in relation to:

(a) matters arising before the commencement of this section; and

(b) matters arising, directly or indirectly, out of such matters;

in so far as those laws do not deal with those matters.

(2) Where a Co‑operative Scheme Act is inconsistent (within the meaning of section 109 of the Constitution) with a national scheme law of the Capital Territory, that law prevails and, to the extent of the inconsistency, that Act does not operate.

77 Regulations may exclude residual operation of Co‑operative Scheme Acts

(1) Regulations under section 73 may provide that prescribed provisions of Co‑operative Scheme Acts do not operate, either generally or as otherwise prescribed by the regulations.

(2) Regulations in force because of subsection (1) have effect accordingly.

78 Effect of sections 76 and 77

To the extent that an Act ceases to operate because of section 76 or 77, the Act is taken for the purposes of the *Acts Interpretation Act 1901* to have been repealed by this Act.

79 Regulations may modify Co‑operative Scheme Acts

(1) Regulations under section 73 may provide that a specified Co‑operative Scheme Act, or specified provisions of a Co‑operative Scheme Act, has or have effect with such modifications as the regulations prescribe.

(2) Regulations in force because of subsection (1) have effect accordingly, even if, because of section 76 or 77, the specified Act does not operate of its own force, or the specified provisions do not operate of their own force, as the case requires.

(3) However, a reference in subsection 76(2) of this Act to a Co‑operative Scheme Act includes a reference to such an Act as it has effect, or to provisions of such an Act as they have effect, because of this section.

80 Updating references to Co‑operative Scheme Acts and regulations

(1) In this section:

***instrument*** has the same meaning as in section 14, but does not include:

(a) a Co‑operative Scheme Act; or

(b) regulations under such an Act or under this Act; or

(c) a national scheme law, or national scheme regulations, of the Capital Territory;

***national scheme regulations of the Capital Territory*** means the Corporations Regulations, or the ASC Regulations, of the Capital Territory.

(2) Subject to subsection (4) and to any regulations in force under subsection (6), a reference in an instrument to a Co‑operative Scheme Act is to be taken to include a reference to such provisions of the national scheme laws of the Capital Territory as correspond to provisions of that Act.

(3) Subject to subsection (4) and to any regulations in force under subsection (6), a reference in an instrument to regulations under a Co‑operative Scheme Act is to be taken to include a reference to such provisions of national scheme regulations of the Capital Territory as correspond to provisions of the first‑mentioned regulations.

(4) Subject to any regulations in force under subsection (6), a reference in an instrument to a provision of a Co‑operative Scheme Act, or of regulations under such an Act, is to be taken to include a reference to the corresponding provision of a national scheme law, or of national scheme regulations, of the Capital Territory.

(4A) Subject to any regulations in force under subsection (6), a reference in an instrument to the National Companies and Securities Commission is to be taken to include a reference to the Australian Securities Commission.

(5) Regulations under section 73 may declare that, for the purposes of this section:

(a) prescribed provisions of national scheme laws of the Capital Territory correspond to prescribed provisions of Co‑operative Scheme Acts; and

(b) prescribed provisions of national scheme regulations of the Capital Territory correspond to prescribed provisions of regulations under Co‑operative Scheme Acts.

(6) Regulations under section 73:

(a) may declare that subsection (2), (3), (4) or (4A) of this section does not apply in relation to prescribed references in prescribed instruments; and

(b) may declare that subsection (2), (3), (4) or (4A) of this section has effect in relation to prescribed references in prescribed instruments as if, in that subsection, the words “be taken to be” were substituted for the words “be taken to include”.

(7) Regulations in force because of subsection (5) or (6) have effect accordingly.

81 Saving of provisions about Australian Stock Exchange Limited

(1) Section 76 does not apply in relation to Part IIA of the *Securities Industry Act 1980*.

(2) Part IIA has effect, as provided in this section, despite the national scheme laws of the Capital Territory.

(3) A reference in Part IIA to a relevant Act, except in relation to a time before the commencement of this section, is taken to be a reference to a national scheme law of the Capital Territory.

(4) Subject to subsection (5), a reference in Part IIA to a particular Co‑operative Scheme Act, except in relation to a time before that commencement, is taken to be a reference to such provisions of the national scheme laws of the Capital Territory as correspond to provisions of that Act.

(5) A reference in Part IIA to a provision of a Co‑operative Scheme Act (other than a provision of Part IIA itself), except in relation to a time before that commencement, is taken to be a reference to the corresponding provision of a national scheme law of the Capital Territory.

(6) Regulations in force because of subsection 80(5) also have effect for the purposes of this section.

Part 13—The Corporations Law

82 The Corporations Law

The Corporations Law is as follows:

The Corporations Law

Chapter 1—Introductory

Part 1.1—Preliminary

1 Citation

This Law may be referred to as the Corporations Law.

2 Commission has general administration of this Law

Subject to the ASC Law of this jurisdiction, the Commission has the general administration of the Corporations Law of this jurisdiction.

Part 1.2—Interpretation

Division 1—General

6 Effect of this Part

(1) The provisions of this Part have effect for the purposes of this Law, except so far as the contrary intention appears in this Law.

(2) This Part applies for the purposes of:

(a) Part 5.7;

(b) Chapter 5 as applying by virtue of Part 5.7; and

(c) Part 9.2;

as if a reference in this Part to a person or to a body corporate included a reference to a Part 5.7 body.

(3) This Part applies for the purposes of Chapter 6 as if a reference in this Part to a body corporate included a reference to a Chapter 6 body.

(4) Where, because of Part 11.2, provisions of this Law, as in force at a particular time, continue to apply:

(a) in relation to someone or something; or

(b) for particular purposes;

then, for the purposes of those provisions as so applying:

(c) this Part as in force at that time continues to have effect; and

(d) this Part as in force at a later time does not have effect.

7 Location of other interpretation provisions

(1) Most of the interpretation provisions for this Law are in this Part.

(2) However, interpretation provisions relevant only to Chapters 6, 7 and 8, respectively, are to be found at the beginning of those Chapters.

(3) Also, interpretation provisions relevant to a particular Part, Division or Subdivision may be found at the beginning of that Part, Division or Subdivision.

(4) Occasionally, an individual section contains its own interpretation provisions, not necessarily at the beginning.

8 How to read references to provisions of this Law

(1) The object of this section is to help ensure that the Corporations Law of this jurisdiction operates, so far as possible, as if that Law, together with the Corporations Law of each jurisdiction other than this jurisdiction, constituted a single national Corporations Law applying of its own force throughout Australia.

(2) A reference to this Law is a reference to this Law or the Corporations Law of another jurisdiction.

(3) A reference to a provision of this Law is a reference to that provision or the corresponding provision of the Corporations Law of another jurisdiction.

(4) Subsections (2) and (3) have effect:

(a) except so far as the contrary intention appears or the context otherwise requires; and

(b) except as prescribed.

(5) Without limiting subsection (4):

(a) subsection (2) does not apply in relation to a reference to this Law that is expressed as a reference to the Corporations Law of this jurisdiction; and

(b) subsection (3) does not apply in relation to a reference to a provision of this Law that is expressed as a reference to that provision of the Corporations Law of this jurisdiction; and

(c) neither subsection (2) nor (3) applies to a reference in:

(i) this section; or

(ii) section 8A, 58, 58A or 58B; or

(iii) Division 9, 10 or 11 of this Part; or

(iv) Part 1.3; or

(v) Chapter 2A (except subsection 113(3)); or

(vi) Chapter 2E (except subsection 213(2)); or

(vii) Chapter 2K (except section 273); or

(viii) Part 5B.1 or Part 5B.2 (except section 601CX); or

(ix) Part 5.7; or

(ixa) Chapter 5C; or

(x) Division 2 of Part 7.3; or

(xi) section 703; or

(xii) Division 3 or 4 of Part 7.11; or

(xiv) Division 2 of Part 8.3; or

(xv) Part 9.10 or 11.1.

8A Corporations Regulations, and application orders, of a jurisdiction treated as part of that jurisdiction’s Corporations Law

(1) Except in subsection 8(3) or Part 1.3, a reference to this Law includes a reference to the regulations and the application orders.

(2) A reference in Part 1.3 to this Law includes a reference to the regulations.

(3) Subject to this section, a reference to the Corporations Law of a jurisdiction includes a reference to:

(a) the Corporations Regulations of that jurisdiction; and

(b) the application orders under section 111A of that Law.

(4) A reference to a provision of this Law includes a reference to the application orders (if any) in force for the purposes of that provision.

(5) A reference to a provision of the Corporations Law of a jurisdiction includes a reference to the application orders (if any) under section 111A of that Law that are in force for the purposes of the first‑mentioned provision.

(6) No earlier subsection of this section applies in relation to a reference in this section.

9 Dictionary

Unless the contrary intention appears:

**A**

***AASB*** means the Australian Accounting Standards Board.

***Account*** means the Companies Unclaimed Money Account established by section 71 of the *Corporations Act 1989*.

***accounting standard***, means:

(a) an instrument in force under section 334; or

(b) a provision of such an instrument as it so has effect.

***ACN*** (short for “Australian Company Number”) is the number given by ASIC to a company on registration (see sections 118 and 601BD).

***acquire***:

(a) in relation to a futures contract—has the meaning given by sections 23, 26, 27 and 28;

(b) in relation to shares—has, in Chapter 7, the meaning given by subsection 51(1).

***act*** includes thing.

***Act*** means:

(a) except in relation to a jurisdiction—an Act of the Commonwealth; and

(b) in relation to a jurisdiction:

(i) in the case of a State—an Act passed by the Parliament of that State; or

(ii) in the case of the Northern Territory—an Act of the Northern Territory; or

(iii) in the case of the Capital Territory—an Act or Ordinance of the Capital Territory.

***adjustment agreement*** means a standardised agreement the effect of which is that:

(a) a particular person will either be under a Chapter 8 obligation to pay, or will have a Chapter 8 right to receive, an amount of money;

(b) whether the person will be under such an obligation to pay, or will have such a right to receive, the amount of money will depend on a particular state of affairs existing at a particular future time, including, without limiting the generality of the foregoing, a state of affairs that relates to fluctuations in the value or price of a commodity or other property, or in an index or other factor; and

(c) the amount of money will be calculated in a particular manner by reference to that state of affairs;

whether or not the agreement has any other effect or is capable of being varied or discharged before that future time.

***administration***, in relation to a body corporate, has, in the case of a company or recognised company, the meaning given by:

(a) section 435C or a corresponding law; and

(b) section 1381 or a corresponding law.

***administrator***:

(a) in relation to a body corporate but not in relation to a deed of company arrangement:

(i) means an administrator of the body appointed under Part 5.3A; and

(ii) has a meaning affected by section 1381; and

(iii) if 2 or more persons are appointed under that Part as administrators of the body or entity—has a meaning affected by paragraph 451A(2)(b); or

(b) in relation to a deed of company arrangement:

(i) means an administrator of the deed appointed under Part 5.3A; and

(ii) if 2 or more persons are appointed under that Part as administrators of the deed—has a meaning affected by paragraph 451B(2)(b).

***admit to quotation***: securities are ***admitted to quotation*** on a stock market of a securities exchange if the exchange has given unconditional permission for quotation of the securities on the stock market.

***Advisory Committee*** means the Companies and Securities Advisory Committee established by section 145 of the *Australian Securities and Investments Commission Act 1989*.

***affairs***, in relation to a body corporate, has, in the provisions referred to in section 53, a meaning affected by that section.

***affidavit*** includes affirmation.

***agency*** means an agency, authority, body or person.

***AGM*** means an annual general meeting of a company that section 250N requires to be held.

***agreement*** means:

(a) in Chapter 6 or 7—a relevant agreement; or

(b) in Chapter 8—a Chapter 8 agreement.

***amount*** includes a nil amount and zero.

***ancillary offence***, in relation to another offence, means an offence against:

(a) section 5, 6, 7 or 7A of the *Crimes Act 1914*; or

(b) subsection 86(1) of that Act by virtue of paragraph 86(1)(a) of that Act; or

(c) such a provision of the *Crimes Act 1914* as it applies as a law of this jurisdiction;

being an offence that is related to that other offence.

***annual return***:

(a) of a company—means the return that subsection 345(1) requires the company to lodge with ASIC; and

(b) of a registered managed investment scheme—means the return that subsection 345(2) requires the responsible entity of the scheme to lodge with ASIC.

***another jurisdiction*** means a jurisdiction other than this jurisdiction.

***application order*** means an order under section 111A of the Corporations Law of this jurisdiction.

***appoint*** includes re‑appoint.

***appropriate dealer*** for a market bid means a member of the relevant securities exchange.

***approved foreign bank***,in relation to a member of a futures organisation, means a bank, established by or under the law of a foreign country, in relation to which there is in force an approval given by the futures organisation in accordance with its business rules (within the meaning of Chapter 8).

***approved securities organisation*** means a body corporate in relation to which an approval under section 770 of the Corporations Law of this jurisdiction is in force.

***APRA*** means the Australian Prudential Regulation Authority.

***arbitrage transaction*** means a purchase or sale of securities effected in the ordinary course of trading on a stock market together with an offsetting sale or purchase of those securities effected at the same time, or at as nearly the same time as practicable, in the ordinary course of trading on another stock market for the purpose of obtaining a profit from the difference between the prices of those securities in the 2 stock markets.

***ARBN*** (short for “Australian Registered Body Number”) is the number given by ASIC to a registrable body on registration under Part 5B.2.

***arrangement***, in Part 5.1, includes a reorganisation of the share capital of a body corporate by the consolidation of shares of different classes, by the division of shares into shares of different classes, or by both of those methods.

***ARSN*** (short for “Australian Registered Scheme Number”) is the number given by ASIC to a registered scheme on registration (see section 601EB).

***ASIC*** means the Australian Securities and Investments Commission.

***ASIC database*** means so much of the national companies database kept by ASIC as consists of:

(a) some or all of a register kept by ASIC under this Law; or

(b) information set out in a document lodged under this Law;

but does not include ASIC’s document imaging system.

***assets*** means:

(a) in relation to the holder of a futures brokers licence—all the assets of the holder, whether or not used in connection with a business of dealing in futures contracts; and

(b) in relation to the holder of a dealers licence—all the assets of the holder, whether or not used in connection with a securities business.

***associate***: The following are the associates of a bidder making a takeover offer, a substantial holder or a 90% holder:

(a) if the bidder or holder is a body corporate:

(i) a body corporate it controls; or

(ii) a body corporate that controls it; or

(iii) a body corporate that is controlled by an entity that controls it

(b) a person with whom the bidder or holder has, or proposes to enter into, a relevant agreement for the purpose of controlling or influencing the composition of the body’s board or the conduct of the body’s affairs

(c) a person with whom the bidder or holder is acting, or proposes to act, in concert in relation to the body’s affairs.

Otherwise a person’s associates are determined under sections 10 to 17.

***ASX*** means Australian Stock Exchange Limited.

***Australia***includes the coastal sea of each jurisdiction but does not include an external Territory.

***Australian ADI*** means:

(a) an ADI (authorised deposit‑taking institution) within the meaning of the *Banking Act 1959*; and

(b) a person who carries on State banking within the meaning of paragraph 51(xiii) of the Constitution.

***Australian bank*** means:

(a) a bank as defined in section 5 of the *Banking Act 1959*; or

(b) a bank constituted by or under a law of a State or Territory;

***Australian company law*** means:

(a) this Act; or

(b) the company law of a State or Territory;

***Australian court*** means a federal court or a court of a State or Territory.

***Australian law*** means a law of the Commonwealth or of a State or Territory.

***Australian register*** of a foreign company means a branch register of members kept under section 601CM.

***authorised trustee corporation*** means a body corporate that is declared by the regulations to be an authorised trustee corporation for the purposes of the provision in which the expression appears.

**B**

***banker’s books*** means:

(a) books of an Australian ADI, including documents used in the ordinary business of an Australian ADI;

(b) cheques, orders for the payment of money, bills of exchange and promissory notes in an Australian ADI’s possession;

(c) scrip in an Australian ADI’s possession, whether by way of pledge or otherwise; or

(d) documents that create or evidence futures contracts and are in an Australian ADI’s possession.

***banking corporation*** means a body corporate that carries on, as its sole or principal business, the business of banking (other than State banking not extending beyond the limits of the State concerned).

***bank*** or ***banker*** includes, but is not limited to, a body corporate that is an ADI (authorised deposit‑taking institution) for the purposes of the *Banking Act 1959*.

***banning order*** means:

(a) in section 835 or 836—an order by the Commission in force under Division 5 of Part 7.3; and

(b) in any other provision of Chapter 7—an order by the Commission in force under Division 5 of Part 7.3 of the Corporations Law of this jurisdiction; and

(c) in section 1199 or 1199A—an order by the Commission in force under Division 5 of Part 8.3; and

(d) in any other provision of Chapter 8—an order by the Commission in force under Division 5 of Part 8.3 of the Corporations Law of this jurisdiction.

***begin***, in relation to a winding up, has the meaning given by Division 1A of Part 5.6.

***benefit***:

(a) means any benefit, whether by way of payment of cash or otherwise; and

(b) when used in Division 2 of Part 2D.2 (sections 200B to 1813)—means:

(i) a payment or other valuable consideration; or

(ii) an interest in property of any kind; and

(iii) any other benefit.

***bid class*** of securities for a takeover bid is the class of securities to which the securities being bid for belong.

***bidder*** for a takeover bid means the person who makes or proposes to make, or each of the people who make or propose to make, the offers under the bid (whether personally or by an agent or nominee).

Note: The dealer who announces a market bid is not the bidder; the bidder is the person or people on whose behalf the announcement is made.

***bidder’s statement*** means a bidder’s statement under sections 636 and 637 as supplemented.

***bid period***:

(a) for an off‑market bid—starts when the bidder’s statement is given to the target and ends:

(i) 1 month later if no offers are made under the bid; or

(ii) at the end of the offer period; and

(b) for a market bid—starts when the bid is announced to the relevant securities exchange and ends at the end of the offer period.

***Board*** means:

(b) in Part 7.10—the board of SEGC; or

(c) in Part 9.2—the Companies Auditors and Liquidators Disciplinary Board established by section 202 of the *Australian Securities and Investments Commission Act 1989*.

***board***, in relation to a body, means the committee of management, board of directors, council or other governing authority of the body.

***board or managerial office*** (when used in Division 2 of Part 2D.2 (sections 200B to 1813) in relation to a body corporate) means:

(a) an office of director of the body corporate; and

(b) any other office in connection with the management of the body corporate’s affairs that is held by:

(i) a person who also holds an office of director of the body corporate or a related body corporate; or

(ii) a person who has held an office of director of the body corporate or a related body corporate at any time within the 12 months immediately before the loss of, or retirement from, that office.

***body*** means a body corporate or an unincorporated body and includes, for example, a society or association.

***body corporate***:

(a) includes a body corporate that is being wound up or has been dissolved; and

(b) in this Chapter (except section 66A) and section 206E includes an unincorporated registrable body.

***books*** includes:

(a) a register;

(b) any other record of information;

(c) financial reports or financial records, however compiled, recorded or stored; and

(d) a document.

***borrower***,in relation to a debenture, means the body that is or will be liable to repay money under the debenture.

***bought position*** means:

(a) in relation to a commodity agreement, or in relation to a futures contract, being a commodity agreement—the position of a person who, by virtue of the agreement, is under a Chapter 8 obligation to accept delivery in accordance with the agreement; or

(b) in relation to a futures contract, being an adjustment agreement—the position of a person who, by virtue of the agreement:

(i) will, if the value or worth of the agreement (as determined in accordance with the agreement) as at a particular future time is less by a particular amount than the value or worth of the agreement (as so determined) as at a particular earlier time, be under a Chapter 8 obligation to pay that amount; and

(ii) will, if the value or worth of the agreement (as so determined) as at a particular future time exceeds by a particular amount the value or worth of the agreement (as so determined) as at a particular earlier time, have a Chapter 8 right to receive that amount.

***business affairs***, in relation to an entity, has a meaning affected by sections 53AA, 53AB, 53AC and 53AD.

***business day*** means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place concerned.

***buy‑back*** by a company means the acquisition by the company of shares in itself.

***buy‑back agreement*** by a company means an agreement by the company to buy back its own shares (whether the agreement is conditional or not).

**C**

***calendar month*** means a period commencing at the beginning of a day of one of the 12 months of the year and ending immediately before the beginning of the corresponding day of the next month or, if there is no such corresponding day, ending at the expiration of the next month.

***calendar year*** means a period of 12 months commencing on 1 January.

***Capital Territory*** means the Australian Capital Territory and the Jervis Bay Territory.

***carry on*** has a meaning affected by Division 3.

***cash management trust interest*** means an interest that:

(a) is an interest in a registered scheme; and

(b) relates to an undertaking of the kind commonly known as a cash management trust.

***cause*** includes procure.

***certified*** means:

(a) in relation to a copy of, or extract from, a document—certified by a statement in writing to be a true copy of, or extract from, the document; or

(b) in relation to a translation of a document—certified by a statement in writing to be a correct translation of the document into English.

***Chapter 8 agreement*** means:

(a) a relevant agreement;

(b) a proposed relevant agreement;

(c) a relevant agreement as varied, or as proposed to be varied;

(d) where a relevant agreement has been varied—the relevant agreement as in force at any time before the variation; or

(e) where a relevant agreement has been discharged—the relevant agreement as in force at any time before its discharge.

***Chapter 8 obligation*** has the meaning given by section 55.

***Chapter 8 right*** has the meaning given by section 55.

***charge*** means a charge created in any way and includes a mortgage and an agreement to give or execute a charge or mortgage, whether on demand or otherwise.

***chargeable matter*** means any of the following:

(a) the lodgment of a document under the Corporations Law of this jurisdiction;

(b) the registration of a document under that Law;

(c) the inspection or search of a register kept by, or a document in the custody of, the Commission under that Law;

(d) the making available by the Commission, under that Law, of information (whether in the form of a document or otherwise);

(e) the production by the Commission, under a subpoena, of such a register or document;

(f) the issuing of a document or of a copy of a document, the granting of a licence, consent or approval, or the doing of any other act, under that Law, by the Minister or the Commission;

(g) the making of an inquiry of, or an application to, the Minister, or the Commission, in relation to a matter arising under that Law;

(h) the submission to the Commission of a document for examination by the Commission;

(i) the making of an application under that Law to the Panel;

(j) the doing of any act by the Panel in dealing with an application under that Law to the Panel.

***chargee*** means the holder of a charge and includes a person in whose favour a charge is to be given or executed, whether on demand or otherwise, under an agreement.

***civil penalty disqualification*** has the meaning given by subsection 91(4A).

***civil penalty******order***means any of the following*:*

(a) a declaration of contravention under section 1317F

(b) a pecuniary penalty order under section 1317G

(c) a compensation order under section 1317H

(d) an order under section 206C disqualifying a person from managing corporations.

***civil penalty provision*** has the meaning given in subsection 1317E(1).

***class*** has:

(a) in relation to futures contracts—a meaning affected by subsection 72(3); and

(b) in relation to shares or interests in a managed investment scheme—a meaning affected by section 57; and

(c) when used in relation to securities for the purposes of Chapter 6, 6A or 6C—a meaning affected by subsection 605(2).

***clearing house*** means:

(a) in relation to a body corporate:

(i) in any case—a person who provides, or proposes to provide, clearing house facilities for a futures market conducted by that body; or

(ii) in the case of a futures exchange—a body corporate in relation to which an approval as a clearing house for that futures exchange is in force under subsection 1131(2) or is taken because of subsection 1131(4) to be in force; and

(b) in relation to a futures market:

(i) in any case—a person who provides, or proposes to provide, clearing house facilities for that futures market; or

(ii) in the case of a futures market of a futures exchange—a body corporate in relation to which an approval as a clearing house for that futures exchange is in force under subsection 1131(2) or is taken because of subsection 1131(4) to be in force.

***clearing house facilities***, in relation to a futures market, means facilities for the registration of futures contracts acquired or disposed of on that futures market.

***client***, in relation to a futures broker, means, except in Division 2 of Part 8.3, a person on whose behalf the broker deals, or from whom the broker accepts instructions to deal, in futures contracts.

***clients’ segregated account***, in relation to a person who is a member of a futures organisation, means an account that:

(a) the person maintains, whether in Australia or elsewhere, with:

(i) an Australian ADI; or

(ii) an approved foreign bank in relation to the person; and

(b) is maintained for the sole purpose of containing money deposited by the person into the account under section 1209 or a corresponding previous law.

***close out***, in relation to a futures contract, means:

(a) discharge the Chapter 8 obligations of the person in the bought position, or sold position, under the futures contract as a result of the matching up of the futures contract with a futures contract of the same kind under which the person has assumed an offsetting sold position, or offsetting bought position, as the case may be; or

(b) otherwise discharge the Chapter 8 obligations of a party to the futures contract.

***coastal sea***:

(a) in relation to Australia—means:

(i) the territorial sea of Australia; and

(ii) the sea on the landward side of the territorial sea of Australia and not within the limits of a State or internal Territory;

and includes the airspace over, and the sea‑bed and subsoil beneath, any such sea; and

(b) in relation to a jurisdiction—means so much of the coastal sea of Australia as is within the area described in Schedule 2 to the *Petroleum (Submerged Lands) Act 1967* under the heading that refers to that jurisdiction.

***commence***, in relation to a winding up, has the meaning given by Division 1A of Part 5.6.

***commencement*** means:

(a) in relation to this Law or a provision of this Law—the time at which the Law or provision came into operation; or

(b) in relation to an accounting standard:

(i) in the case of an accounting standard as originally in effect—the time when the accounting standard took effect; or

(ii) in the case of an accounting standard as varied by a particular provision of an instrument made under section 32 of the *Corporations Act 1989*, as the instrument has effect for the purposes of Chapter 2M of the Corporations Law of this jurisdiction—the time when that provision took effect.

***Commission*** means the Australian Securities and Investments Commission.

***Commission Act*** means the *Australian Securities and Investments Commission Act 1989*.

***Commission delegate*** has the same meaning as in the ASC Law of this jurisdiction.

***committee of creditors***, in relation to a company under administration, means a committee of creditors of the company appointed at a meeting convened under section 436E.

***commodity*** means:

(a) any thing that is capable of delivery pursuant to an agreement for its delivery; or

(b) without limiting the generality of paragraph (a), an instrument creating or evidencing a thing in action.

***commodity agreement*** means a standardised agreement the effect of which is that:

(a) a person is under a Chapter 8 obligation to make delivery; or

(b) a person is under a Chapter 8 obligation to accept delivery;

at a particular future time of a particular quantity of a particular commodity for a particular price or for a price to be calculated in a particular manner, whether or not:

(c) the subject matter of the agreement is in existence;

(d) the agreement has any other effect; or

(e) the agreement is capable of being varied or discharged before that future time.

***company*** means a company registered, or taken to be registered, under the Corporations Law of this jurisdiction and:

(a) in sections 70A, 500 and 600F, includes a recognised company; and

(b) in Chapter 2K (other than section 273), includes a registrable body (other than a registrable local body) that is registered under Division 1 or 2 of Part 5B.2 of the Corporations Law of this jurisdiction; and

(ba) in section 273, includes:

(i) a recognised company; and

(ii) a registered body (other than a registrable local body); and

(c) in Parts 5.7B and 5.8 (except sections 595 and 596), includes a Part 5.7 body; and

(ca) in Part 5B.1 includes an unincorporated registrable body.

***company law***, in relation to a State or Territory, means the law, or a previous law, of the State or Territory relating to companies.

***company limited by guarantee*** means a company formed on the principle of having the liability of its members limited to the respective amounts that the members undertake to contribute to the property of the company if it is wound up.

***company limited by shares*** means a company formed on the principle of having the liability of its members limited to the amount (if any) unpaid on the shares respectively held by them.

***condition***, in relation to a licence, means a condition or restriction to which the licence is subject, or will be subject, as the case requires.

***conduct***:

(a) in relation to a futures market, a stock market, or any other market, exchange, place or facility—includes maintain or provide; and

(b) in Chapter 7—has a meaning affected by section 762.

***connected entity***, in relation to a corporation, means:

(a) a body corporate that is, or has been, related to the corporation; or

(b) an entity that is, or has been, connected (as defined by section 64B) with the corporation.

***consolidated entity*** means a company, registered managed investment scheme or disclosing entity together with all the entities it is required by the accounting standards to include in consolidated financial statements.

***Consolidated Revenue Fund*** means the Consolidated Revenue Fund of the Commonwealth.

***constitution*** means (depending on the context):

(a) a company’s constitution, which (where relevant) includes rules and consequential amendments that are part of the company’s constitution because of the *Life Insurance Act 1995*; or

(b) a managed investment scheme’s constitution; or

(c) in relation to any other kind of body:

(i) the body’s charter or memorandum; or

(ii) any instrument or law (other than this Law) constituting, or defining the constitution of, the body or governing the activities of the body or its members.

Note: The *Life Insurance Act 1995* has rules about how benefit fund rules become part of a company’s constitution. They override this Law. See Subdivision 2 of Division 4 of Part 2A of that Act.

***Constitution*** means the Constitution of the Commonwealth.

***continuous disclosure notice*** means:

(a) a document used to notify a securities exchange of information relating to a body under provisions of the securities exchange’s listing rules referred to in subsection 1001A(1); or

(b) a document under section 1001B lodged in relation to the body.

***continuously quoted securities*** are securities that:

(a) are in a class of securities that were quoted ED securities at all times in the 12 months before the date of the prospectus; and

(b) are securities of an entity that was not covered by any of the following at any time in that 12 months:

(i) an exemption under section 111AS or 111AT, or a modification under section 111AV

(ii) an exemption under paragraph 741(1)(a), or a declaration under paragraph 741(1)(b), relating to a provision that is a disclosing entity provision for the purposes of Division 4 of Part 1.2A

and, for these purposes, securities are not in different classes merely because of a temporary difference in the dividend, or distribution rights, attaching to the securities or because different amounts have been paid up on the securities.

***contravene*** includes fail to comply with.

***contributing member***, in relation to a futures organisation, means:

(a) in the case of a futures exchange—a member or member organisation of the futures exchange; or

(b) in the case of a futures association:

(i) a member of that futures association that is a member of no futures exchange; or

(ii) a member organisation of that futures association that is a member organisation of no futures exchange.

***contributory*** means:

(a) in relation to a company (other than a no liability company):

(i) a person liable as a member or past member to contribute to the property of the company if it is wound up; and

(ii) for a company with share capital—a holder of fully paid shares in the company; and

(iii) before the final determination of the persons who are contributories because of subparagraphs (i) and (ii)—a person alleged to be such a contributory; and

(b) in relation to a Part 5.7 body:

(i) a person who is a contributory by virtue of section 586; and

(ii) before the final determination of the persons who are contributories by virtue of that section—a person alleged to be such a contributory;

(c) in relation to a no liability company—subject to section 385, a member of the company.

***control*** has the meaning given by section 50AA.

***control day***, in relation to a controller of property of a corporation, means:

(a) unless paragraph (b) applies:

(i) in the case of a receiver, or receiver and manager, of that property—the day when the receiver, or receiver and manager, was appointed; or

(ii) in the case of any other person who is in possession, or has control, of that property for the purpose of enforcing a charge—the day when the person entered into possession, or took control, of property of the corporation for the purpose of enforcing that charge; or

(b) if the controller became a controller of property of the corporation:

(i) to act with an existing controller of such property; or

(ii) in place of a controller of such property who has died or ceased to be a controller of such property;

the day that is, because of any other application or applications of this definition, the control day in relation to the controller referred to in subparagraph (i) or (ii).

***controller***, in relation to property of a corporation, means:

(a) a receiver, or receiver and manager of that property; or

(b) anyone else who (whether or not as agent for the corporation) is in possession, or has control, of that property for the purpose of enforcing a charge.

***convertible note*** has the same meaning as in Division 3A of Part III of the *Income Tax Assessment Act 1936*.

***convertible securities***: Securities are convertible into another class of securities if the holder may have the other class of securities issued to them by the exercise of rights attached to those securities. An option may be a convertible security even if it is non‑renounceable.

***corporation*** has the meaning given by section 57A.

***Corporations Law***,in relation to a jurisdiction, has the additional meaning given by section 8A.

***corresponding***, in relation to a law, has the meaning given by section 58.

***corresponding previous law*** has the meaning given by section 58.

***court*** has the meaning given by section 58AA.

***Court*** has the meaning given by section 58AA.

***court of summary jurisdiction*** means any justice or justices of the peace or other magistrate sitting as a court for the making of summary orders or the summary punishment of offences:

(a) under a law of the Commonwealth or of this or any other jurisdiction; or

(b) by virtue of his or her commission or their commissions.

***creditors’ voluntary winding up*** means a winding up under Part 5.5, other than a members’ voluntary winding up.

***current market bid price*** for securities covered by a market bid is the price specified in the announcement of the bid as increased or decreased during the offer period.

**D**

***daily newspaper*** means a newspaper that is ordinarily published on each day that is a business day in the place where the newspaper is published, whether or not the newspaper is ordinarily published on other days.

***date*** of a takeover bid is:

(a) for an off‑market bid—the date on which offers are first made under the bid; or

(b) for a market bid—the date on which the bid is announced to the relevant securities exchange.

***deal***:

(a) in relation to a futures contract—has the meaning given by Division 4;

(b) in relation to securities—subject to subsection 93(4), means (whether as principal or agent) acquire, dispose of, subscribe for or underwrite the securities, or make or offer to make, or induce or attempt to induce a person to make or to offer to make, an agreement:

(i) for or with respect to acquiring, disposing of, subscribing for or underwriting the securities; or

(ii) the purpose or purported purpose of which is to secure a profit or gain to a person who acquires, disposes of, subscribes for or underwrites the securities or to any of the parties to the agreement in relation to the securities.

***dealer*** means:

(a) a person who carries on a securities business; or

(b) 2 or more persons who together carry on a securities business.

***dealers licence*** means:

(a) in this Chapter or section 780, 806 or 807—a dealers licence granted under Part 7.3; or

(b) in any other provision of Chapter 7—a dealers licence granted under Part 7.3 of the Corporations Law of this jurisdiction.

***debenture*** of a body means a chose in action that includes an undertaking by the body to repay as a debt money deposited with or lent to the body. The chose in action may (but need not) include a charge over property of the body to secure repayment of the money. However, a debenture does not include:

(a) an undertaking to repay money deposited with or lent to the body by a person if:

(i) the person deposits or lends the money in the ordinary course of a business carried on by the person; and

(ii) the body receives the money in the ordinary course of carrying on a business that neither comprises nor forms part of a business of borrowing money and providing finance

(b) an undertaking by an Australian ADI to repay money deposited with it, or lent to it, in the ordinary course of its banking business

(c) an undertaking to pay money under:

(i) a cheque; or

(ii) an order for the payment of money; or

(iii) a bill of exchange

(d) an undertaking to pay money under a promissory note that has a face value of at least $50,000

(e) an undertaking by a body corporate to pay money to a related body corporate

(f) an undertaking to repay money that is prescribed by the regulations.

For the purposes of this definition, if a chose in action that includes an undertaking by a body to pay money as a debt is offered as consideration for the acquisition of securities under an off‑market takeover bid, or is issued under a compromise or arrangement under Part 5.1, the undertaking is taken to be an undertaking to repay as a debt money deposited with or lent to the body.

***decision period***, in relation to a chargee in relation to a charge on property of a company under administration, means the period beginning on the day when:

(a) if notice of the appointment of the administrator must be given to the chargee under subsection 450A(3)—such notice is so given; or

(b) otherwise—the administration begins;

and ending at the end of the tenth business day after that day.

***deed*** includes a document having the effect of a deed.

***deed of company arrangement*** means a deed of company arrangement executed under Part 5.3A or such a deed as varied and in force from time to time.

***de facto spouse***, in relation to a person, means an individual of the opposite sex to that person who is living with that person as his or her spouse on a genuine domestic basis although not legally married to that person.

***defalcation***, in Part 7.9, includes a contravention of subsection 870(3).

***defeating condition*** for a takeover bid means a condition that:

(a) will, in circumstances referred to in the condition, result in the rescission of, or entitle the bidder to rescind, a takeover contract; or

(b) prevents a binding takeover contract from resulting from an acceptance of the offer unless or until the condition is fulfilled.

***defect***, in relation to a statutory demand, includes:

(a) an irregularity; and

(b) a misstatement of an amount or total; and

(c) a misdescription of a debt or other matter; and

(d) a misdescription of a person or entity.

***Department***, in a case where a provision uses the expression “the Department” without specifying which Department is referred to, means:

(a) if the Minister or Ministers for the time being administering the *Corporations Act 1989* administers or administer only one Department of State of the Commonwealth—that Department; or

(b) otherwise—the Department of State of the Commonwealth prescribed for the purposes of this definition as it applies for the purposes of that provision.

***deregistered*** means:

(a) in relation to a company—deregistered under Chapter 5A; and

(b) in relation to any other body corporate—deregistered in a way that results in the body corporate ceasing to exist.

***director*** of a company or other body means:

(a) a person who:

(i) is appointed to the position of a director; or

(ii) is appointed to the position of an alternate director and is acting in that capacity;

regardless of the name that is given to their position; and

(b) unless the contrary intention appears, a person who is not validly appointed as a director if:

(i) they act in the position of a director; or

(ii) the directors of the company or body are accustomed to act in accordance with the person’s instructions or wishes.

Subparagraph (b)(ii) does not apply merely because the directors act on advice given by the person in the proper performance of functions attaching to the person’s professional capacity, or the person’s business relationship with the directors or the company or body.

Note: Paragraph (b)—Contrary intention—Examples of provisions for which a person referred to in paragraph (b) would not be included in the term “director” are:

1. section 249C (power to call meetings of a company’s members)
2. subsection 251A(3) (signing minutes of meetings)
3. section 205B (notice to ASIC of change of address).

***disclosing entity*** has the meaning given by section 111AC.

***disclosure document*** for an offer of securities means:

(a) a prospectus for the offer; or

(b) a profile statement for the offer; or

(c) an offer information statement for the offer.

***discretionary account*** has the meaning given by section 61.

***dispose*** of a futures contract has the meaning given by sections 24, 26, 27 and 28. For the purposes of Chapter 6, a person who has a relevant interest in securities ***disposes*** of the securities if, and only if, they cease to have a relevant interest in the securities.

***document*** includes:

(a) any paper or other material on which there is writing or printing or on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;

(b) a disc, tape or other article from which sounds, images or messages are capable of being reproduced; and

(c) a disc, tape or other article, or any material, from which sounds, images, writings or messages are capable of being reproduced with or without the aid of any other article or device;

and without limiting the generality of the foregoing, includes any summons, order and other legal process and any notice.

Note: In Division 3 of Part 7.13. ***document*** has a meaning affected by the definition of ***document*** in subsection 1097(1).

***document of title***, in relation to securities, includes an instrument of transfer relating to the securities.

***domestic corporation*** means a corporation that is incorporated or formed in Australia or an external Territory.

**E**

***ED securities*** has the meaning given by section 111AD.

***eligible applicant***, in relation to a corporation, means:

(a) the Commission; or

(b) a liquidator or provisional liquidator of the corporation; or

(c) an administrator of the corporation; or

(d) an administrator of a deed of company arrangement executed by the corporation; or

(e) a person authorised in writing by the Commission to make:

(i) applications under the Division of Part 5.9 in which the expression occurs; or

(ii) such an application in relation to the corporation.

***eligible commodity agreement*** means a commodity agreement (in this definition called the ***relevant agreement***), where, at the time when the relevant agreement:

(a) unless paragraph (b) applies—is entered into; or

(b) if the relevant agreement is not a commodity agreement at the time when it is entered into—becomes a commodity agreement;

it appears likely, having regard to all relevant circumstances (other than the respective intentions of the person in the sold position, and the person in the bought position, under the relevant agreement), including, without limiting the generality of the foregoing:

(c) the provisions of any agreement;

(d) the rules and practices of any market; and

(e) the manner in which the respective Chapter 8 obligations of persons in sold positions, and persons in bought positions, under agreements of the same kind as the first‑mentioned agreement are generally discharged;

that:

(f) the Chapter 8 obligation of the person in the sold position under the relevant agreement to make delivery in accordance with the relevant agreement will be discharged otherwise than by the person so making delivery;

(g) the Chapter 8 obligation of the person in the bought position under the relevant agreement to accept delivery in accordance with the relevant agreement will be discharged otherwise than by the person so accepting delivery; or

(h) the person in the sold position, or bought position, under the relevant agreement will assume an offsetting bought position, or offsetting sold position, as the case may be, under an agreement of the same kind as the relevant agreement.

***eligible exchange‑traded option*** means a contract that is entered into on a futures market of a futures exchange and under which a party acquires from another party an option or right, exercisable at or before a specified time:

(a) to purchase from, or to sell to, that other party a specified quantity of a specified commodity at a price specified in, or to be determined in accordance with, the contract; or

(b) to be paid by that other party an amount of money to be determined by reference to the amount by which a specified number is greater or less than the number of a specified index, being the Australian Stock Exchanges All Ordinaries Price Index or a prescribed index, as at the time when the option or right is exercised.

***eligible money market dealer*** means a body corporate in respect of which a declaration is in force under section 65.

***eligible securities conduct*** means conduct in the course of, for the purposes of, or otherwise in connection with:

(a) dealing in securities; or

(b) advising a person about securities; or

(c) giving to a person a securities report.

***emoluments*** means the amount or value of any money, consideration or benefit given, directly or indirectly, to a director of a body corporate in connection with the management of affairs of the body or of any holding company or subsidiary of the body, whether as a director or otherwise, but does not include amounts in payment or reimbursement of out‑of‑pocket expenses incurred for the benefit of the body.

***employee share scheme*** for a company means a scheme under which shares (or units in shares) in the company or a holding company may be acquired:

(a) by, or for the benefit of:

(i) employees of the company, or of a related body corporate; or

(ii) directors of the company, or of a related body corporate, who hold a salaried employment or office in the company or in a related body corporate; or

(b) by a corporation all of whose members are:

(i) employees of the company, or of a related body corporate; or

(ii) directors of the company, or of a related body corporate, who hold a salaried employment or office in the company or in a related body corporate.

***employee share scheme buy‑back*** means a buy‑back under a scheme that:

(a) has as its purpose the acquisition of shares in a company by, or on behalf of:

(i) employees of the company, or of a related body corporate; or

(ii) directors of the company, or a related body corporate, who hold a salaried employment or office in the company or in a related body corporate; and

(b) has been approved by the company in general meeting.

***enforce***, in relation to a charge on property of a company under administration, includes:

(a) appoint a receiver of property of the company under a power contained in an instrument relating to the charge; or

(b) obtain an order for the appointment of a receiver of such property for the purpose of enforcing the charge; or

(c) enter into possession, or assume control, of such property for that purpose; or

(d) appoint a person so to enter into possession or assume control (whether as agent for the chargee or for the company); or

(e) exercise, as chargee or as a receiver or person so appointed, a right, power or remedy existing because of the charge, whether arising under an instrument relating to the charge, under a written or unwritten law, or otherwise.

***enforcement process***, in relation to property, means:

(a) execution against that property; or

(b) any other enforcement process in relation to that property that involves a court or a sheriff.

***enter into***: A person who:

(a) enters into, or becomes a party to, a relevant agreement in relation to voting shares or other securities; or

(b) exercises an option to have voting shares or other securities issued or granted;

is taken to enter into a transaction in relation to the shares or securities. ***Enter into***, in relation to a futures contract, has a meaning affected by subsection 72(2).

***entitlements*** of an employee of a company has the meaning given by subsections 596AA(2) and (3).

***entity***:

(a) in Chapter 2E—has the meaning given by section 243C; and

(c) otherwise—has the meaning given by section 64A.

***entity***: for the purposes of Chapter 2E an ***entity*** is any of the following:

(a) a body corporate

(b) a partnership

(c) an unincorporated body

(d) an individual

(e) for a trust that has only 1 trustee—the trustee

(f) for a trust that has more than 1 trustee—the trustees together.

***equal access scheme*** has the meaning given by subsections 257B(2) and (3).

***estate*** includes any estate or interest, charge, right, title, claim, demand, lien or encumbrance, at law or in equity.

***event*** includes any happening, circumstance or state of affairs.

***examinable affairs***, in relation to a corporation means:

(a) the promotion, formation, management, administration or winding up of the corporation; or

(b) any other affairs of the corporation (including anything that is included in the corporation’s affairs because of section 53); or

(c) the business affairs of a connected entity of the corporation, in so far as they are, or appear to be, relevant to the corporation or to anything that is included in the corporation’s examinable affairs because of paragraph (a) or (b).

***examinable assets and liabilities***, in relation to an entity, means all of the following:

(a) the entity’s property and assets:

(i) whether present or future; and

(ii) whether held alone or jointly with any other person or persons; and

(iii) whether or not held as agent, bailee or trustee;

(b) the entity’s liabilities:

(i) whether present or future; and

(ii) whether actual or contingent; and

(iii) whether owed alone or jointly with any other person or persons; and

(iv) whether or not owed as trustee.

***examinable officer***, in relation to a corporation, means:

(a) a director, secretary or executive officer of the corporation; or

(b) a receiver, or receiver and manager, of property of the corporation (whether appointed under a provision contained in an instrument, or by a court); or

(c) an administrator of the corporation; or

(d) an administrator of a deed of company arrangement executed by the corporation; or

(e) a liquidator or provisional liquidator of the corporation (whether or not appointed by a court); or

(f) a trustee or other person administering a compromise or arrangement made between the corporation and any other person or persons.

***examinable operations***, in relation to an entity, means all of the following:

(a) the entity’s business, trading, transactions and dealings:

(i) whether alone or jointly with any other entity or entities; and

(ii) whether or not as agent, bailee or trustee;

(b) the entity’s profits, income and receipts;

(c) the entity’s losses, outgoings and expenditure.

***Exchange*** means Australian Stock Exchange Limited.

***exchange member***, in relation to a futures exchange, means:

(a) a corporation that is a member of the futures exchange;

(b) a partnership that is a member of the futures exchange; or

(c) a member of such a partnership.

***Exchange subsidiary*** means:

(b) in section 779 or subsection 920(1)—a securities exchange that is a subsidiary of the Exchange; and

(c) in any other provision of Chapter 7—a local securities exchange that is a subsidiary of the Exchange.

***exchange traded option*** means an option declared by a securities exchange to be an exchange traded option.

**EXCLUDED**

***excluded security*** means:

(a) where:

(i) there is attached to a share or debenture a right to participate in a retirement village scheme; and

(ii) each of the other rights, and each interest (if any), attached to the share or debenture is a right or interest that is merely incidental to the right referred to in subparagraph (i);

the share or debenture or a unit in the share or debenture; or

(b) an interest in a managed investment scheme constituted by a right to participate in a retirement village scheme.

***excluded Territory*** means an external Territory to which this Act does not extend.

***Executive Council*** means the Federal Executive Council.

***executive officer*** of a body corporate means a person who is concerned in, or takes part in, the management of the body (regardless of the person’s designation and whether or not the person is a director of the body).

**EXEMPT**

***exempt body*** has the meaning given by section 66A.

***exempt broker*** means a person who is an exempt broker by virtue of section 67.

***exempt dealer*** has the meaning given by section 68.

***exempt foreign company*** means a foreign company of a kind referred to in subsection 601CK(8), whether or not Division 2 of Part 5B.2 applies to it.

***exempt futures market*** means a futures market in relation to which a declaration under section 1127 is in force.

***exempt investment adviser*** has the meaning given by section 68.

***exempt managed investment scheme interest*** has the meaning given by section 68A.

***exempt public authority*** means a body corporate that is incorporated within Australia or an external Territory and is:

(a) a public authority; or

(b) an instrumentality or agency of the Crown in right of the Commonwealth, in right of a State or in right of a Territory.

***exempt stock market*** means a stock market in relation to which, or a stock market in a class of stock markets in relation to which, a declaration is in force under section 771.

***expert***, in relation to a matter, means a person whose profession or reputation gives authority to a statement made by him or her in relation to that matter.

***extend***, in relation to a period:

(a) includes further extend; and

(b) has a meaning affected by section 70.

***externally‑administered body corporate*** means a body corporate:

(a) that is being wound up;

(b) in respect of property of which a receiver, or a receiver and manager, has been appointed (whether or not by a court) and is acting;

(c) that is under administration;

(ca) that has executed a deed of company arrangement that has not yet terminated; or

(d) that has entered into a compromise or arrangement with another person the administration of which has not been concluded.

***external Territory*** means a Territory, not being an internal Territory, provision for the government of which as a territory is made by any Act.

***extraordinary resolution***, in relation to a registered scheme, means a resolution:

(a) of which notice as set out in paragraph 252J(c) has been given; and

(b) that has been passed by at least 50% of the total votes that may be cast by members entitled to vote on the resolution (including members who are not present in person or by proxy).

**F**

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

***fee***,in Part 9.10, includes a fee that is a tax.

***fidelity fund*** means:

(a) in relation to a futures organisation—the fidelity fund (if any) that section 1228 requires the futures organisation to keep; or

(b) in relation to a securities exchange within the meaning of Chapter 7—the fidelity fund (if any) that section 895 requires or required the securities exchange to keep.

***financial benefit*** (when used in Chapter 2E) has a meaning that is affected by section 229.

***financial corporation*** means a financial corporation within the meaning of paragraph 51(20) of the Constitution.

***financial records*** includes:

(a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers; and

(b) documents of prime entry; and

(c) working papers and other documents needed to explain:

(i) the methods by which financial statements are made up; and

(ii) adjustments to be made in preparing financial statements.

***financial report*** means an annual financial report or a half‑year financial report prepared under Chapter 2M.

Note: Section 295 deals with the contents of annual financial reports and section 302 deals with the contents of half‑year financial reports.

***financial statements*** means annual financial statements under section 295 or half‑year financial statements under section 303.

***financial year*** has the meaning given by section 323D.

***find***,in the case of a reference to a court finding a person guilty of an offence, has a meaning affected by section 73A.

***floating charge*** includes a charge that conferred a floating security at the time of its creation but has since become a fixed or specific charge.

***for***, in relation to a fee or tax, includes in respect of.

***foreign companies law***, in relation to a State, Territory or excluded Territory, means the law, or a previous law, of that State, Territory or excluded Territory relating to foreign companies within the meaning of that law or previous law.

***foreign company*** means:

(a) a body corporate incorporated in an external Territory or outside Australia and the external Territories, not being:

(i) a corporation sole; or

(ii) an exempt public authority; or

(b) an unincorporated body that:

(i) is formed in an external Territory or outside Australia and the external Territories; and

(ii) under the law of its place of formation, may sue or be sued, or may hold property in the name of its secretary or of an officer of the body duly appointed for that purpose; and

(iii) does not have its head office or principal place of business in Australia.

***foreign country*** means any country (whether or not an independent sovereign state) outside Australia and the external Territories.

***foreign holder*** of securities means a holder of the securities whose address, as shown in the register in which details of their holding is recorded, is a place outside Australia and the external Territories.

***franchise*** means an arrangement under which a person earns profits or income by exploiting a right, conferred by the owner of the right, to use a trade mark or design or other intellectual property or the goodwill attached to it in connection with the supply of goods or services. An arrangement is not a franchise if the person engages the owner of the right, or an associate of the owner, to exploit the right on the person’s behalf.

***fully paid share*** means a share on which no amount remains unpaid.

***function*** includes a duty.

***Fund*** means the National Guarantee Fund established under subsection section 69 of the *Corporations Act 1989*.

**FUTURES**

***futures advice business*** has the meaning given by section 71.

***futures adviser*** means a person who carries on, or 2 or more persons who together carry on, a futures advice business.

***futures advisers licence*** means:

(a) in this Chapter or section 1173—a futures advisers licence granted under Part 8.3; and

(b) in any other provision of Chapter 8—a futures advisers licence granted under Part 8.3 of the Corporations Law of this jurisdiction.

***futures association*** means:

(a) in this Chapter or section 1220, 1222, 1223 or 1269—a body corporate in relation to which an approval under section 1132 is in force or is taken because of subsection 1132(3) to be in force; or

(b) in any other provision of Chapter 8—a local futures association.

***futures broker*** means:

(a) except in section 1209 and Part 8.5:

(i) a person who carries on, or 2 or more persons who together carry on, a futures broking business, whether or not the person, or any of the persons, also deals in futures contracts on the person’s own account; or

(ii) the holder of a futures brokers licence; and

(b) in section 1209 or Part 8.5 (except a provision of that section or Part referred to in paragraph (c) of this definition)—the holder of a futures brokers licence granted under Part 8.3 of the Corporations Law of this jurisdiction; and

(c) in subsection 1209(14), (15) or (16) or section 1221 or 1222—the holder of a futures brokers licence.

***futures brokers licence*** means:

(a) in this Chapter or section 1142, 1172, 1173 or 1269—a futures brokers licence granted under Part 8.3; and

(b) in any other provision of Chapter 8—a futures brokers licence granted under Part 8.3 of the Corporations Law of this jurisdiction.

***futures broking business***, in relation to a person, means, subject to subsection 25(4), a business of dealing in futures contracts on behalf of other persons.

***futures contract*** has the meaning given by section 72.

***futures exchange*** means:

(a) in this Chapter or section 1220, 1222, 1223 or 1269—a body corporate in relation to which an approval under section 1126 is in force or is taken because of subsection 1126(3) to be in force; or

(b) in any other provision of Chapter 8—a local futures exchange.

***futures law*** means a provision of Chapter 8.

***futures licence*** means a futures brokers licence or a futures advisers licence.

***futures licensee*** means a person who holds a futures licence.

***futures market*** means a market, exchange or other place at which, or a facility by means of which, futures contracts are regularly acquired or disposed of.

***futures option*** means an option or Chapter 8 right to assume, at a specified price or value and within a specified period, a bought position, or a sold position, in relation to an eligible commodity agreement or in relation to an adjustment agreement.

***futures organisation*** means:

(a) in this Chapter, section 1141A or subsection 1242(3) or 1249(3)—a futures exchange or a futures association; and

(b) in Part 8.6:

(i) a local futures exchange; or

(ii) a local futures association, other than a futures association each of whose members is also a member of a futures exchange; and

(c) in any other provision of Chapter 8—a local futures exchange or a local futures association.

***futures report*** means an analysis or report about futures contracts.

***futures representative*** has the meaning given by section 73.

**G**

***Gazette*** means the *Commonwealth of Australia Gazette*.

***Gazette notice*** means a notice published in the *Gazette*.

***general law*** means the principles and rules of the common law and equity.

***Government Printer*** includes any person printing for the Government of the Commonwealth.

***guarantor***, in relation to a debenture, means a body that has guaranteed, or has agreed to guarantee, the repayment of any money deposited or lent to the borrower under the debenture.

***guilty***, in the case of a reference to a court finding a person guilty of an offence, has a meaning affected by section 73A.

**H**

***half‑year*** has the meaning given by subsection 323D(5).

***have***, in relation to information, includes be in possession of the information.

***highest outside purchase price*** for a takeover bid is the highest amount paid or payable by the bidder for a security in the bid class under a purchase made outside the bid and during the bid period.

***hold***, in relation to a person, in relation to a document that is, or purports to be, a copy of a licence, means have in the person’s possession.

***holding company***, in relation to a body corporate, means a body corporate of which the first body corporate is a subsidiary.

**I**

***included***, in relation to an official list, has the meaning given by section 75.

***incorporated in Australia***, in relation to a body corporate, includes incorporated by or under a law of the Commonwealth, a State or the Capital Territory.

***incorporation***:

(a) of a company or of a recognised company—means the company’s first registration under the Corporations Law of any jurisdiction; and

(b) of any other incorporated body—means the body’s incorporation by or under a law (other than this law or a corresponding previous law).

***individual*** means a natural person.

***industrial instrument*** means:

(a) a contract of employment; or

(b) a law, award, determination or agreement relating to terms or conditions of employment.

***information*** includes complaint.

***information service*** means:

(a) a broadcasting service;

(b) an interactive or broadcast videotext or teletext service or a similar service;

(c) an online database service or a similar service; or

(d) any other prescribed service.

***injury compensation*** means compensation payable under any law relating to workers compensation.

***inside information***, in relation to a futures contract, means information that is not generally available but, if it were generally available, would be likely to affect materially the price for dealing in:

(a) that futures contract; or

(b) a futures contract of the same kind as that futures contract.

***insolvent*** has the meaning given by subsection 95A(2) and, in Part 7.10, has a meaning affected by section 922.

***insolvent transaction*** has the meaning given by section 588FC.

***insolvent under administration*** means a person who:

(a) under the *Bankruptcy Act 1966* or the law of an external Territory, is a bankrupt in respect of a bankruptcy from which the person has not been discharged; or

(b) under the law of a country other than Australia or the law of an external Territory, has the status of an undischarged bankrupt;

and includes:

(c) a person who has executed a deed of arrangement under Part X of the *Bankruptcy Act 1966* or the corresponding provisions of the law of an external Territory or of the law of a country other than Australia, where the terms of the deed have not been fully complied with; and

(d) a person whose creditors have accepted a composition under Part X of the *Bankruptcy Act 1966* or the corresponding provisions of the law of an external Territory or of the law of a country other than Australia where a final payment has not been made under that composition.

***interest*** in a managed investment scheme means a right to benefits produced by the scheme (whether the right is actual, prospective or contingent and whether it is enforceable or not).

***internal Territory*** means the Capital Territory or the Northern Territory.

***invalid futures authority*** has the meaning given by subsection 87(2).

***invalid securities authority*** has the meaning given by subsection 88(2).

***investment advice business*** has the meaning given by section 77.

***investment adviser*** means a person who carries on, or 2 or more persons who together carry on, an investment advice business.

***investment advisers licence*** means:

(a) in this Chapter or section 807—an investment advisers licence granted under Part 7.3; or

(b) in any other provision of Chapter 7—an investment advisers licence granted under Part 7.3 of the Corporations Law of this jurisdiction.

***investment contract*** means any contract, scheme or arrangement that, in substance and irrespective of its form, involves the investment of money in or under such circumstances that the investor acquires or may acquire an interest in, or right in respect of, property, whether in this jurisdiction or elsewhere, that, under, or in accordance with, the terms of investment will, or may at the option of the investor, be used or employed in common with any other interest in, or right in respect of, property, whether in this jurisdiction or elsewhere, acquired in or under like circumstances.

***involved***, in relation to a contravention, has the meaning given by section 79.

***issue*** includes:

(a) in relation to interests in a managed investment scheme—make available; and

(b) otherwise—circulate, distribute and disseminate.

**J**

***Jervis Bay Territory*** means the Territory referred to in the *Jervis Bay Territory Acceptance Act 1915*.

***Judge*** means a judge of the Court.

***jurisdiction*** means a State or the Capital Territory and, in the case of a State, includes the coastal sea of the State.

***justice of the peace*** includes a justice of the peace for a State or part of a State or for a Territory.

**L**

***land*** includes messuages, tenements and hereditaments, corporeal and incorporeal, of any tenure or description, and whatever may be the estate or interest therein.

***large proprietary company*** has the meaning given by subsection 45A(3).

***law***, in relation to a jurisdiction, means, subject to section 58, a law of, or a law in force in, that jurisdiction and, in the case of the Capital Territory, includes, without limitation:

(a) the *Corporations Act 1989* and regulations under it; and

(b) the Corporations Law, Corporations Regulations, ASC Law, and ASC Regulations, of the Capital Territory; and

(c) a relevant Act within the meaning of the *Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980*; and

(d) regulations under such an Act.

***Law***, in the case of a reference to this Law or to the Corporations Law of a jurisdiction, has the additional meaning given by sections 8 and 8A.

***lawyer*** means a duly qualified legal practitioner and, in relation to a person, means such a practitioner acting for the person.

***leave of absence*** means long service leave, extended leave, recreation leave, annual leave, sick leave or any other form of leave of absence from employment.

***licence*** means:

(a) in section 808—a securities licence; and

(b) in any other provision of Chapter 7—a dealers licence, or an investment advisers licence, granted under Part 7.3 of the Corporations Law of this jurisdiction; and

(c) in section 1174 or subsection 1220(2) or 1221(3)—a futures licence; and

(d) in any other provision of Chapter 8—a futures brokers licence, or a futures advisers licence, granted under Part 8.3 of the Corporations Law of this jurisdiction.

***licensee*** means:

(a) in section 781 or subsection 879(1)—a securities licensee; and

(b) in any other provision of Chapter 7—a person who holds a dealers licence, or an investment advisers licence, granted under Part 7.3 of the Corporations Law of this jurisdiction; and

(c) in section 1143—a futures licensee; and

(d) in any other provision of Chapter 8—a person who holds a futures brokers licence, or a futures advisers licence, granted under Part 8.3 of the Corporations Law of this jurisdiction; and

(e) in relation to a licence—the person who holds the licence.

***limited company*** means a company limited by shares or a company limited by guarantee but does not include a no liability company.

***linked***: the incurring of a debt and a contravention of section 596AB are ***linked*** if they are linked under subsection 596AB(4).

***liquidating trade*** means a transaction whereby, for the purpose of closing out a futures contract, the person in the bought position, or sold position, under the futures contract assumes an offsetting sold position, or offsetting bought position, as the case may be, under another futures contract.

***liquidator***, in Chapters 7 and 8, includes a provisional liquidator.

***listed***: A company, managed investment scheme or other body is listed if it is included in the official list of a securities exchange.

***listed corporation*** means a body corporate that is included in an official list of a securities exchange (as defined, for the purposes of this definition, by the regulations) in Australia or an external Territory.

***listed disclosing entity*** has the meaning given by subsection 111AL(1).

***listing rules***, when used in Chapter 7, has the meaning given by section 761.

***local agent***, in relation to a foreign company, means a person who is a local agent of the foreign company by virtue of subsection 601CG(5).

***local corporation*** means:

(a) a company; or

(b) any other corporation that is incorporated in this jurisdiction.

***local futures association*** means a body corporate in relation to which an approval under section 1132 of the Corporations Law of this jurisdiction is in force.

***local futures exchange*** means a body corporate in relation to which an approval under section 1126 of the Corporations Law of this jurisdiction is in force.

***local securities exchange*** means a local stock exchange or an approved securities organisation.

***local stock exchange*** means:

(a) the Exchange; or

(b) a body corporate referred to in any of subparagraphs (c)(ii) to (x), inclusive, of the definition of ***stock exchange*** that conducts in this jurisdiction, or proposes so to conduct, a stock market; or

(c) a body corporate in relation to which an approval under section 769 of the Corporations Law of this jurisdiction is in force.

***lodge*** means lodge with the Commission in this or any other jurisdiction.

**M**

***machine‑copy***, in relation to a document, means a copy made of the document by any machine in which, or process by which, an image of the contents of the document is reproduced.

***magistrate*** means a magistrate who is remunerated by salary or otherwise.

***managed investment scheme*** means:

(a) a scheme that has the following features:

(i) people contribute money or money’s worth as consideration to acquire rights (***interests***)to benefits produced by the scheme (whether the rights are actual, prospective or contingent and whether they are enforceable or not)

(ii) any of the contributions are to be pooled, or used in a common enterprise, to produce financial benefits, or benefits consisting of rights or interests in property, for the people (the ***members***) who hold interests in the scheme (whether as contributors to the scheme or as people who have acquired interests from holders)

(iii) the members do not have day‑to‑day control over the operation of the scheme (whether or not they have the right to be consulted or to give directions); or

(b) a time‑sharing scheme;

but does not include the following:

(c) a partnership covered by an application order made for the purposes of section 115

(d) a body corporate (other than a body corporate that operates as a time sharing scheme)

(e) a scheme in which all the members are bodies corporate that are related to each other and to the body corporate that promotes the scheme

(f) a franchise

(g) a statutory fund maintained under the *Life Insurance Act 1995*

(h) a regulated superannuation fund, an approved deposit fund, a pooled superannuation trust, or a public sector superannuation scheme, within the meaning of the *Superannuation Industry (Supervision) Act 1993*

(i) a scheme operated by an Australian ADI in the ordinary course of its banking business

(j) the issue of debentures or convertible notes by a body corporate

(k) a barter scheme under which each participant may obtain goods or services from another participant for consideration that is wholly or substantially in kind rather than in cash

(l) a retirement village scheme operating within or outside Australia:

(i) under which the participants, or a majority of them, are provided, or are to be provided, with residential accommodation within a retirement village (whether or not the entitlement of a participant to be provided with accommodation derives from a proprietary interest held by the participant in the premises where the accommodation is, or is to be, provided); and

(ii) which is not a time‑sharing scheme

(m) a scheme that is operated by a co‑operative company registered under Part VI of the *Companies (Co‑operative) Act 1943* of Western Australia or under a previous law of Western Australia that corresponds to that Part

(n) a scheme of a kind declared by the regulations not to be a managed investment scheme.

Note: Paragraph (c)—A partnership with less than 20 members will usually not require registration because of paragraph 601ED(1)(a) and under section 115 a partnership with more than 20 members can only operate if covered by an application order.

***manager*** has a meaning affected by section 90.

***managing controller***, in relation to property of a corporation, means:

(a) a receiver and manager of that property; or

(b) any other controller of that property who has functions or powers in connection with managing the corporation.

***marketable securities*** means debentures, stocks, shares or bonds of any Government, of any local government authority or of any body corporate, association or society, and includes any right or option in respect of shares in any body corporate and any prescribed interest.

***market bid*** means a takeover bid made under Chapter 6 as a market bid (see section 616).

***member***:

(aa) in relation to a managed investment schememeans a person who holds an interest in the scheme; or

(a) when used in Chapter 6 or Chapter 7 (except Part 7.1A and the provisions mentioned in paragraph (aa) of this definition) in relation to a securities exchange or stock exchange, means:

(i) a person who is a member organisation of that exchange; or

(ii) a person who is a partner in a partnership that is a member organisation of that exchange; or

(aa) when used in section 769, 769A or 772A, subsection 776(2), section 779, subsection 786(8) or 910(3) or section 913 or 1115, in relation to a securities exchange or stock exchange, means:

(i) a person who is a member organisation of that exchange; or

(ii) a person who is a partner in a partnership that is a member organisation of that exchange; or

(iii) a person who is recognised under the business rules of the exchange as a suitably qualified affiliate of the exchange and who is involved in the carrying on of a business of dealing in securities (whether as an employee, director or in any other capacity); or

(b) in relation to a body corporate that is, or proposes to become, a futures organisation—has a meaning affected by section 56; or

(c) in relation to a company registered under the Corporations Law of any jurisdiction—a person who is a member under section 246A.

***member firm***, in relation to a securities exchange, means a partnership that is a member organisation of the securities exchange.

***member organisation*** means:

(a) in relation to a securities exchange or stock exchange:

(i) a person who is recognised under the business rules of the exchange as a suitably qualified participant of the exchange and who carries on a business of dealing in securities otherwise than in partnership; or

(ii) a partnership that is recognised under the business rules of the exchange as a suitably qualified participant of the exchange and that carries on a business of dealing in securities; and

(b) in relation to a futures organisation:

(i) a member of the futures organisation that carries on a business of dealing in futures contracts otherwise than in partnership; or

(ii) a partnership that the futures organisation recognises as a member organisation, that carries on a business of dealing in futures contracts and each partner in which is a member of some futures organisation.

***members’ voluntary winding up*** means a winding up under Part 5.5 where a declaration has been made and lodged pursuant to section 494.

***minerals*** means minerals in any form, whether solid, liquefied or gaseous and whether organic or inorganic.

***minimum holding buy‑back*** means a buy‑back of all of a holder’s shares in a listed corporation if the shares are less than a marketable parcel within the meaning of the rules of the relevant securities exchange.

***mining purposes*** means any or all of the following purposes:

(a) prospecting for ores, metals or minerals;

(b) obtaining, by any mode or method, ores, metals or minerals;

(c) the sale or other disposal of ores, metals, minerals or other products of mining;

(d) the carrying on of any business or activity necessary for, or incidental to, any of the foregoing purposes;

whether in Australia or elsewhere, but does not include quarrying operations for the sole purpose of obtaining stone for building, roadmaking or similar purposes.

***Minister*** has the meaning given by section 80A.

***Ministerial Council*** means the Ministerial Council for Companies and Securities established by the Agreement made on 22 December 1978 between the Commonwealth and the States a copy of which is set out in the Schedule to the *National Companies and Securities Commission Act 1979*, being that agreement as amended or affected by any other agreement.

***misconduct*** includes fraud, negligence, default, breach of trust and breach of duty.

***modifications*** includes additions, omissions and substitutions.

***money*** includes a payment order.

***month*** means calendar month.

**N**

***national business names register*** means the record or records of information identified by the Minister in a notice under section 70 of the *Corporations Act 1989*.

***national newspaper*** means a daily newspaper that circulates generally in each State, the Capital Territory and the Northern Territory.

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

***necessary transfer documents*** for the transfer of securities to a person means the documents that are sufficient to enable the person to become the holder of the securities.

***negative***, in relation to a document, means a transparent negative photograph used, or intended to be used, as a medium for reproducing the contents of the document, and includes a transparent photograph made from surface contact with the original negative photograph.

***negotiable instrument***, in relation to a body corporate, means:

(a) a bill of exchange, promissory note, cheque or other negotiable instrument;

(b) an indorsement on, or order in, a bill of exchange, promissory note, cheque or other negotiable instrument; or

(c) a letter of credit;

of, or purporting to be issued or signed by or on behalf of, the body.

***no liability company*** means a company that is registered as, or converts to, a no liability company under this Law.

Note 1: A no liability company can be registered under section 118, 601BD or 1362B. A company can convert to a no liability company under Part 2B.7.

Note 2: A no liability company must have solely mining purposes and have no contractual right to recover unpaid calls (see subsection 112(2).

***nominee corporation*** means a body corporate whose principal business is the business of holding marketable securities as a trustee or nominee.

***non****‑****broker*** means a person who is neither a futures broker nor one of 2 or more persons who together constitute a futures broker.

***non‑dealer*** means a person who is neither a dealer nor one of 2 or more persons who together constitute a dealer.

***non‑voting share***, in relation to a body corporate, means an issued share in the body that is not a voting share in the body.

***Northern Territory*** means the Northern Territory of Australia.

***notice*** includes a circular and an advertisement.

***NSEGC*** means the National Securities Exchanges Guarantee Corporation referred to in a previous law corresponding to Part 7.10.

**O**

***oath*** includes affirmation.

***of***, in relation to securities, means, in the case of interests in a managed investment scheme, made available by.

***offence*** means an offence against a law of the Commonwealth or a State or Territory.

***offer information statement*** means an offer information statement that is lodged with ASIC.

***offer period*** for a takeover bid is the period for which offers under the bid remain open.

***office***,in relation to the Commission, means an office of the Commission in this jurisdiction or elsewhere.

***officer*** of a corporation means:

(a) a director or secretary of the corporation; or

(b) a person:

(i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the corporation; or

(ii) who has the capacity to affect significantly the corporation’s financial standing; or

(iii) in accordance with whose instructions or wishes the directors of the corporation are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person’s professional capacity or their business relationship with the directors or the corporation); or

(c) a receiver, or receiver and manager, of the property of the corporation; or

(d) an administrator of the corporation; or

(e) an administrator of a deed of company arrangement executed by the corporation; or

(f) a liquidator of the corporation; or

(g) a trustee or other person administering a compromise or arrangement made between the corporation and someone else.

Note: Section 201B contains rules about who is a director of a corporation.

***official liquidator*** means a person registered as an official liquidator under section 1283 or deemed to be registered as an official liquidator under this Law.

***official manager*** means a person appointed as an official manager under Part 5.3.

***off‑market bid*** means a takeover bid made under Chapter 6 as an off‑market bid (see section 616).

***on***, in relation to a stock market or futures market, includes at or by means of.

***on behalf of*** includes on the instructions of.

***on‑market***: a transaction of any kind is an ***on‑market*** transaction if it is effected on a stock market of a securities exchange and is:

(a) an on‑market transaction as defined in the rules governing the operation of the exchange; or

(b) if those rules do not define on‑market transactions—effected in the ordinary course of trading on the stock market.

***on‑market buy‑back*** has the meaning given by subsections 257B(6) to (8).

***option contract***, in Chapter 7, means:

(a) a contract under which a party acquires from another party an option or right, exercisable at or before a specified time, to buy from, or to sell to, that other party a number of specified securities, or of a specified class of securities, being securities of a kind referred to in paragraph 92(1)(a), (b), (c) or (d), at a price specified in, or to be determined in accordance with, the contract; or

(b) a contract entered into on a stock market of a securities exchange or on an exempt stock market, being a contract under which a party to the contract acquires from another party to the contract an option or right, exercisable at or before a specified time:

(i) to buy from, or to sell to, that other party an amount of a specified foreign currency, or a quantity of a specified commodity, at a price specified in, or to be determined in accordance with, the contract; or

(ii) to be paid by that other party an amount of money to be determined by reference to the amount by which a specified number is greater or less than the number of a specified index, being the Australian Stock Exchanges All Ordinaries Price Index or a prescribed index, as at the time when the option or right is exercised.

***originating provision***,in relation to a provision of this Law, means the provision enacted by the Parliament as a direct or indirect result of which the provision of this Law was included in this Law.

***other jurisdictions*** means 2 or more jurisdictions other than this jurisdiction.

***outstanding property***, in relation to a body corporate that has been dissolved or deregistered, means outstanding property (other than unpaid capital, whether called or uncalled) that was vested in the body, to which it was entitled, or over which it had a disposing power, when it was dissolved or deregistered, but that neither the body nor its liquidator got in, realised on or otherwise disposed of or dealt with.

***own account*** has:

(a) in relation to a person dealing in a futures contract—a meaning affected by section 29; or

(b) in relation to a person dealing in, or entering into a transaction in relation to, securities—a meaning affected by section 84.

**P**

***Parliament*** means the Parliament of the Commonwealth.

***Part 5.1 body*** means:

(a) a company; or

(b) a registrable body (other than a registrable local body) that is registered under Division 1 or 2 of Part 5B.2 of the Corporations Law of this jurisdiction.

***Part 5.7 body*** means:

(a) a registrable body (other than a registrable local body) that:

(i) is registered under Division 1 or 2 of Part 5B.2 of the Corporations Law of this jurisdiction; or

(ii) carries on business in this jurisdiction; or

(b) a partnership, association or other body (whether a body corporate or not) that consists of more than 5 members.

***party***:

(a) in relation to a transaction—includes, if the transaction has been completed or given effect to, or has been terminated, a person who was a party to the transaction; and

(b) in relation to a Chapter 8 agreement—means, in the case of a proposed or discharged relevant agreement, a person who would be a party to the relevant agreement if it were in effect.

***payment*** (when used in Division 2 of Part 2D.2 (sections 200B to 1813)) includes a payment by way of damages for breach of contract.

***payment order*** means a cheque (including a cheque that a bank or other institution draws on itself), bank draft, money order or postal order.

***penalty unit*** means $100.

***person***:

(a) has a meaning affected by section 85A; and

(b) when used in Division 2 of Part 2D.2 (sections 200B to 1813)—includes a superannuation fund.

***place of origin***, in relation to a body corporate, means:

(a) in the case of a body incorporated in a State or Territory—that State or Territory; or

(b) otherwise—the place of the body’s incorporation.

***possession*** has a meaning affected by section 86.

***power*** includes an authority.

***premises*** includes:

(a) a structure, building, aircraft, vehicle or vessel;

(b) any land or place (whether enclosed or built on or not); and

(c) a part of a structure, building, aircraft, vehicle or vessel or of such a place.

***prescribed*** means prescribed by the Corporations Law of this jurisdiction, by the regulations or by the rules.

***previous Fund*** means the National Guarantee Fund that was established under subsection 122CA(1) of the *Securities Industry Act 1980*.

***price***, in relation to a commodity agreement or a futures contract, or in Chapter 8, includes any amount payable for the delivery of a commodity under an agreement.

***printed*** includes type‑written, lithographed or reproduced by any mechanical means.

***Proclamation*** means a Proclamation by the Governor‑General published in the *Gazette*.

***procure*** includes cause.

***profile statement*** means a profile statement that is lodged with ASIC.

***proper authority*** has:

(a) in relation to a futures licensee—the meaning given by subsection 87(1); and

(b) in relation to a securities licensee—the meaning given by subsection 88(1).

***proper SCH transfer*** means:

(a) an SCH‑regulated transfer of a quoted security or quoted right effected in accordance with the SCH business rules; or

(b) a transfer that is taken by section 1097D to be a proper SCH transfer.

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

***proportional takeover approval provisions***, in relation to a company, means provisions of the kind referred to in subsection 648D(1) that are contained in, or that it is proposed to insert in, the constitution of the company.

***proportional takeover bid*** means an off‑market bid for a specified proportion of the securities in the bid class (see paragraph 618(1)(b)).

***proprietary company*** has the meaning given by subsection 45A(1).

***prospectus*** means a prospectus that is lodged with ASIC.

***prove*** includes establish in any way (for example, but without limitation, through the operation of a presumption for which this Law or any other law of this jurisdiction provides).

***providing finance*** means

(a) lending money; or

(b) giving guarantees or security for loans made by someone else; or

(c) drawing, accepting, indorsing, negotiating or discounting a bill of exchange, cheque, payment order or promissory note so that someone can obtain funds.

***public authority of the Commonwealth or a State*** means:

(a) a Minister or State Minister; or

(b) the holder of an office established by a Commonwealth or State law; or

(c) a body corporate incorporated for a public purpose by a Commonwealth or State law to the extent to which it is exercising a power conferred by a Commonwealth or State law.

***public company*** means a company other than a proprietary company and:

(a) in subsection 849(1), includes a body corporate that is a public company for the purposes of the Corporations Law of another jurisdiction; and

(b) in section 195, Chapter 2E and section 1376, includes a body corporate (other than a prescribed body corporate) that:

(i) is incorporated, or taken to be incorporated, in this jurisdiction, but not under the Corporations Law of this jurisdiction; and

(ii) is included in the official list of a securities exchange; and

(c) in Chapter 2E and section 1376 does not include a company that does not have “Limited” in its name because of section 150 or 151.

***public document***,in relation to a body corporate, has the meaning given by section 88A.

***publish***:

(a) in relation to a notice—means, in Chapter 7, publish by any means, including in a newspaper or periodical, by broadcasting or televising or in a cinematograph film; and

(b) in any case—includes issue.

**Q**

***qualified accountant*** means a member of a professional body that is approved by ASIC in writing for the purposes of this definition.

***qualified privilege*** has the meaning given by section 89.

***quarter day*** means 31 March, 30 June, 30 September or 31 December.

***quotation***, in relation to securities, in relation to a stock market of a securities exchange, or of a stock exchange, within the meaning of the provision where the expression occurs, includes the displaying or providing, on a stock market of the securities exchange or stock exchange, of information concerning:

(a) if offers to sell, purchase or exchange the securities at particular prices, or for particular consideration, are made or accepted on that stock market—those prices or that consideration;

(b) if offers or invitations are made on that stock market, being offers or invitations that are intended, or may reasonably be expected, to result in the making or acceptance of offers to sell, purchase or exchange the securities at particular prices, or for particular consideration—those prices or that consideration; or

(c) in any case—the price at which, or the consideration for which, particular persons, or particular classes of persons, propose, or may reasonably be expected, to sell, purchase or exchange the securities.

***quoted ED securities*** has the meaning given by section 111AM.

***quoted right*** has the meaning given by section 1097A.

Note: The meaning of ***quoted right*** may be extended by the SCH business rules (under section 1097B) or by a Commission declaration (under section 1097C).

***quoted security*** has the meaning given by section 1097A.

Note: The meaning of ***quoted security*** may be extended by the SCH business rules (under section 1097B) or by a Commission declaration (under section 1097C).

**R**

***receiver and manager*** has a meaning affected by section 90.

***recognised company*** means a body corporate that, because of the definition of ***company*** in section 9 of the Corporations Law of another jurisdiction, is a company for the purposes of that section of that Law.

***recognised futures exchange*** means a body corporate that:

(a) conducts a futures market outside Australia; and

(b) is prescribed for the purposes of this definition.

***record*** includes information stored or recorded by means of a computer.

***redeemable preference share*** means a preference share in a body corporate that is, or at the body’s option is to be, liable to be redeemed.

***register*** means register under this Law.

**REGISTERED**

***registered Australian body*** means:

(a) in this Chapter—a registrable Australian body that is registered under Division 1 of Part 5B.2; or

(b) otherwise—a registrable Australian body that is registered under Division 1 of Part 5B.2 of the Corporations Law of this jurisdiction.

***registered body*** means:

(a) in this Chapter or section 601CX or 601CY—a registered Australian body or a registered foreign company; or

(b) otherwise—a registrable body that is registered under Division 1 or 2 of Part 5B.2 of the Corporations Law of this jurisdiction.

***registered company auditor*** means:

(a) in sections 1287 and 1288—a person registered as an auditor, or taken to be registered as an auditor, under Part 9.2 of the Corporations Law of this jurisdiction; and

(b) otherwise—a person registered as an auditor, or taken to be registered as an auditor, under Part 9.2;

and, in relation to a body corporate that is not a company, includes a person qualified to act as the body’s auditor under the law of the body’s incorporation.

***registered foreign company*** means:

(a) in this Chapter or section 601CX—a foreign company that is registered under Division 2 of Part 5B.2; or

(b) otherwise—a foreign company that is registered under Division 2 of Part 5B.2 of the Corporations Law of this jurisdiction.

***registered liquidator*** means:

(a) in sections 1287 and 1288—a person registered as a liquidator under subsection 1282(2), or taken to be registered as a liquidator under Part 9.2, of the Corporations Law of this jurisdiction; and

(b) otherwise—a person registered as a liquidator under subsection 1282(2) or taken to be registered as a liquidator under Part 9.2.

***registered office***, in relation to a body corporate, means the body’s registered office under section 142 or 601CT, as the case requires.

***registered scheme*** means a managed investment scheme that is registered under section 601EB.

***registrable Australian body*** means:

(a) a body corporate, not being:

(i) a company; or

(ii) a recognised company; or

(iii) an exempt public authority; or

(iv) a corporation sole; or

(b) an unincorporated body that, under the law of its place of formation, may sue or be sued, or may hold property in the name of its secretary or of an officer of the body duly appointed for that purpose;

but does not include a foreign company.

***registrable body*** means a registrable Australian body or a foreign company.

***registrable local body*** means a registrable Australian body that:

(a) is incorporated in this jurisdiction; or

(b) is unincorporated but is formed, or has its head office or principal place of business, in this jurisdiction.

***regulations*** means the Corporations Regulations of this jurisdiction.

***related body corporate***, in relation to a body corporate, means a body corporate that is related to the first‑mentioned body by virtue of section 50.

***related entity***, in relation to a body corporate, means any of the following:

(a) a promoter of the body;

(b) a relative, or de facto spouse, of such a promoter;

(c) a relative of a spouse, or of a de facto spouse, of such a promoter;

(d) a director or member of the body or of a related body corporate;

(e) a relative, or de facto spouse, of such a director or member;

(f) a relative of a spouse, or of a de facto spouse, of such a director or member;

(g) a body corporate that is related to the first‑mentioned body;

(h) a beneficiary under a trust of which the first‑mentioned body is or has at any time been a trustee;

(i) a relative, or de facto spouse, of such a beneficiary;

(j) a relative of a spouse, or of a de facto spouse, of such a beneficiary;

(k) a body corporate one of whose directors is also a director of the first‑mentioned body;

(l) a trustee of a trust under which a person is a beneficiary, where the person is a related entity of the first‑mentioned body because of any other application or applications of this definition.

***related party*** (when used in Chapter 2E) has the meaning given by section 228.

***relation‑back day***, in relation to a winding up of a company or Part 5.7 body, means:

(a) 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 or body be wound up was made—the day on which the application for the order was filed; or

(b) otherwise—the day on which the winding up is taken because of Division 1A of Part 5.6 to have begun.

***relative***, in relation to a person, means the spouse, parent or remoter lineal ancestor, son, daughter or remoter issue, or brother or sister of the person.

***relevant agreement*** means an agreement, arrangement or understanding:

(a) whether formal or informal or partly formal and partly informal;

(b) whether written or oral or partly written and partly oral; and

(c) whether or not having legal or equitable force and whether or not based on legal or equitable rights.

***relevant date***, in relation to a winding up, means the day on which the winding up is taken because of Division 1A of Part 5.6 to have begun.

Note: Subsection 553(1B) modifies the operation of this definition for debts and claims that arise while a company is under a deed of company arrangement if the deed terminates immediately before the winding up.

***relevant interest***, in relation to securities, has a meaning given by sections 608 and 609.

***relevant previous law***, in relation to a jurisdiction, means:

(a) in the case of the Capital Territory—a relevant Act within the meaning of the *Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980*; and

(b) in the case of any other jurisdiction—a relevant Code within the meaning of a law of that other jurisdiction.

***relevant securities exchange*** for a listed company, or listed registered managed investment scheme, means:

(a) the securities exchange on whose stock market the company or scheme is listed; or

(b) if the company or scheme is listed on 2 or more exchanges—each of those exchanges.

***remedial order*** means an order that:

(a) restrains a person from exercising any voting or other rights attached to securities

(b) directs a body corporate not to make or to defer payment of an amount due from the body corporate in respect of securities

(c) restrains a person from acquiring securities or an interest in securities

(d) directs a person to dispose of, or not to dispose of, securities or interests in securities

(e) directs the disposal referred to in paragraph (d):

(i) to be made within a specified time; or

(ii) to be made subject to specified conditions; or

(iii) not to be made to a specified person or persons or to a specified class or classes of persons

(f) directs a specified person to pay to the body corporate an amount equal to any profit or benefit that the person obtains because of the disposal referred to in paragraph (d)

(g) vests securities, or an interest in securities, in ASIC

(h) directs a body corporate not to register the transfer or transmission of securities

(i) cancels securities issued as consideration for offers under a takeover bid

(j) declares that an exercise of the voting or other rights attached to securities be disregarded

(k) cancels or declares voidable:

(i) an agreement or offer relating to a takeover bid, or a proposed takeover bid; or

(ii) any other agreement or offer in connection with the acquisition of securities or relevant interests in securities

(l) directs a person to give specified information to the holders of securities of a body corporate

(m) directs a body corporate not to issue securities to a person

(n) if an order of a kind referred to in paragraphs (a) to (m) is in force in respect of securities—directs the registered holder of the securities to give written notice of the order to any person whom the holder knows to be entitled to exercise a right to vote attached to those securities

(o) directs a body corporate to repeal or modify its existing constitution or adopt a particular constitution

(p) if a person has failed to comply with a requirement of Chapter 6, 6A, 6B or 6C*—*directs that person to comply with that requirement.

***remuneration*** of an officer or employee of a corporation. A benefit given to an officer or employee of a corporation is ***remuneration*** if and only if the benefit, were it received by a director of the corporation, would be remuneration of the director for the purposes of an accounting standard that deals with disclosure in companies’ financial reports of information about related parties. For the purposes of this definition, the following are not officers of a corporation:

(a) a receiver, or receiver and manager, of the property of the corporation

(b) an administrator of the corporation

(c) an administrator of a deed of company arrangement executed by the corporation

(d) a liquidator of the corporation

(e) a trustee or other person administering a compromise or arrangement made between the corporation and someone else.

***renounceable option*** means an assignable option to have an allotment of shares in a body corporate made to the holder of the option.

***representative*** means:

(a) in Chapter 7—a securities representative; or

(b) in Chapter 8—a futures representative.

***reproduction***, in relation to a document, means a machine‑copy of the document or a print made from a negative of the document.

***resolution***,in relation to creditors or contributories, means a resolution passed at a meeting of the creditors or contributories.

***resolution for voluntary winding up*** means the special resolution referred to in section 491.

***responsible entity*** of a registered scheme means the company named in the ASC’s record of the scheme’s registration as the responsible entity or temporary responsible entity of the scheme.

***responsible officer*** means:

(a) in relation to a body corporate that is, or proposes to be, a member of another body corporate:

(i) a director or executive officer of the first‑mentioned body; or

(ii) a person who has control or substantial control of the first‑mentioned body; and

(b) in relation to a body corporate that applies for a licence—an officer of the body who would perform duties in connection with the holding of the licence.

***result*** includes:

(a) when used as a verb—result indirectly; and

(b) when used as a noun—an indirect result.

***retirement village scheme*** means a scheme, undertaking or enterprise (in this definition called the ***relevant scheme***), whether in Australia or elsewhere, that is being, or is proposed to be, carried out or undertaken with the intention that the participants, or a majority of the participants, in the relevant scheme be provided, in connection with the relevant scheme, with residential accommodation within a retirement community, whether or not the entitlement of a participant to be provided with such accommodation derives from a proprietary interest held by the participant in the premises where the accommodation is provided, but does not include a time‑sharing scheme.

***revoke***, in relation to an accounting standard, means, in the case of a provision of an accounting standard, vary the last‑mentioned accounting standard by omitting the provision.

***rules*** means:

(a) rules of the Federal Court; or

(b) rules of the Supreme Court of this or another jurisdiction;

as the case requires.

**S**

***same kind***, in relation to a Chapter 8 agreement, has the meaning given by section 54.

***SCH*** is short for securities clearing house.

***SCH business rules*** means the business rules (within the meaning of Chapter7) of the securities clearing house.

***SCH certificate cancellation provisions*** means the provisions of the SCH business rules that deal with:

(a) brokers cancelling certificates or other documents of title to quoted securities or quoted rights; and

(b) matters incidental to brokers cancelling such certificates or documents.

***SCH participant*** means a person who, or a partnership that, under the SCH business rules, is entitled to participate in the facilities provided by the securities clearing house.

***SCH‑regulated transfer*** means a transfer (within the meaning of Division 3 of Part 7.13) of a quoted security or a quoted right that, according to the SCH business rules, is an SCH‑regulated transfer.

***SCH subregister*** means a subregister of quoted securities or quoted rights maintained by the SCH under the SCH business rules.

***scheme property*** of a registered scheme means:

(a) contributions of money or money’s worth to the scheme; and

(b) money that forms part of the scheme property under provisions of this Law or the ASC Law; and

(c) money borrowed or raised by the responsible entity for the purposes of the scheme; and

(d) property acquired, directly or indirectly, with, or with the proceeds of, contributions or money referred to in paragraph (a), (b) or (c); and

(e) income and property derived, directly or indirectly, from contributions, money or property referred to in paragraph (a), (b), (c) or (d).

Note 1: Paragraph (a)—if what a member contributes to a scheme is rights over property, the rights in the property that the member retains do not form part of the scheme property.

Note 2: For provisions that are relevant to paragraph (b), see subsections 177(4), 1317HA(1A), 1317HB(3) and 1317HD(3) of this Law and subsection 93A(5) of the ASC Law.

***scrip*** means documents that are, or are documents of title to, securities.

***section 513C day***, in relation to the administration of a company, has the meaning given by section 513C.

***section 770A stock market*** means a stock market in relation to which an approval under section 770A is in force.

**SECURITIES**

***securities*** has the meaning given by section 92.

***securities adviser*** means a dealer, an investment adviser or a securities representative of a dealer or of an investment adviser.

***securities business*** has the meaning given by section 93.

Note: The activities of the securities clearing house will not generally constitute a securities business—see subsection 779J(1).

***securities clearing house*** means the body corporate in relation to which an approval under section 779B is in force.

***securities exchange*** means:

(a) in a provision (other than a provision of this Chapter or Chapter 6 or 7) for the purposes of which a regulation is in force defining that expression—a securities exchange as defined by that regulation; or

(b) in Chapter 6:

(i) the Exchange;

(ii) Australian Stock Exchange (Adelaide) Limited;

(iii) Australian Stock Exchange (Brisbane) Limited;

(iv) Australian Stock Exchange (Hobart) Limited;

(v) Australian Stock Exchange (Melbourne) Limited;

(vi) Australian Stock Exchange (Perth) Limited;

(vii) Australian Stock Exchange (Sydney) Limited; or

(viii) a body corporate that is declared by the regulations to be a securities exchange for the purposes of that Chapter; or

(c) in this Chapter, section 773, 778, 779, 874 or 879, subsection 920(1) or Chapter 6D:

(i) a stock exchange; or

(ii) a body corporate in relation to which an approval under section 770 is in force; or

(d) in any other provision of Chapter 7:

(i) a local stock exchange; or

(ii) an approved securities organisation.

***securities law*** means a provision of Chapter 5C, 6, 6A, 6B, 6C, 6D or 7 or a corresponding previous law.

***securities licence*** means a dealers licence or an investment advisers licence.

***securities licensee*** means a person who holds a securities licence.

***securities recommendation*** means a recommendation with respect to securities or a class of securities, whether made expressly or by implication.

***securities report*** means an analysis or report about securities.

***securities representative*** has the meaning given by section 94.

***SEGC*** means a body corporate in relation to which a nomination as the Securities Exchanges Guarantee Corporation is in force under subsection 67(1) of the *Corporations Act 1989* or is taken because of subsection 67(5) of that Act to be so in force.

***selective buy‑back*** means a buy‑back that is none of the following:

(a) a buy‑back under an equal access scheme within the meaning of subsections 257B(2) and (3)

(b) a minimum holding buy‑back

(c) an on‑market buy‑back

(d) an employee share scheme buy‑back.

***serious fraud*** means an offence involving fraud or dishonesty, being an offence:

(a) against an Australian law or any other law; and

(b) punishable by imprisonment for life or for a period, or maximum period, of at least 3 months.

***sheriff*** includes a person charged with the execution of a writ or other process.

***small proprietary company*** has the meaning given by subsection 45A(2).

***sold position*** means:

(a) in relation to a commodity agreement, or in relation to a futures contract, being a commodity agreement—the position of a person who, by virtue of the agreement, is under a Chapter 8 obligation to make delivery in accordance with the agreement; or

(b) in relation to a futures contract, being an adjustment agreement—the position of a person who, by virtue of the agreement:

(i) will, if the value or worth of the agreement (as determined in accordance with the agreement) as at a particular future time exceeds by a particular amount the value or worth of the agreement (as so determined) as at a particular earlier time, be under a Chapter 8 obligation to pay that amount; and

(ii) will, if the value or worth of the agreement (as so determined) as at a particular future time is less by a particular amount than the value or worth of the agreement (as so determined) as at a particular earlier time, have a Chapter 8 right to receive that amount.

***sole trader*** means a person who is a member organisation of a securities exchange.

***solvent*** has the meaning given by subsection 95A(1).

***special resolution*** means:

(a) in relation to a company, a resolution:

(i) of which notice as set out in paragraph 249L(c) has been given; and

(ii) that has been passed by at least 75% of the votes cast by members entitled to vote on the resolution; or

(b) in relation to a registered scheme, a resolution:

(i) of which notice as set out in paragraph 252J(c) has been given; and

(ii) that has been passed by at least 75% of the votes cast by members entitled to vote on the resolution.

***staff member***, in relation to the Commission, means a person who is a staff member for the purposes of the Commission Act.

***standardised agreement*** means a Chapter 8 agreement that is one of 2 or more Chapter 8 agreements each of which is a Chapter 8 agreement of the same kind as the other, or as each of the others, as the case may be.

***standard opening hours*** means 10 am to 12 noon and 2 pm to 4 pm each business day.

***State*** means a State of the Commonwealth and includes the Northern Territory.

***State Fair Trading Act*** means the following Acts for each jurisdiction:

| **State Fair Trading Acts** | | |
| --- | --- | --- |
|  | **Jurisdiction** | **Act** |
| 1 | New South Wales | Fair Trading Act 1987 (NSW) |
| 2 | Victoria | Fair Trading Act 1985 |
| 3 | Queensland | Fair Trading Act 1987 |
| 4 | South Australia | Fair Trading Act 1987 |
| 5 | Western Australia | Fair Trading Act 1987 |
| 6 | Tasmania | Fair Trading Act 1990 |
| 7 | Northern Territory | Fair Trading Act 1990 |
| 8 | Australian Capital Territory | Fair Trading Act 1992 |

***statement***, in Chapter 7, includes matter that is not written but conveys a message.

***statutory declaration*** means a declaration made by virtue of any Act of the Commonwealth, of a State or of a Territory authorising a declaration to be made otherwise than in the course of a judicial proceeding.

***statutory demand*** means:

(a) a document that is, or purports to be, a demand served under section 459E; or

(b) such a document as varied by an order under subsection 459H(4).

***statutory minimum*** means:

(a) if an amount greater than $2,000 is prescribed—the prescribed amount; or

(b) otherwise—$2,000.

***stock exchange*** means:

(a) in a provision (other than a provision of this Chapter or Chapter 6 or 7) for the purposes of which a regulation is in force defining that expression—a stock exchange as defined by that regulation; or

(b) in Chapter 6:

(i) the Exchange;

(ii) Australian Stock Exchange (Adelaide) Limited;

(iii) Australian Stock Exchange (Brisbane) Limited;

(iv) Australian Stock Exchange (Hobart) Limited;

(v) Australian Stock Exchange (Melbourne) Limited;

(vi) Australian Stock Exchange (Perth) Limited;

(vii) Australian Stock Exchange (Sydney) Limited; or

(viii) a body corporate that is declared by the regulations to be a stock exchange for the purposes of that Chapter; or

(c) in this Chapter or section 869 or 1115—any of the following:

(i) the Exchange;

(ii) Australian Stock Exchange (Adelaide) Limited;

(iii) Australian Stock Exchange (Brisbane) Limited;

(iv) Australian Stock Exchange (Hobart) Limited;

(v) Australian Stock Exchange (Melbourne) Limited;

(vi) Australian Stock Exchange (Perth) Limited;

(vii) Australian Stock Exchange (Sydney) Limited;

(viii) the Stock Exchange of Bendigo Limited;

(ix) the Stock Exchange of Ballarat Limited;

(x) the Stock Exchange of Newcastle Limited;

(xi) a body corporate in relation to which an approval under section 769 is in force; or

(d) in any other provision of Chapter 7—a local stock exchange.

***stock market*** means, subject to section 97, a market, exchange or other place at which, or a facility by means of which:

(a) offers to sell, purchase or exchange securities are regularly made or accepted;

(b) offers or invitations are regularly made, being 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, purchase or exchange securities; or

(c) information is regularly provided about the prices at which, or the consideration for which, particular persons, or particular classes of persons, propose, or may reasonably be expected, to sell, purchase or exchange securities.

***subscriber*** for securities that are interests in a managed investment scheme means any person:

(a) accepting an offer, or making an offer pursuant to an invitation, in respect of the interests; or

(b) subscribing for or buying the interests.

***subsidiary***, in relation to a body corporate, means a body corporate that is a subsidiary of the first‑mentioned body by virtue of Division 6.

***substantial holding***: A person has a substantial holding in a body corporate, or listed registered managed investment scheme, if:

(a) the total votes attached to voting shares in the body, or voting interests in the scheme, in which they or their associates:

(i) have relevant interests; and

(ii) would have a relevant interest but for subsection 609(6) (exchange traded options) or 609(7) (conditional agreements);

is 5% or more of the total number of votes attached to voting shares in the body, or interests in the scheme; or

(b) the person has made a takeover bid for voting shares in the body, or voting interests in the scheme, and the takeover period has started and not yet ended.

Note: For ***relevant interest***, see section 608.

***substantial part***, in relation to activities, includes the whole of those activities.

***suspend***, in relation to a licence, includes, except in sections 827 and 1192, make under section 827 or 1192, as the case requires, an order prohibiting the licensee as mentioned in paragraph 827(1)(d) or 1192(1)(d).

***swear***, in relation to an affidavit, means, in the case of an affirmation, affirm.

**T**

***takeover bid*** means an off‑market bid or market bid made under Chapter 6.

***takeover contract*** means a contract that results from the acceptance of an offer made under a takeover bid.

***target*** for a takeover bid means the company, listed body or managed investment scheme whose securities are to be acquired under the bid.

***target’s statement*** means a target’s statement under sections 638 to 640 as supplemented.

***Territory*** means a Territory referred to in section 122 of the Constitution, other than the Northern Territory.

***Territory*** means the Capital Territory or an external Territory.

***this jurisdiction*** includes the coastal sea of this jurisdiction.

***this Law*** has the additional meaning given by sections 8 and 8A.

***time‑sharing scheme*** means a scheme, undertaking or enterprise, whether in Australia or elsewhere:

(a) participants in which are, or may become, entitled to use, occupy or possess, for 2 or more periods during the period for which the scheme, undertaking or enterprise is to operate, property to which the scheme, undertaking or enterprise relates; and

(b) that is to operate for a period of not less than 3 years.

***trade***, in relation to securities, in relation to a stock market, includes:

(a) make or accept on that stock market an offer to sell, buy or exchange the securities; and

(b) make on that stock market an offer or invitation that is intended, or may reasonably be expected, to result in the making or acceptance of an offer to sell, buy or exchange the securities.

***trading day*** of a securities exchange or stock exchange means a day on which a stock market of the exchange or stock exchange is open for trading in securities.

***trading floor***, in relation to a futures market conducted by a body corporate, means a place or facility that the body maintains or provides for the acquisition or disposal of futures contracts by members of the body, or by such members and other persons.

***transaction***, in Part 5.7B, in relation to a body corporate or Part 5.7 body, means a transaction to which the body is a party, for example (but without limitation):

(a) a conveyance, transfer or other disposition by the body of property of the body; and

(b) a charge created by the body on property of the body; and

(c) a guarantee given by the body; and

(d) a payment made by the body; and

(e) an obligation incurred by the body; and

(f) a release or waiver by the body; and

(g) a loan to the body;

and includes such a transaction that has been completed or given effect to, or that has terminated.

***transmission*** means a transmission, by means of electric or electromagnetic energy, of:

(a) sounds, including speech and music;

(b) visual images;

(c) signals for the communication, whether as between persons and persons, persons and things or things and things, of any matter otherwise than in the form of sounds or visual images; or

(d) signals for the actuation or control of machinery or apparatus.

***transparency***, in relation to a document, means:

(a) a developed negative or positive photograph of that document (in this definition called an ***original photograph***) made, on a transparent base, by means of light reflected from, or transmitted through, the document;

(b) a copy of an original photograph made by the use of photosensitive material (being photo‑sensitive material on a transparent base) placed in surface contact with the original photograph; or

(c) any one of a series of copies of an original photograph, the first of the series being made by the use of photo‑sensitive material (being photo‑sensitive material on a transparent base) placed in surface contact with a copy referred to in paragraph (b), and each succeeding copy in the series being made, in the same manner, from any preceding copy in the series.

***Tribunal*** means the Administrative Appeals Tribunal.

**U**

***ultimate holding company***, in relation to a body corporate, means a body corporate that:

(a) is a holding company of the first‑mentioned body; and

(b) is itself a subsidiary of no body corporate.

***unauthorised futures market*** means a futures market that is neither a futures market of a futures exchange nor an exempt futures market.

***unauthorised stock market*** means a stock market that is not:

(a) a stock market of a securities exchange; or

(b) a section 770A stock market; or

(c) an exempt stock market.

***unclaimed money account*** means an account that:

(a) the Commission maintains under section 63J of the *Audit Act 1901*; and

(b) is maintained for the sole purpose of containing money that is unclaimed property.

Note: An unclaimed money account is an example of an account for which section 141 of the *Australian Securities and Investments Commission Act 1989* provides. That section relates to money the Commission receives or holds on trust.

***unclaimed property*** means:

(a) property paid or transferred to the Commission under a provision of this Law that provides for property to be transferred, or for the Court to direct that property be transferred, to the Commission to be dealt with under Part 9.7; or

(b) any other property that a provision of this Law provides for the Commission to deal with under Part 9.7; or

(c) property that vests in the Commission under section 1404; or

(d) an accretion to, or substitution for, property that is unclaimed property because of any other application or applications of this definition; or

(e) without limiting paragraph (d), money paid, or required to be paid, under paragraph 1339(2)(b) into an unclaimed money account;

but does not include income that the Minister has applied under subsection 1339(3).

***uncommercial transaction*** has the meaning given by section 588FB.

***underlying securities*** means:

(a) in relation to an option over securities—those securities; and

(b) in relation to scrip that is constituted by documents that are, or are documents of title to, securities—those securities.

***undertaking***, in relation to a managed investment scheme, means the undertaking, scheme, enterprise, contract or arrangement to which the scheme relates.

***underwrite*** includes sub‑underwrite.

***unfair loan*** has the meaning given by section 588FD.

***unfair preference*** has the meaning given by section 588FA.

***unit***, in relation to a share, debenture or other interest, means a right or interest, whether legal or equitable, in the share, debenture or other interest, by whatever term called, and includes an option to acquire such a right or interest in the share, debenture or other interest.

***unlimited company*** means a company whose members have no limit placed on their liability.

***unlisted disclosing entity*** has the meaning given by subsection 111AL(2).

***unsecured***, in relation to a debt, has in Part 5.7B a meaning affected by section 588D.

**V**

***value***, in relation to an asset, includes amount.

***voting interest***, in relation to a managed investment scheme, means an issued interest in the scheme that confers a right to vote, not being a right to vote that is exercisable only in one or more of the following circumstances:

(a) on a proposal that affects rights attached to the interests

(b) on a proposal to wind up the scheme

(c) on a proposal for the disposal of the whole of the scheme property, business and undertaking

(d) during the winding up of the scheme.

***voting power*** in a company has the meaning given by section 610.

***voting share*** in a body corporate means an issued share in the body that carries any voting rights beyond the following:

(a) a right to vote while a dividend (or part of a dividend) in respect of the share is unpaid

(b) a right to vote on a proposal to reduce the body’s share capital

(c) a right to vote on a resolution to approve the terms of a buy‑back agreement

(d) a right to vote on a proposal that affects the rights attached to the share

(e) a right to vote on a proposal to wind the body up

(f) a right to vote on a proposal for the disposal of the whole of the body’s property, business and undertaking

(g) a right to vote during the body’s winding up.

**W**

***wages***, in relation to a company, means amounts payable to or in respect of an employee of the company (whether the employee is remunerated by salary, wages, commission or otherwise) under an industrial instrument, including amounts payable by way of allowance or reimbursement but excluding amounts payable in respect of leave of absence.

***wholly‑owned subsidiary***, in relation to a body corporate, means a body corporate none of whose members is a person other than:

(a) the first‑mentioned body;

(b) a nominee of the first‑mentioned body;

(c) a subsidiary of the first‑mentioned body, being a subsidiary none of whose members is a person other than:

(i) the first‑mentioned body; or

(ii) a nominee of the first‑mentioned body; or

(d) a nominee of such a subsidiary.

***winding up by the Court*** includes winding up in insolvency.

***wound up by the Court*** includes wound up in insolvency.

***writing*** includes any mode of representing or reproducing words, figures, drawings or symbols in a visible form.

Division 2—Associates

10 Effect of Division

(1) This Division has effect for the purposes of interpreting a reference (in this Division called the ***associate reference***), in relation to a person (in this Division called the ***primary person***), to an associate.

(2) A person is not an associate of the primary person except as provided in this Division.

(3) Nothing in this Division limits the generality of anything else in it.

11 Associates of bodies corporate

If the primary person is a body corporate, the associate reference includes a reference to:

(a) a director or secretary of the body;

(b) a related body corporate; and

(c) a director or secretary of a related body corporate.

12 Matters relating to voting shares

(1) If the associate reference relates to:

(a) the extent of a power to exercise, or to control the exercise of, the voting power attached to voting shares in a body corporate;

(b) the primary person’s voting power in a body corporate; or

(c) a takeover bid for securities in a body corporate;

it includes a reference to a person with whom the primary person has, or proposes to enter into, a relevant agreement:

(d) because of which one of those persons 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 the body;

(e) for the purpose of controlling or influencing:

(i) the composition of the body’s board; or

(ii) the conduct of affairs of the body;

(f) under which one of those persons:

(i) will or may acquire; or

(ii) may be required by the other to acquire;

shares in the body in which the other has a relevant interest; or

(g) under which one of those persons may be required to dispose of shares in the body in accordance with the other’s directions;

whatever other effect the relevant agreement may have.

(2) In relation to a matter relating to shares in a body corporate, a person may be an associate of the body and the body may be an associate of a person.

13 References in Chapter 7

If the associate reference occurs in Chapter 7 and relates to a matter that is not of a kind referred to in paragraph 12(1)(a), (b) or (c), it includes a reference to:

(a) a person in partnership with whom the primary person carries on a securities business;

(b) subject to subsection 16(2), a person who is a partner of the primary person otherwise than because of carrying on a securities business in partnership with the primary person;

(c) a trustee of a trust in relation to which the primary person benefits, or is capable of benefiting, otherwise than because of transactions entered into in the ordinary course of business in connection with the lending of money;

(d) a director of a body corporate of which the primary person is also a director and that carries on a securities business; and

(e) subject to subsection 16(2), a director of a body corporate of which the primary person is also a director and that does not carry on a securities business.

14 References in Chapter 8

If it occurs in section 29 or 1323 or Chapter 8, the associate reference includes a reference to:

(a) a person in partnership with whom the primary person carries on a business of dealing in futures contracts;

(b) subject to subsection 16(2), a person who is a partner of the primary person otherwise than because of carrying on in partnership with the primary person a business of dealing in futures contracts;

(c) a trustee of a trust in relation to which the primary person benefits, or is capable of benefiting, otherwise than because of transactions entered into in the ordinary course of business in connection with the lending of money;

(d) a director of a body corporate of which the primary person is also a director and that carries on a business of dealing in futures contracts; and

(e) subject to subsection 16(2), a director of a body corporate of which the primary person is also a director and that does not carry on a business of dealing in futures contracts.

15 General

(1) The associate reference includes a reference to:

(a) a person in concert with whom the primary person is acting, or proposes to act;

(b) a person who, under the regulations, is, for the purposes of the provision in which the associate reference occurs, an associate of the primary person; and

(c) a person with whom the primary person is, or proposes to become, associated, whether formally or informally, in any other way;

in respect of the matter to which the associate reference relates.

(2) If the primary person has entered, or proposes to enter, into a transaction, or has done, or proposes to do, any act or thing, in order to become associated with another person as mentioned in an applicable provision of this Division, the associate reference includes a reference to that other person.

16 Exclusions

(1) A person is not an associate of another person by virtue of section 12 or subsection 15(1), or by virtue of subsection 15(2) as it applies in relation to section 12 or subsection 15(1), merely because of one or more of the following:

(a) one gives advice to the other, or acts on the other’s behalf, in the proper performance of the functions attaching to a professional capacity or a business relationship;

(b) one, a client, gives specific instructions to the other, whose ordinary business includes dealing in securities, to acquire shares on the client’s behalf in the ordinary course of that business;

(c) one had sent, or proposes to send, to the other an offer under a takeover bid for shares held by the other;

(d) one has appointed the other, otherwise than for valuable consideration given by the other or by an associate of the other, to vote as a proxy or representative at a meeting of members, or of a class of members, of a body corporate.

(2) For the purposes of proceedings under this Law in which it is alleged that a person was an associate of another person by virtue of paragraph 13(b) or (e) or 14(b) or (e), the first‑mentioned person shall not be taken to have been an associate of the other person in relation to a matter by virtue of that paragraph unless it is proved that the first‑mentioned person knew, or ought to have known, at that time, the material particulars of that matter.

17 Associates of composite persons

A reference to an associate, in relation to a dealer, investment adviser, futures broker or futures adviser, is, if 2 or more persons constitute the dealer, investment adviser, futures broker or futures adviser, a reference to an associate of any of those persons.

Division 3—Carrying on business

18 Carrying on business: otherwise than for profit

A reference to a person carrying on business, carrying on a business, or carrying on a business of a particular kind, includes a reference to the person carrying on business, carrying on a business, or carrying on a business of that kind, as the case may be:

(a) in any case—otherwise than for profit; or

(b) in the case of a body corporate—otherwise than for the profit of the members or corporators of the body.

19 Businesses of a particular kind

A reference to a business of a particular kind includes a reference to a business of that kind that is part of, or is carried on in conjunction with, any other business.

20 Carrying on a business: alone or together with others

A reference in this Law to a person carrying on a business, or a business of a particular kind, is a reference to the person carrying on a business, or a business of that kind, whether alone or together with any other person or persons.

21 Carrying on business in Australia or a State or Territory

(1) A body corporate that has a place of business in Australia, or in a State or Territory, carries on business in Australia, or in that State or Territory, as the case may be.

(2) A reference to a body corporate carrying on business in Australia, or in a State or Territory, includes a reference to the body:

(a) establishing or using a share transfer office or share registration office in Australia, or in the State or Territory, as the case may be; or

(b) administering, managing, or otherwise dealing with, property situated in Australia, or in the State or Territory, as the case may be, as an agent, legal personal representative or trustee, whether by employees or agents or otherwise.

(3) Despite subsection (2), a body corporate does not carry on business in Australia, or in a State or Territory, merely because, in Australia, or in the State or Territory, as the case may be, the body:

(a) is or becomes a party to a proceeding or effects settlement of a proceeding or of a claim or dispute;

(b) holds meetings of its directors or shareholders or carries on other activities concerning its internal affairs;

(c) maintains a bank account;

(d) effects a sale through an independent contractor;

(e) solicits or procures an order that becomes a binding contract only if the order is accepted outside Australia, or the State or Territory, as the case may be;

(f) creates evidence of a debt, or creates a charge on property;

(g) secures or collects any of its debts or enforces its rights in regard to any securities relating to such debts;

(h) conducts an isolated transaction that is completed within a period of 31 days, not being one of a number of similar transactions repeated from time to time; or

(j) invests any of its funds or holds any property.

Division 4—Dealing in futures contracts

23 Acquiring a futures contract

(1) A person acquires a futures contract (other than a futures option or an eligible exchange‑traded option) if, and only if, the person enters into, or takes an assignment of, the futures contract, whether or not on another’s behalf.

(2) A person acquires a futures option or an eligible exchange‑traded option if, and only if, the person takes the option, or takes an assignment of the option, whether or not on another’s behalf.

(3) This section has effect subject to sections 26 and 27.

24 Disposing of a futures contract

(1) A person disposes of a futures contract (other than a futures option or an eligible exchange‑traded option) if, and only if, the person takes, or causes to be taken, such action as closes out the futures contract, whether or not the action is taken on another’s behalf.

(2) A person disposes of a futures option or an eligible exchange‑traded option if, and only if, the person:

(a) grants, assigns or exercises the option;

(b) takes, or causes to be taken, such action as releases the option; or

(c) allows the option to lapse;

whether or not on another’s behalf.

(3) This section has effect subject to sections 26 and 27.

25 Dealing in futures contracts: general

(1) Subject to sections 26 and 27, a person deals in a futures contract if, and only if, the person:

(a) acquires, or disposes of, the futures contract;

(b) offers to acquire, or to dispose of, the futures contract; or

(c) induces, or attempts to induce, another person to acquire, or to dispose of, the futures contract.

(2) Subject to sections 26 and 27, a person deals in a futures contract on another person’s behalf if, and only if, the first‑mentioned person acquires, or disposes of, the futures contract on the other person’s behalf, or offers so to acquire, or so to dispose of, the futures contract.

(3) In determining whether or not a person who is not a resident of Australia or of an external Territory deals in a futures contract on another person’s behalf, an act that the holder of a futures brokers licence or an exempt broker does on the first‑mentioned person’s behalf shall be disregarded.

(4) Subsection (5) has effect for the purposes of determining:

(a) whether or not a person deals in a futures contract on another person’s behalf;

(c) what constitutes such a business carried on by a person.

(5) An act that the person does:

(a) while employed by, or acting for or by arrangement with, a futures broker;

(b) as employee or agent of, or otherwise on behalf of, on account of, or for the benefit of, the broker; and

(c) in connection with a business of dealing in futures contracts that the broker carries on;

shall be disregarded.

(6) Subsections (3), (4) and (5) do not have effect for the purposes of sections 26, 27, 28, 1126 and 1132.

26 Dealing in futures contracts through intermediaries: first step

Where a person acquires, disposes of, or otherwise deals in, a futures contract on another person’s behalf, the other person shall also be deemed to acquire, dispose of, or deal in, as the case may be, the futures contract.

27 Dealing in futures contracts through intermediaries: second and later steps

(1) Where:

(a) because of instructions given, or any other act done, by a person (in this section called the ***intermediary***), the intermediary is, by virtue of:

(i) an application of section 26; or

(ii) an application of section 26 and an application, or 2 or more applications, of this section;

to be deemed to acquire, dispose of, or deal in, a futures contract; and

(b) the intermediary gave the instructions, or did that other act, on behalf of another person (in this section called the ***principal***);

this section has effect, except for the purposes of section 26.

(2) The principal shall also be deemed to acquire, dispose of, or deal in, as the case may be, the futures contract.

(3) The intermediary and:

(a) if subparagraph (1)(a)(i) applies—the person who acquires, disposes of, or otherwise deals in, as the case may be; or

(b) if subparagraph (1)(a)(ii) applies—the persons who, by virtue of the applications referred to in that subparagraph, are each deemed to acquire, dispose of, or deal in, as the case may be;

the futures contract on the intermediary’s behalf shall each be deemed to acquire, dispose of, or deal in, as the case may be, the futures contract on the principal’s behalf.

28 Dealing in futures contracts, through intermediaries, on futures markets

(1) This section has effect where a person acquires, disposes of, or otherwise deals in, a futures contract on a futures market and by virtue of:

(a) an application of section 26; or

(b) an application of section 26 and an application or applications of section 27;

another person:

(c) is also deemed to acquire, dispose of, or deal in, the futures contract; or

(d) is deemed to acquire, dispose of, or deal in, the futures contract on a third person’s behalf.

(2) The other person shall be deemed to acquire, dispose of, or deal in, the futures contract on that futures market, or on the third person’s behalf on that futures market, as the case may be.

29 Own account dealings and transactions: futures contracts

(1) A reference to a person dealing in a futures contract, or entering into a transaction in relation to a futures contract, on the person’s own account includes a reference to a person so dealing, or entering into such a transaction, as the case may be, as principal or on behalf of:

(a) in any case—an associate of the person;

(b) in any case—a body corporate in which the person has a controlling interest; or

(c) if the person carries on a futures broking business in partnership—a body corporate in which the person’s interests and the interests of the other partners together constitute a controlling interest.

(2) A futures broker who is a member of a futures exchange or of a recognised futures exchange does not deal in a futures contract, or enter into a transaction in relation to a futures contract, on the broker’s own account merely because the dealing is with, or the transaction is entered into with, another futures broker who is a member of a futures exchange or of a recognised futures exchange.

(3) Despite Division 2, a person is not an associate of another person for the purposes of subsection (1) merely because the first‑mentioned person is either or both of the following:

(a) a partner of the other person otherwise than because of carrying on in partnership with the other person a business of dealing in futures contracts;

(b) a director of a body corporate of which the other person is also a director, whether or not the body carries on a business of dealing in futures contracts.

Division 5A—Types of company

45A Proprietary companies

(1) A proprietary company is a company that is registered as, or converts to, a proprietary company under this Law.

Note 1: A proprietary company can be registered under section 118, 601BD or 1362B. A company can convert to a proprietary company under Part 2B.7.

Note 2: A proprietary company must:

1. be limited by shares or be an unlimited company with a share capital
2. have no more than 50 non‑employee shareholders
3. not do anything that would require disclosure to investors under Chapter 6D (except in limited circumstances).

(see section 113).

(2) *Small proprietary company*

A proprietary company is a small proprietary company for a financial year if it satisfies at least 2 of the following paragraphs:

(a) the consolidated gross operating revenue for the financial year of the company and the entities it controls (if any) is less than $10 million

(b) the value of the consolidated gross assets at the end of the financial year of the company and the entities it controls (if any) is less than $5 million

(c) the company and the entities it controls (if any) have fewer than 50 employees at the end of the financial year.

Note: A small proprietary company generally has reduced financial reporting requirements (see subsection 292(2)).

(3) *Large proprietary company*

A proprietary company is a large proprietary company for a financial year if it satisfies at least 2 of the following paragraphs:

(a) the consolidated gross operating revenue for the financial year of the company and the entities it controls (if any) is $10 million or more

(b) the value of the consolidated gross assets at the end of the financial year of the company and the entities it controls (if any) is $5 million or more

(c) the company and the entities it controls (if any) have 50 or more employees at the end of the financial year.

When a company controls an entity

(4) For the purposes of this section, the question whether a proprietary company controls an entity is to be decided in accordance with the accounting standards made for the purposes of paragraph 295(2)(d) (even if the standards do not otherwise apply to the company).

(5) *Counting employees*

In counting employees for the purposes of subsections (2) and (3), take part‑time employees into account as an appropriate fraction of a full‑time equivalent.

(6) *Accounting standards*

Consolidated gross operating revenue and the value of consolidated gross assets are to be calculated for the purposes of this section in accordance with accounting standards in force at the relevant time (even if the standard does not otherwise apply to the financial year of some or all of the companies concerned).

Division 6—Subsidiaries and related bodies corporate

46 What is a subsidiary

A body corporate (in this section called the ***first body***) is a subsidiary of another body corporate if, and only if:

(a) the other body:

(i) controls the composition of the first body’s board;

(ii) is in a position to cast, or control the casting of, more than one‑half of the maximum number of votes that might be cast at a general meeting of the first body; or

(iii) holds more than one‑half of the issued share capital of the first body (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or

(b) the first body is a subsidiary of a subsidiary of the other body.

47 Control of a body corporate’s board

Without limiting by implication the circumstances in which the composition of a body corporate’s board is to be taken to be controlled by another body corporate, the composition of the board shall be taken to be so controlled if the other body, by exercising a power exercisable (whether with or without the consent or concurrence of any other person) by it, can appoint or remove all, or the majority, of the directors of the first‑mentioned body, and, for the purposes of this Division, the other body shall be deemed to have power to make such an appointment if:

(a) a person cannot be appointed as a director of the first‑mentioned body without the exercise by the other body of such a power in the person’s favour; or

(b) a person’s appointment as a director of the first‑mentioned body follows necessarily from the person being a director or other officer of the other body.

48 Matters to be disregarded

(1) This section applies for the purposes of determining whether a body corporate (in this section called the ***first body***) is a subsidiary of another body corporate.

(2) Any shares held, or power exercisable, by the other body in a fiduciary capacity shall be treated as not held or exercisable by it.

(3) Subject to subsections (4) and (5), any shares held, or power exercisable:

(a) by a person as a nominee for the other body (except where the other body is concerned only in a fiduciary capacity); or

(b) by, or by a nominee for, a subsidiary of the other body (not being a subsidiary that is concerned only in a fiduciary capacity);

shall be treated as held or exercisable by the other body.

(4) Any shares held, or power exercisable, by a person by virtue of the provisions of debentures of the first body, or of a trust deed for securing an issue of such debentures, shall be disregarded.

(5) Any shares held, or power exercisable, otherwise than as mentioned in subsection (4), by, or by a nominee for, the other body or a subsidiary of it shall be treated as not held or exercisable by the other body if:

(a) the ordinary business of the other body or that subsidiary, as the case may be, includes lending money; and

(b) the shares are held, or the power is exercisable, only by way of security given for the purposes of a transaction entered into in the ordinary course of business in connection with lending money, not being a transaction entered into with an associate of the other body, or of that subsidiary, as the case may be.

49 References in this Division to a subsidiary

A reference in paragraph 46(b) or 48(3)(b) or subsection 48(5) to being a subsidiary, or to a subsidiary, of a body corporate includes a reference to being a subsidiary, or to a body corporate that is a subsidiary, as the case may be, of the first‑mentioned body by virtue of any other application or applications of this Division.

50 Related bodies corporate

Where a body corporate is:

(a) a holding company of another body corporate;

(b) a subsidiary of another body corporate; or

(c) a subsidiary of a holding company of another body corporate;

the first‑mentioned body and the other body are related to each other.

50AA Control

(1) For the purposes of this Law, an entity controls a second entity if the first entity has the capacity to determine the outcome of decisions about the second entity’s financial and operating policies.

(2) In determining whether the first entity has this capacity:

(a) the practical influence the first entity can exert (rather than the rights it can enforce) is the issue to be considered; and

(b) any practice or pattern of behaviour affecting the second entity’s financial or operating policies is to be taken into account (even if it involves a breach of an agreement or a breach of trust).

(3) The first entity does not control the second entity merely because the first entity and a third entity jointly have the capacity to determine the outcome of decisions about the second entity’s financial and operating policies.

(4) If the first entity:

(a) has the capacity to influence decisions about the second entity’s financial and operating policies; and

(b) is under a legal obligation to exercise that capacity for the benefit of someone other than the first entity’s members;

the first entity is taken not to control the second entity.

Division 7—Interpretation of other expressions

51 Acquisition and disposal of shares

(1) For the purposes of the definition of ***deal*** in section 9 and of Chapter 7, a person acquires shares in a body corporate if, and only if:

(a) the person acquires a relevant interest in those shares as a result of a transaction entered into by or on behalf of the person in relation to those shares, in relation to any other securities of that body corporate or in relation to securities of any other body corporate; or

(b) the person acquires any legal or equitable interest in securities of that body corporate or in securities of any other body corporate and, as a result of the acquisition, another person acquires a relevant interest in those shares.

52 Doing acts

A reference to doing an act or thing includes a reference to causing or authorising the act or thing to be done.

52A Signing

Without affecting the law on agency, if this Law requires that something be signed, it can be signed by an individual using a power of attorney from the person required to sign.

53 Affairs of a body corporate

For the purposes of the definition of ***examinable affairs*** in section 9, section 53AA, 232, 233 or 234, paragraph 461(1)(e), section 487, subsection 1307(1) or section 1309, or of a prescribed provision of this Law, the affairs of a body corporate include:

(a) the promotion, formation, membership, control, business, trading, transactions and dealings (whether alone or jointly with any other person or persons and including transactions and dealings as agent, bailee or trustee), property (whether held alone or jointly with any other person or persons and including property held as agent, bailee or trustee), liabilities (including liabilities owed jointly with any other person or persons and liabilities as trustee), profits and other income, receipts, losses, outgoings and expenditure of the body;

(b) in the case of a body corporate (not being an authorised trustee corporation) that is a trustee (but without limiting the generality of paragraph (a))—matters concerned with the ascertainment of the identity of the persons who are beneficiaries under the trust, their rights under the trust and any payments that they have received, or are entitled to receive, under the terms of the trust;

(c) the internal management and proceedings of the body;

(d) any act or thing done (including any contract made and any transaction entered into) by or on behalf of the body, or to or in relation to the body or its business or property, at a time when:

(i) a receiver, or a receiver and manager, is in possession of, or has control over, property of the body;

(ii) the body is under administration;

(iia) a deed of company arrangement executed by the body has not yet terminated;

(iii) a compromise or arrangement made between the body and any other person or persons is being administered; or

(iv) the body is being wound up;

and, without limiting the generality of the foregoing, any conduct of such a receiver or such a receiver and manager, of an administrator of the body, of an administrator of such a deed of company arrangement, of a person administering such a compromise or arrangement or of a liquidator or provisional liquidator of the body;

(e) the ownership of shares in, debentures of, and interests in a managed investment scheme made available by, the body;

(f) the power of persons to exercise, or to control the exercise of, the rights to vote attached to shares in the body or to dispose of, or to exercise control over the disposal of, such shares;

(g) matters concerned with the ascertainment of the persons who are or have been financially interested in the success or failure, or apparent success or failure, of the body or are or have been able to control or materially to influence the policy of the body;

(h) the circumstances under which a person acquired or disposed of, or became entitled to acquire or dispose of, shares in, debentures of, or interests in a managed investment scheme made available by, the body;

(j) where the body has made available interests in a managed investment scheme—any matters concerning the financial or business undertaking, scheme, common enterprise or investment contract to which the interests relate; and

(k) matters relating to or arising out of the audit of, or working papers or reports of an auditor concerning, any matters referred to in a preceding paragraph.

53AA Business affairs of a body corporate

A body corporate’s business affairs include (without limitation):

(a) any of the body’s affairs (including anything that is included in the body’s affairs because of section 53); and

(b) matters concerned with ascertaining the corporations with which the body is or has been connected.

53AB Business affairs of a natural person

A natural person’s business affairs include (without limitation):

(a) the person’s examinable operations and examinable assets and liabilities; and

(b) any act done (including any contract made and any transaction entered into) by or on behalf of the person, or to or in relation to the person or his or her business or property, at a time when:

(i) the person was, under the *Bankruptcy Act 1966* or the law of an external Territory, a bankrupt in respect of a bankruptcy from which the person had not been discharged; or

(ii) the person had, under a law of an external Territory or of a foreign country, the status of an undischarged bankrupt; or

(iii) the person’s property was subject to control under Division 2 of Part X of the *Bankruptcy Act 1966* because of an authority given by the person under section 188 of that Act; or

(iv) a deed of assignment, deed of arrangement, or composition, under Part X of the *Bankruptcy Act 1966* or under the corresponding provisions of the law of an external Territory or of a foreign country was in effect in relation to the person or the person’s property; and

(c) without limiting the generality of paragraph (b), any conduct of the trustee of such a bankrupt estate or of such a deed of assignment or arrangement, a person acting under such an authority or a person administering such a composition; and

(d) matters concerned with ascertaining the corporations with which the person is or has been connected.

53AC Business affairs of a partnership

A partnership’s business affairs include (without limitation):

(a) the partnership’s promotion, formation, membership, control, examinable operations and examinable assets and liabilities; and

(b) the partnership’s management and proceedings; and

(c) any act done (including any contract made and any transaction entered into) by or on behalf of the partnership, or to or in relation to the partnership, at a time when the partnership is being wound up; and

(d) matters concerned with ascertaining the corporations with which the partnership is or has been connected.

53AD Business affairs of a trust

A trust’s business affairs include (without limitation):

(a) the creation of the trust; and

(b) matters arising under, or otherwise relating to, the terms of the trust; and

(c) the appointment and removal of a trustee of the trust; and

(d) the business, trading, transactions and dealings of the trustee of the trust; and

(e) the profits, income and receipts of the trustee of the trust; and

(f) the losses, outgoings and expenditure of the trustee of the trust; and

(g) the trust property, including transactions and dealings in, and the income arising from, the trust property; and

(h) the liabilities of the trustee of the trust; and

(j) the management of the trust; and

(k) any act done (including any contract made and any transaction entered into) by or on behalf of the trustee of the trust, or to or in relation to the trust, at a time when the trust is being wound up; and

(l) matters concerned with ascertaining the corporations with which the trust is or has been connected.

54 Chapter 8 agreements of the same kind

A Chapter 8 agreement is of the same kind as another Chapter 8 agreement if, and only if, the provisions of the first‑mentioned Chapter 8 agreement are the same as, or not materially different from, the provisions of the other Chapter 8 agreement, disregarding:

(a) the fact that the parties to the respective Chapter 8 agreements are different; and

(b) any difference in the amounts payable under corresponding provisions of the respective Chapter 8 agreements.

55 Chapter 8 obligations and rights

(1) A Chapter 8 obligation, or a Chapter 8 right, is an obligation or right, as the case may be, whether or not enforceable at law or in equity.

(2) A reference to a Chapter 8 obligation of a particular kind includes a reference to alternative Chapter 8 obligations one of which is a Chapter 8 obligation of that kind.

56 Classes of futures organisation membership

A reference to a member, in relation to a body corporate that is, or proposes to become, a futures organisation, is, if the body may operate otherwise than as a futures organisation and any of the rules, regulations or by‑laws made by the body or contained in its constituent documents provide for:

(a) a separate class of membership for persons to whom the operation of the body otherwise than as a futures organisation relates (whether or not such persons may be members within another class of membership); or

(b) 2 or more such separate classes of membership;

a reference to a person in the person’s capacity as a member of the body in a class of membership other than that separate class or those separate classes, as the case may be.

57 Classes of shares or interests in managed investment schemes

(1) The shares in a body corporate, if not divided into 2 or more classes, constitute a class.

(2) If the interests in a managed investment scheme to which an undertaking relates are not divided into 2 or more classes, they constitute a class.

57A Meaning of *corporation*

(1) Subject to this section, in this Law, ***corporation*** includes:

(a) any body corporate, whether incorporated in this jurisdiction or elsewhere; and

(b) a company; and

(c) a recognised company; and

(d) an unincorporated body that:

(i) is formed outside this jurisdiction; and

(ii) under the law of its place of formation, may sue or be sued, or may hold property in the name of its secretary or of an officer of the body duly appointed for that purpose; and

(iii) does not have its head office or principal place of business in this jurisdiction.

(2) Neither of the following is a ***corporation***:

(a) an exempt public authority;

(b) a corporation sole.

(3) A financial institution (as defined by section 111AZA) is not a corporation for the purposes of this Law.

(4) An exempt body in relation to this jurisdiction (as defined in section 66A) is not a ***corporation***.

58 Corresponding laws and corresponding previous laws

(1) A reference, in relation to this Law, to a corresponding law is a reference to the Corporations Law of another jurisdiction.

(2) A reference, in relation to a provision of this Law, to a corresponding law, or a reference to a law corresponding to a provision of this Law, is a reference to the provision of the Corporations Law of another jurisdiction that corresponds to that provision of this Law.

(3) A reference to a corresponding previous law is a reference:

(a) to a previous law of this jurisdiction that corresponds, in whole or in part, to this Law, to the extent that it so corresponds; and

(b) except where the contrary intention appears—to a previous law of another jurisdiction that corresponds to a law referred to in paragraph (a).

(4) A reference, in relation to a provision of this Law, to a corresponding previous law, or a reference to a previous law corresponding to a provision of this Law, is a reference:

(a) to a provision of a previous law of this jurisdiction that:

(i) corresponds to that provision of this Law; or

(ii) is declared by the regulations to be a provision that so corresponds; and

(b) except where the contrary intention appears—to a provision of a previous law of another jurisdiction that corresponds to the provision referred to in paragraph (a).

(5) A reference to the lodgment or registration of a prospectus under a corresponding previous law is a reference to the lodgment of a copy of a prospectus with, or the registration of a copy of a prospectus by, as the case may be, the NCSC under:

(a) a corresponding previous law of this jurisdiction; or

(b) a law of another jurisdiction that corresponds to that corresponding previous law.

58A Recognition of acts etc. done under corresponding laws

(1) A reference to an act done by or in relation to the Commission is a reference to such an act done under or for the purposes of the Corporations Law of this or any other jurisdiction.

(2) A reference to an act done by or in relation to a court is a reference to such an act done under or for the purposes of the Corporations Law of this or any other jurisdiction.

58AA Meaning of *court* and *Court*

(1) Subject to subsection (3), in this Law:

***court*** means any court when exercising the jurisdiction of this jurisdiction.

***Court*** means any of the following courts when exercising the jurisdiction of this jurisdiction:

(a) the Federal Court;

(b) the Supreme Court of this or any other jurisdiction;

(c) the Family Court of Australia;

(d) a court to which section 41 of the *Family Law Act 1975* applies because of a Proclamation made under subsection 41(2) of that Act.

(2) Except where there is a clear expression of a contrary intention (for example, by use of the expression ***the Court***), proceedings in relation to a matter under this Law may, subject to the Acts mentioned in subsection (3), be brought in any court.

(3) The jurisdiction that courts have in relation to matters under this Law is dealt with in Part 9 of each of the following:

(a) the *Corporations Act 1989*;

(b) the Corporations (New South Wales) Act 1990 of New South Wales;

(c) the Corporations (Victoria) Act 1990 of Victoria;

(d) the *Corporations (Queensland) Act 1990* of Queensland;

(e) the *Corporations (Western Australia) Act 1990* of Western Australia;

(f) the *Corporations (South Australia) Act, 1990* of South Australia;

(g) the *Corporations (Tasmania) Act 1990* of Tasmania;

(h) the *Corporations (Northern Territory) Act 1990* of the Northern Territory.

(4) The matters dealt with in those Parts of those Acts include the applicability of limits on the jurisdictional competence of courts.

58B Discharge of obligations under this Law

(1) Except as expressly provided in this Law, any act done, whether within Australia or elsewhere, which, if it had been done under or for the purposes of this Law, would have discharged an obligation under this Law, discharges that obligation.

(2) Subject to subsection (3), an act required to be done under this Law may, for the purposes of this Law, be done anywhere in Australia, whether within or outside this jurisdiction.

(3) Nothing in subsection (2) affects the operation of any provision of this Law that:

(a) expressly requires a particular act to be done within this jurisdiction; or

(b) expressly or by implication permits a particular act to be done outside Australia.

59 Debentures as consideration for acquisition of shares

A reference to a body corporate that offers debentures as consideration for the acquisition of shares in a body corporate includes a reference to a body corporate that offers a cash sum as consideration for the acquisition of shares where it is to be a term of the contract for the acquisition of those shares that the offeree makes, or that the sum is applied in whole or in part in making, a payment by way of deposit with, or loan to, the body corporate that offers the sum.

61 Discretionary accounts

A reference to operation by a futures broker on a discretionary account is a reference to dealings by the broker in futures contracts on instructions of another person that authorise the broker to deal in futures contracts without the prior approval of that other person, whether:

(a) the instructions are given by, and the money used for operating on the account is provided by, one person only; or

(b) the instructions are given by, and the money used for operating on the account is contributed as a common fund by, each of a number of persons;

not being dealings on instructions that authorise dealings in futures contracts without the prior approval of that other person only as to the time when or the price at which the dealings are to be effected, or both.

64 Entering into a transaction in relation to shares or securities

A reference in section 51 or Chapter 6 to entering into a transaction in relation to shares or securities includes a reference to:

(a) entering into, or becoming a party to, a relevant agreement in relation to the shares or securities; and

(b) exercising an option to have the shares or securities allotted.

64A Entities

Except in Chapter 2E, a reference to an entity:

(a) is a reference to a natural person, a body corporate (other than an exempt public authority), a partnership or a trust; and

(b) includes, in the case of a trust, a reference to the trustee of the trust.

64B Entities connected with a corporation

Body corporate

(1) A body corporate is connected with a corporation if, and only if, the corporation:

(a) can control, or influence materially, the body’s activities or internal affairs; or

(b) is a member of the body; or

(c) is in a position to cast, or to control the casting of, a vote at a general meeting of the body; or

(d) has power to dispose of, or to exercise control over the disposal of, a share in the body; or

(e) is financially interested in the body’s success or failure or apparent success or failure; or

(f) is owed a debt by the body; or

(g) is engaged by the body under a contract for services; or

(h) acts as agent for the body in any transaction or dealing.

Natural person

(2) A natural person is connected with a corporation if, and only if, the corporation:

(a) is a trustee of a trust under which the person is capable of benefiting; or

(b) is engaged by the person under a contract for services; or

(c) acts as agent for the person in any transaction or dealing; or

(d) is an attorney of the person under a power of attorney; or

(e) has appointed the person as the corporation’s attorney under a power of attorney; or

(f) is given financial, business or legal advice by the person in the performance of the functions attaching to the person’s professional capacity.

Partnership

(3) A partnership is connected with a corporation if, and only if, the corporation:

(a) is a partner in the partnership; or

(b) can control, or influence materially, the partnership’s activities or internal affairs; or

(c) is financially interested in the partnership’s success or failure or apparent success or failure; or

(d) is a creditor of the partnership; or

(e) is engaged by the partnership under a contract for services; or

(f) acts as agent for the partnership in any transaction or dealing.

Trust

(4) A trust is connected with a corporation if, and only if, the corporation:

(a) is the settlor, or one of the settlors, of the trust; or

(b) has power under the terms of the trust to appoint or remove a trustee of the trust or to vary, or cause to be varied, any of the terms of the trust; or

(c) is a trustee of the trust; or

(d) can control, or influence materially, the activities of the trust; or

(e) is capable of benefiting under the trust; or

(f) is a creditor of the trustee of the trust; or

(g) is engaged by the trustee of the trust under a contract for services; or

(h) acts as agent for the trustee of the trust in any transaction or dealing.

65 Eligible money market dealer

ASIC may declare a body corporate to be an authorised dealer in the short term money market by notice published in the *Gazette*.

66A Exempt bodies

(1) Each of the following is an exempt body in relation to New South Wales:

(a) a society, association or union registered under the *Co‑operation Act* 1923 of New South Wales;

(b) a co‑operative within the meaning of the Co‑operatives Act 1992 of New South Wales or a foreign co‑operative within the meaning of that Act registered under Division 3 of Part 2 of that Act;

(d) a registrable body or recognised company in respect of which an exemption from compliance with subsection 61(1) of the Co‑operation Act 1923 of New South Wales is in force;

(e) an association, society, club, institution or body incorporated under the *Associations Incorporation Act 1984* of New South Wales.

(2A) Each of the following is an exempt body in relation to Victoria:

(a) an incorporated association within the meaning of the *Associations Incorporation Act 1981* of Victoria;

(c) a society within the meaning of the *Co‑operation Act 1981* of Victoria and a foreign society registered under Part XI of that Act;

(d) a co‑operative housing society within the meaning of the Co‑operative *Housing Societies Act 1958* of Victoria.

(2) Each of the following is an exempt body in relation to Queensland:

(a) a society within the meaning of the *Co‑operative and Other Societies Act* 1967‑1986 of Queensland;

(c) a society within the meaning of the *Co‑operative Housing Societies Act* 1958‑1974 of Queensland;

(d) an association within the meaning of the *Primary Producers’ Co‑operative Associations Act* 1923 of Queensland;

(e) an association, society, institution or body incorporated under the *Associations Incorporation Act* 1981‑1989 of Queensland.

(3) A body corporate is an exempt body in relation to South Australia if, and only if:

(a) it is not a company for the purposes of section 9 of the Corporations Law of South Australia; and

(b) it is incorporated by or under a law of South Australia other than that Law or a corresponding previous law.

(4) Each of the following is an exempt body in relation to Western Australia:

(a) a society within the meaning of section 5 of the *Building Societies Act* 1976 of Western Australia;

(b) The WA Teachers Financial Society Limited;

(c) a co‑operative company registered under:

(i) Part VI of the *Companies (Co‑operative) Act 1943* of Western Australia; or

(ii) a previous law of Western Australia that corresponds to that Part;

(d) a society registered under the *Co‑operative and Provident Societies Act* 1903 of Western Australia;

(e) an association, society, institution or body incorporated under the *Associations Incorporation Act* 1987 of Western Australia.

(5) Each of the following is an exempt body in relation to Tasmania:

(a) a trustee bank registered under the *Trustee Banks Act* 1984 of Tasmania;

(b) a society, other than a financial institution, registered under the *Co‑operative Industrial Societies Act* 1928, or the *Co‑operative Housing Societies Act* 1963, of Tasmania;

(c) an association, society, institution or body incorporated under the *Associations Incorporation Act* 1964 of Tasmania;

(d) a body corporate created by section 75Q of the *Conveyancing and Law of Property Act* 1884 of Tasmania.

(6) Each of the following is an exempt body in relation to the Northern Territory:

(a) the Cullen Bay Marina Management Corporation;

(c) a society registered under the *Co‑operative Societies Act* of the Northern Territory;

(d) an association, society, institution or body incorporated under the *Associations Incorporation Act* of the Northern Territory;

(e) a corporation constituted under the *Unit Titles Act* of the Northern Territory.

(7) Each of the following is an exempt body in relation to the Capital Territory:

(a) a society registered under the *Co‑operative Societies Act 1939* of the Capital Territory;

(b) an association, society, institution or body incorporated under the *Associations Incorporation Act 1953* of the Capital Territory;

(c) a corporation constituted under the *Unit Titles Act 1970* of the Capital Territory.

67 Exempt brokers and exempt futures advisers

(1) A body corporate is both an exempt broker and an exempt futures adviser if it is:

(a) a prescribed body corporate; or

(b) an exempt public authority in relation to which a declaration is in force under subsection (2).

(2) The Minister may by writing declare that paragraph (1)(b) applies in relation to specified bodies corporate.

(3) The Commission shall cause a copy of an instrument executed under subsection (2) to be published in the *Gazette*.

(4) Subject to this section, a person is an exempt broker or an exempt futures adviser if the person is a futures broker or futures adviser, as the case may be, but does not carry on a futures broking business or a futures advice business, as the case may be, except:

(a) as an official receiver or trustee within the meaning of the *Bankruptcy Act 1966*; or

(b) as a receiver, receiver and manager, or liquidator, appointed by a court; or

(c) as a person appointed by a court to carry on the business concerned; or

(d) as a receiver, receiver and manager, or liquidator, appointed otherwise than by a court; or

(e) as an administrator of a body corporate; or

(ea) as an administrator of a deed of company arrangement executed by a body corporate;

(f) as a trustee or other person administering a compromise or arrangement between a body corporate and any other person or persons; or

(g) as a personal representative of a dead futures broker or futures adviser, as the case may be; or

(h) in such other capacity, or in such other circumstances, as are prescribed.

(5) A person who carries on a futures broking business or futures advice business in a capacity referred to in any of paragraphs (4)(d) to (g), inclusive, shall be deemed for the purposes of subsection (4) to carry on the business otherwise than in that capacity unless there is in force under subsection (6) an approval of the person carrying on the business in that capacity.

(6) The Commission may, on application by a person and after having regard to:

(a) the prescribed matters (if any); and

(b) such matters as it thinks appropriate;

by writing approve of the person carrying on a specified futures broking business or futures advice business in a specified capacity, being a capacity referred to in any of paragraphs (4)(d) to (g), inclusive.

(7) A person is not an exempt broker or an exempt futures adviser except as provided by this section.

68 Exempt dealers and exempt investment advisers

(1) A person is both an exempt dealer and an exempt investment adviser if the person is:

(a) an eligible money market dealer; or

(b) an exempt public authority.

(2) Subject to this section, a person is an exempt dealer or an exempt investment adviser if the person is a dealer or investment adviser, as the case may be, but does not carry on a securities business or an investment advice business, as the case may be, except:

(a) as an official receiver or trustee within the meaning of the *Bankruptcy Act 1966*;

(b) as a receiver, receiver and manager, or liquidator, appointed by a court;

(c) as a person appointed by a court to carry on the business concerned;

(d) by virtue of the person’s powers, as Public Trustee, under a prescribed law of a State or Territory;

(e) as a receiver, receiver and manager, or liquidator, appointed otherwise than by a court;

(f) as an administrator of a body corporate; or

(fa) as an administrator of a deed of company arrangement executed by a body corporate; or

(g) as a trustee or other person administering a compromise or arrangement between a body corporate and any other person or persons;

(h) as a personal representative of a dead dealer or investment adviser, as the case may be; or

(j) in such other capacity, or in such other circumstances, as are prescribed.

(3) A body corporate that carries on, or holds itself out as carrying on, a business of dealing in debentures of that body is an exempt dealer if it neither carries on, nor holds itself out as carrying on, a business of dealing in any other securities.

(4) A person who carries on a securities business or investment advice business in a capacity referred to in any of paragraphs (2)(e) to (h), inclusive, shall be deemed for the purposes of subsection (2) to carry on the business otherwise than in that capacity unless there is in force under subsection (5) an approval of the person carrying on the business in that capacity.

(5) The Commission may, on application by a person and after having regard to:

(a) the prescribed matters (if any); and

(b) such matters as it thinks appropriate;

by writing approve of the person carrying on a specified securities business or investment advice business in a specified capacity, being a capacity referred to in any of paragraphs (2)(e) to (h), inclusive.

(6) A person who carries on a securities business or investment advice business as a personal representative of a dead dealer or investment adviser, as the case may be, shall be deemed for the purposes of subsection (2) to stop carrying on that business as such a personal representative:

(a) at the end of 6 months after the death of the dealer or investment adviser;

(b) on being discharged or removed as a personal representative of the dealer or investment adviser; or

(c) on the final distribution of the estate of the dealer or investment adviser;

whichever happens first.

(7) A person is not an exempt dealer or an exempt investment adviser except as provided by this section.

68A Exempt interests in managed investment schemes in relation to a jurisdiction

(1) Each of the following is an exempt interest in a managed investment scheme in relation to Western Australia:

(a) an interest in a registered scheme that a registered co‑operative company has issued, or proposes to issue, to a member of the company

(b) an interest in a registered scheme in so far as a registered co‑operative company

(i) offers the interest to a member of the company for subscription or purchase; or

(ii) invites such a member to subscribe for or buy the interest

(c) an interest in a registered scheme in so far as:

(i) a registered co‑operative company:

(A) offers the interest to a person other than a member of the company; or

(B) invites a person other than a member to subscribe for or buy the interest; and

(ii) the terms or circumstances of the offer or invitation are such that, if the offer, or an offer that the person makes because of the invitation, is accepted, the acceptance will result in the person becoming a member of the company.

(2) In subsection (1):

***registered co‑operative company*** means a body of the kind referred to in paragraph 66A(4)(c).

70 Extension of period for doing an act

Where this Law confers power to extend the period for doing an act, an application for the exercise of the power may be made, and the power may be exercised, even if the period, or the period as last extended, as the case requires, has ended.

71 Futures advice business

(1) A reference to a futures advice business, in relation to a person, is a reference to:

(a) a business of advising other persons about futures contracts; or

(b) a business in the course of which the person publishes futures reports.

(3) The remaining provisions of this subsection apply for the purposes of determining:

(a) whether or not a person carries on a futures advice business; and

(b) what constitutes a futures advice business carried on by a person; and

(c) whether or not a person holds himself, herself or itself out to be a futures adviser.

(4) If the person is a solicitor or accountant in public practice as such, an act that the person does shall be disregarded if it is merely incidental to the practice of his or her profession.

(5) The fact that the person advises other persons about futures contracts, or publishes futures reports, in some or all of the following circumstances shall be disregarded:

(a) in a newspaper or periodical:

(i) of which the person is the proprietor or publisher; and

(ii) that is generally available to the public otherwise than only on subscription;

(b) in the course of, or by means of, transmissions that:

(i) the person makes by means of an information service; or

(ii) are made by means of an information service that the person owns, operates or makes available;

and are generally available to the public;

(c) in sound recordings, video recordings, or data recordings, that the person makes generally available to the public in either or both of the following ways:

(i) by supplying copies of them to the public;

(ii) by causing the sound recordings to be heard by, the video recordings to be seen and heard by, or the contents of the data recordings to be displayed or reproduced for, the public, as the case may be.

(6) Subsection (5) does not apply in relation to a newspaper or periodical, or transmissions, sound recordings, video recordings or data recordings, whose sole or principal purpose is to advise other persons about futures contracts or to publish futures reports.

(7) The fact that the person holds himself, herself or itself out as advising other persons, or publishing futures reports, as mentioned in subsection (5) shall be disregarded.

(8) An act that the person does:

(a) while employed by, or acting for or by arrangement with, another person;

(b) as employee or agent of, or otherwise on behalf of, on account of, or for the benefit of, the other person; and

(c) in connection with a futures advice business carried on by the other person;

shall be disregarded.

72 Futures contract

(1) A futures contract is:

(a) a Chapter 8 agreement that is, or has at any time been, an eligible commodity agreement or adjustment agreement;

(b) a futures option; or

(c) an eligible exchange‑traded option;

other than:

(d) a Chapter 8 agreement:

(i) that is:

(A) a currency swap;

(B) an interest rate swap;

(C) a forward exchange rate contract; or

(D) a forward interest rate contract; and

(ii) to which an Australian bank, or a merchant bank as defined by subsection (4), is a party; or

(e) a Chapter 8 agreement that, when entered into, is in a class of agreements prescribed for the purposes of this paragraph.

Note: Regulations under subsection 72A(2) may provide that specified provisions of this Law and the regulations apply in relation to Chapter 8 agreements to which section 72A applies as if the agreements were futures contracts.

(2) Where a Chapter 8 agreement that was not a futures contract when it was entered into becomes a futures contract at a later time:

(a) the parties to the Chapter 8 agreement shall be deemed to enter into a futures contract at the later time; and

(b) the Chapter 8 agreement shall be deemed to constitute the futures contract referred to in paragraph (a).

(3) Nothing in this Law limits the manner in which a class of futures contracts may be determined and such a class may be determined according to any criteria relevant to futures contracts.

(4) For the purposes of subparagraph (1)(d)(ii), a body corporate is a merchant bank at a particular time if, and only if, it is at that time a registered corporation in:

(a) the category for authorised money market dealers or, if there is at that time no such category, a prescribed category; or

(b) the category for money market corporations or, if there is at that time no such category, a prescribed category.

(5) An expression has the same meaning in subsection (4) as in the *Financial Corporations Act 1974*.

72A Law applies to certain Chapter 8 agreements as if they were futures contracts

(1) This section applies to Chapter 8 agreements:

(a) that are entered into on a futures market of a futures exchange; and

(b) that are of a kind prescribed for the purposes of this paragraph.

(2) The regulations may, in relation to Chapter 8 agreements to which this section applies:

(a) provide that specified provisions of this Law and the regulations apply in relation to the agreements as if the agreements were futures contracts; and

(b) provide that specified provisions of this Law and the regulations do not apply in relation to the agreements; and

(c) make modifications of this Law and the regulations as applying in relation to the agreements.

(3) Modifications made by regulations referred to in paragraph (2)(c) may be of provisions specified in regulations referred to in paragraph (2)(a) or of other provisions of this Law or the regulations.

73 Futures representatives

(1) Subject to subsection (2), a person is a futures representative of another person if, and only if, the first‑mentioned person:

(a) is employed by; or

(b) acts for or by arrangement with;

the other person in connection with a futures broking business or futures advice business carried on by the other person.

(2) Except for the purposes of paragraph 87(1)(b):

(a) a person who holds a proper authority from a futures licensee is a futures representative of the licensee; and

(b) a person who holds an invalid futures authority from another person is a futures representative of the other person.

(3) Subject to subsection (4), a person does an act, or engages in conduct, as a futures representative of another person if, and only if, the first‑mentioned person does the act, or engages in the conduct:

(a) in connection with a futures broking business or futures advice business carried on by the other person;

(b) while the first‑mentioned person is a futures representative of the other person;

(c) as employee or agent of, or otherwise on behalf of, on account of, or for the benefit of, the other person; and

(d) otherwise than in the course of work of a kind ordinarily done by accountants, clerks or cashiers.

(4) Except for the purposes of Division 4 of Part 8.3, a person who holds himself, herself or itself out to be a futures representative of another person does an act as a futures representative of the other person.

73A When a court is taken to find a person guilty of an offence

An Australian court finds a person guilty of an offence if, and only if:

(a) the court convicts the person of the offence; or

(b) the person is charged before the court with the offence and is found in the court to have committed the offence, but the court does not proceed to convict the person of the offence.

75 Inclusion in official list

A reference to a body corporate or other person included in an official list of a body corporate is a reference to:

(a) a body corporate or other person whose name is included in that official list; or

(b) a body corporate or other person whose name has been changed but whose previous name was included in that official list immediately before the change and is still so included.

77 Investment advice business

(1) A reference to an investment advice business, in relation to a person, is a reference to:

(a) a business of advising other persons about securities; or

(b) a business in the course of which the person publishes securities reports.

(3) The remaining provisions of this section apply for the purposes of determining:

(a) whether or not a person carries on an investment advice business; and

(b) what constitutes an investment advice business carried on by a person; and

(c) whether or not a person holds himself, herself, or itself out to be an investment adviser.

(4) If the person is a body corporate authorised by a law of a State or Territory to take in its own name a grant of probate of the will, or a grant of letters of administration of the estate, of a dead person, an act done by the first‑mentioned person shall be disregarded.

(5) If the person is a solicitor or accountant in public practice as such, an act that the person does shall be disregarded if it is merely incidental to the practice of his or her profession.

(6) The fact that the person advises other persons about securities, or publishes securities reports, in some or all of the following circumstances shall be disregarded:

(a) in a newspaper or periodical:

(i) of which the person is the proprietor or publisher; and

(ii) that is generally available to the public otherwise than only on subscription;

(b) in the course of, or by means of, transmissions that:

(i) the person makes by means of an information service; or

(ii) are made by means of an information service that the person owns, operates or makes available;

and are generally available to the public;

(c) in sound recordings, video recordings, or data recordings, that the person makes generally available to the public in either or both of the following ways:

(i) by supplying copies of them to the public; or

(ii) by causing the sound recordings to be heard by, the video recordings to be seen and heard by, or the contents of the data recordings to be displayed or reproduced for, the public, as the case may be.

(7) Subsection (6) does not apply in relation to a newspaper or periodical, or transmissions, sound recordings, video recordings or data recordings, as the case may be, whose sole or principal purpose is to advise other persons about securities or to publish securities reports.

(8) The fact that the person holds himself, herself or itself out as advising other persons, or publishing securities reports, as mentioned in subsection (6) shall be disregarded.

(9) An act that the person does:

(a) while employed by, or acting for or by arrangement with, another person;

(b) as employee or agent of, or otherwise on behalf of, on account of, or for the benefit of, the other person; and

(c) in connection with an investment advice business carried on by the other person;

shall be disregarded.

79 Involvement in contraventions

A person is involved in a contravention if, and only if, the person:

(a) has aided, abetted, counselled or procured the contravention;

(b) has induced, whether by threats or promises or otherwise, the contravention;

(c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the contravention; or

(d) has conspired with others to effect the contravention.

80 Jervis Bay Territory taken to be part of the Australian Capital Territory

The Jervis Bay Territory is taken to be part of the Australian Capital Territory.

80A References to Ministers

(1) In this Law:

***Minister*** means one of the Queen’s Ministers of State for the Commonwealth and, in relation to any particular Minister, includes any other Minister or member of the Executive Council for the time being acting for or on behalf of that Minister.

***the Minister for a jurisdiction*** means the person who is the Minister for that jurisdiction for the purposes of the Corporations Law of that jurisdiction.

(2) Where a provision of this Law refers to a Minister, using the expression ***the Minister*** without specifying which Minister is referred to, the expression means:

(a) if, for the time being, 2 or more Ministers administer the *Corporations Act 1989*—any one of those Ministers; or

(b) otherwise—the Minister for the time being administering that Act.

(3) Where this Law refers to a Minister, specifying the Minister merely by reference to the fact that the Minister administers a specified Act, or a specified provision of an Act, it refers to:

(a) if, for the time being, different Ministers administer the specified Act or provision in respect of different matters:

(i) if 2 or more Ministers administer the specified Act or provision in respect of the relevant matter—any one of those Ministers; or

(ii) if only one Minister administers the specified Act or provision in respect of the relevant matter—that Minister; or

(b) if paragraph (a) does not apply and, for the time being, 2 or more Ministers administer the specified Act or provision—any one of those Ministers; or

(c) otherwise—the Minister for the time being administering the specified Act or provision.

(4) To avoid doubt, where:

(a) a provision of an Act is administered by 2 or more Ministers; and

(b) because of this section, a provision of this Law requires or permits anything to be done by or in relation to any one of those Ministers;

that provision of this Law does not require or permit it to be done in any particular case by or in relation to more than one of those Ministers.

82 Offers and invitations to the public

A reference in this Law to, or to the making of, an offer to the public or to, or to the issuing of, an invitation to the public shall, unless the contrary intention appears, be construed as including a reference to, or to the making of, an offer to any section of the public or to, or to the issuing of, an invitation to any section of the public, as the case may be, whether selected as clients of the person making the offer or issuing the invitation or in any other manner and notwithstanding that the offer is capable of acceptance only by each person to whom it is made or that an offer or application may be made pursuant to the invitation only by a person to whom the invitation is issued, but a *bona fide* offer or invitation shall not be taken to be an offer or invitation to the public if it:

(a) is an offer or invitation to enter into an underwriting agreement;

(b) is made or issued to a person whose ordinary business is to buy or sell shares, debentures or interests in managed investment schemes, whether as principal or agent;

(c) is made or issued to existing members or debenture holders of a corporation and relates to shares in, or debentures of, that corporation; or

(d) is made or issued to existing members of a company in connection with a proposal referred to in section 507 and relates to shares in that company.

82A Officers of bodies corporate and other entities

(1) Subject to subsection (2), ***officer***, in relation to:

(a) a body corporate; or

(b) an entity;

includes:

(c) a director, secretary, executive officer or employee of the body or entity; and

(d) a receiver and manager, appointed under a power contained in an instrument, of property of the body or entity; and

(e) an administrator of the body or entity; and

(ea) an administrator of a deed of company arrangement executed by the body or entity; and

(f) a liquidator of the body or entity appointed in a voluntary winding up of the body or entity; and

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

(2) None of the following is an officer of a body corporate, or of an entity:

(a) a receiver who is not also a manager;

(b) a receiver and manager appointed by a court;

(c) a liquidator appointed by a court.

83 Officers, and other persons, in default

(1) A reference, in relation to a contravention, to an officer of a body corporate, or to a person, who is in default is a reference to an officer of the body (including a person who later ceases to be such an officer), or to a person, as the case may be, who is involved in the contravention.

84 Own account dealings and transactions: securities

A person deals in, or enters into a transaction of sale or purchase of, securities on the person’s own account if, and only if, the person deals in the securities, or enters into the transaction, as principal or on behalf of:

(a) in any case—an associate of the person;

(b) in any case—a body corporate in which the person has a controlling interest; or

(c) if the person carries on a securities business in partnership—a body corporate in which the person’s interest and the interests of the other partners together constitute a controlling interest.

85A Person etc.

In this Law, expressions used to denote persons generally (such as ***person***, ***party***, ***someone***, ***anyone***, ***no‑one***, ***one***, ***another*** and ***whoever***), include a body politic or corporate as well as an individual.

86 Possession

A thing that is in a person’s custody or under a person’s control is in the person’s possession.

87 Proper authority from futures licensee; invalid futures authority

(1) A reference, in relation to a person (in this subsection called the ***representative***), to a proper authority from a futures licensee (in this subsection called the ***principal***) is a reference to a copy of the licence on which have been endorsed:

(a) a statement:

(i) certifying the copy to be a true copy of the licence;

(ii) stating that the representative is employed by, or acts for or by arrangement with, the principal; and

(iii) signed by the principal; and

(b) in relation to each futures licensee (if any), other than the principal, of whom the representative is a futures representative, a statement that:

(i) sets out the name of the licensee;

(ii) states that the representative is employed by, or acts for or by arrangement with, the licensee;

(iii) states that the licensee consents to the representative being employed by, or acting for or by arrangement with, the principal; and

(iv) is signed by the licensee.

(1A) A reference, in relation to a person (in this subsection called the ***representative***), to a proper authority from a futures licensee (in this subsection called the ***principal***) includes a reference to a document that, immediately before the commencement of Division 3 of Part 8.3, was a proper authority from that principal in relation to that representative under a previous law that corresponds to subsection (1).

(2) A reference, in relation to a person (in this subsection called the ***representative***), to an invalid futures authority from a person (in this subsection called the ***principal***) is a reference to a document:

(a) on which is endorsed a statement:

(i) stating that the representative is employed by, or acts for or by arrangement with, the principal; and

(ii) signed by the principal; and

(b) that purports to be a copy of a futures licence and to be a proper authority of the representative from the principal, but is not in fact such a proper authority;

whether or not:

(c) the principal is, or has ever been, a futures licensee; or

(d) the document is in fact a copy of a futures licence that exists or has ever existed.

(3) For the purposes of this section, a statement is signed by a person if, and only if, it is signed:

(a) if the person is a natural person—by the person; or

(b) if the person is a body corporate:

(i) by a director or secretary; or

(ii) by an executive officer who is authorised to sign the statement.

88 Proper authority from securities licensee; invalid securities authority

(1) A reference, in relation to a person (in this subsection called the ***representative***), to a proper authority from a securities licensee (in this subsection called the ***principal***) is a reference to a copy of the licence on which are endorsed:

(a) a statement:

(i) certifying the copy to be a true copy of the licence;

(ii) stating that the representative is employed by, or acts for or by arrangement with, the principal; and

(iii) signed by the principal; and

(b) in relation to each licensee (if any), other than the principal, of whom the representative is a securities representative, a statement that:

(i) sets out the name of the licensee;

(ii) states that the representative is employed by, or acts for or by arrangement with, the licensee;

(iii) states that the licensee consents to the representative being employed by, or acting for or by arrangement with, the principal; and

(iv) is signed by the licensee.

(1A) A reference, in relation to a person (in this subsection called the ***representative***), to a proper authority from a securities licensee (in this subsection called the ***principal***) includes a reference to a document that, immediately before the commencement of Division 3 of Part 7.3, was a proper authority from that principal in relation to that representative under a previous law that corresponds to subsection (1).

(2) A reference, in relation to a person (in this subsection called the ***representative***), to an invalid securities authority from a person (in this subsection called the ***principal***) is a reference to a document:

(a) on which is endorsed a statement:

(i) stating that the representative is employed by, or acts for or by arrangement with, the principal; and

(ii) signed by the principal; and

(b) that purports to be a copy of a securities licence and to be a proper authority of the representative from the principal, but is not in fact such a proper authority;

whether or not:

(c) the principal is, or has ever been, a securities licensee; or

(d) the document is in fact a copy of a securities licence that exists or has ever existed.

(3) For the purposes of this section, a statement is signed by a person if, and only if, it is signed:

(a) if the person is a natural person—by the person; or

(b) if the person is a body corporate:

(i) by a director or secretary; or

(ii) by an executive officer who is authorised to sign the statement.

88A Public document of a body corporate

(1) Subject to this section, ***public document***, in relation to a body, means:

(a) an instrument of, or purporting to be signed, issued or published by or on behalf of, the body that:

(i) when signed, issued or published, is intended to be lodged or is required by or under this Law or the ASC Law to be lodged; or

(ii) is signed, issued or published under or for the purposes of this Law, the ASC Law or any other Australian law; or

(b) an instrument of, or purporting to be signed or issued by or on behalf of, the body that is signed or issued in the course of, or for the purposes of, a particular transaction or dealing; or

(c) without limiting paragraph (a) or (b), a business letter, statement of account, invoice, receipt, order for goods, order for services or official notice of, or purporting to be signed or issued by or on behalf of, the body.

(2) A thing is not a public document of a body if it:

(a) is applied, or is intended or required to be applied:

(i) to goods; or

(ii) to a package, label, reel or thing in or with which goods are, or are to be, supplied; and

(b) is so applied, or is intended or required to be so applied, for a purpose connected with the supply of the goods.

(3) In subsection (2):

***apply to*** includes print on, weave in, impress on, work into, or annex, affix or attach to.

***label*** includes a band or ticket.

***package*** includes:

(a) a covering, stopper, glass, bottle, vessel, box, capsule, case, frame or wrapper; or

(b) any other container or thing in which goods are, or are to be, packed.

89 Qualified privilege

(1) Where this Law provides that a person has qualified privilege in respect of an act, matter or thing, the person:

(a) has qualified privilege in proceedings for defamation; or

(b) is not, in the absence of malice on the person’s part, liable to an action for defamation at the suit of a person;

as the case requires, in respect of that act, matter or thing.

(2) In subsection (1):

***malice*** includes ill will to the person concerned or any other improper motive.

(3) Neither this section nor a provision of this Law that provides as mentioned in subsection (1) limits or affects any right, privilege or immunity that a person has, apart from this section or such a provision, as defendant in proceedings, or an action, for defamation.

90 Receivers and managers

A receiver of property of a body corporate is also a manager if the receiver manages, or has under the terms of the receiver’s appointment power to manage, affairs of the body.

91 Being or becoming subject to a section 229 prohibition, a section 230 or 599 order, a section 600 notice or a civil penalty disqualification

(1) For the purposes of this Law, a person shall be taken to be or become subject to a section 229 prohibition if, and only if, the person is or becomes, as the case may be, by virtue of section 229 or a corresponding previous law, prohibited as mentioned in that section or corresponding previous law.

(2) For the purposes of this Law, a person shall be taken to be or become subject to a section 230 order if, and only if, an order relating to the person is in force, or is made, as the case may be, under section 230 or a corresponding previous law, and a reference in this Law to a section 230 order is a reference to an order so in force or made.

(3) For the purposes of this Law, a person shall be taken to be or become subject to a section 599 order if, and only if, an order relating to the person is in force, or is made, as the case may be, under section 599 or a corresponding previous law, and a reference in this Law to a section 599 order is a reference to an order so in force or made.

(4) For the purposes of this Law, a person shall be taken to be or become subject to a section 600 notice if, and only if, a notice relating to the person is in force, or is served, as the case may be, under section 600 or a corresponding previous law, and a reference in this Law to a section 600 notice is a reference to a notice so in force or served.

(5) For the purposes of this section, an order or notice that prohibits a person for a specified period from engaging in particular conduct shall, unless sooner revoked, be taken to cease to be in force at the end of that period.

92 Securities

(1) Subject to this section, ***securities*** means:

(a) debentures, stocks or bonds issued or proposed to be issued by a government; or

(b) shares in, or debentures of, a body; or

(c) interests in a managed investment scheme; or

(ca) in Parts 7.3 to 7.6 (inclusive)—interests that would be interests in a managed investment scheme but for paragraph (h) of the definition of ***managed investment scheme*** in section 9; or

(d) units of such shares; or

(e) an option contract within the meaning of Chapter 7;

but does not include a futures contract or an excluded security.

Note: Regulations under subsection 92A(2) may provide that specified provisions of this Law and the regulations apply in relation to relevant agreements to which section 92A applies as if the agreements were securities.

(2) The expression ***securities***, when used in relation to a body, means:

(a) shares in the body;

(b) debentures of the body;

(c) interests in a managed investment scheme made available by the body; or

(ca) in Parts 7.3 to 7.6 (inclusive)—interests made available by the body that would be interests in a managed investment scheme but for paragraph (h) of the definition of ***managed investment scheme*** in section 9;

(d) units of such shares;

but does not include a futures contract or an excluded security.

(2A) In Parts 7.3 to 7.6 (inclusive):

***securities*** includes an interest in a friendly society benefit fund.

(3) In Chapters 6 to 6D (inclusive):

***securities*** means:

(a) shares in a body

(b) debentures of a body

(c) interests in a registered managed investment scheme

(d) legal or equitable rights or interests in:

(i) shares; or

(ii) debentures; or

(iii) interests in a registered managed investment scheme

(e) options to acquire (whether by way of issue or transfer) a security covered by paragraph (a), (b), (c) or (d).

It does not cover a futures contract or an option approved by a securities exchange as an exchange traded option.

Note: Section 9 defines ***body*** and sections 9 and 72 define ***futures contract***.

92A Law applies to certain relevant agreements as if they were securities

(1) This section applies to relevant agreements (whether or not they are futures contracts):

(a) that are entered into on a stock market of a securities exchange; and

(b) that are of a kind prescribed for the purposes of this paragraph.

(2) The regulations may, in relation to relevant agreements to which this section applies:

(a) provide that specified provisions of this Law and the regulations apply in relation to the agreements as if the agreements were securities; and

(b) provide that specified provisions of this Law and the regulations do not apply in relation to the agreements; and

(c) make modifications of this Law and the regulations as applying in relation to the agreements.

(3) Modifications made by regulations referred to in paragraph (2)(c) may be of provisions specified in regulations referred to in paragraph (2)(a) or of other provisions of this Law or the regulations.

93 Securities business

(1) A securities business is a business of dealing in securities.

(3) Subsections (5), (6) and (7) apply for the purposes of determining:

(a) whether or not a person carries on, or holds himself, herself or itself out as carrying on, a securities business; and

(b) what constitutes such a business carried on by a person.

(4) Subsection (7) also applies for the purposes of determining whether or not a person deals in securities.

(5) An act done on behalf of the person by the holder of a dealers licence or an exempt dealer shall be disregarded.

(6) An act that the person does:

(a) while employed by, or acting for or by arrangement with, a dealer;

(b) as employee or agent of, or otherwise on behalf of, on account of, or for the benefit of, the dealer; and

(c) in connection with a securities business carried on by the dealer;

shall be disregarded.

(7) An act or acts done by the person that constitutes or together constitute a dealing by the person in a futures contract shall be disregarded.

94 Securities representatives

(1) Subject to subsection (2), a person is a securities representative of another person if, and only if, the first‑mentioned person:

(a) is employed by; or

(b) acts for or by arrangement with;

the other person in connection with a securities business or investment advice business carried on by the other person.

(2) Except for the purposes of paragraph 88(1)(b):

(a) a person who holds a proper authority from a securities licensee is a securities representative of the licensee; and

(b) a person who holds an invalid securities authority from another person is a securities representative of the other person.

(3) Subject to subsection (4), a person does an act, or engages in conduct, as a securities representative of another person if, and only if, the first‑mentioned person does the act, or engages in the conduct:

(a) in connection with a securities business or investment advice business carried on by the other person;

(b) while the first‑mentioned person is a securities representative of the other person;

(c) as employee or agent of, or otherwise on behalf of, on account of, or for the benefit of, the other person; and

(d) otherwise than in the course of work of a kind ordinarily done by accountants, clerks or cashiers.

(4) Except for the purposes of Division 4 of Part 7.3, a person who holds himself, herself or itself out to be a securities representative of another person does an act as a securities representative of the other person.

95A Solvency and insolvency

(1) A person is solvent if, and only if, the person is able to pay all the person’s debts, as and when they become due and payable.

(2) A person who is not solvent is insolvent.

(3) Section 922 defines when a person becomes insolvent for the purposes of Part 7.10.

97 Stock market not to include futures market

In determining whether a market, exchange, place or facility is a stock market, regard shall not be had to the making at that market, exchange or other place, or by means of that facility, as the case may be, of futures contracts.

Division 8—Miscellaneous interpretation rules

100 Address of registered office etc

(1) Where a provision of this Law requires a notice to be lodged of, or information in an application to specify:

(a) the address of an office, or of a proposed office, of a body corporate or other person; or

(b) a change in the situation of an office of a body corporate or other person;

the notice:

(c) shall specify the full address, or the full new address, as the case requires, of the relevant office including, where applicable, the number of the room and of the floor or level of the building on which the office is situated; and

(d) where the notice or application relates to the address or situation of an office of a body corporate and the address specified in accordance with paragraph (a) is the address of premises that are not to be occupied by the body corporate—must include a written statement to the effect that the person who occupies those premises has consented in writing to the address being specified in the notice or application and has not withdrawn that consent.

(2) The Commission may require a person who has lodged a notice or application that includes a statement under paragraph (1)(d) to produce to the Commission the consent referred to in the statement.

100A Operation of certain laws relating to instruments on which stamp duty has not been paid

Nothing in this Law affects the operation of any provision of any law:

(a) relating to the admissibility in evidence, or any other use, in any proceedings, of a document in respect of which any applicable stamp duty has not been paid; or

(b) prohibiting the registration by a company of a transfer of securities if any stamp duty applicable in respect of the transfer has not been paid.

101 Amount of stock representing a number of shares

In relation to a body corporate the whole or a portion of whose share capital consists of stock, a reference to a number of shares (including a number expressed as a percentage) is, in relation to an amount of stock, a reference to the amount of stock that represents that number of shares.

102 Applications to be in writing

An application to the Commission for the issuing of a document or the doing of any other act or thing by the Commission under this Law shall be in writing.

Note: For electronic lodgment of documents with ASIC, see section 352.

102A Application not to be granted unless applications also made under corresponding laws

(1) This section facilitates the administration, on a national basis, of the Corporations Law of each jurisdiction by requiring some kinds of application to be made under the Corporations Law of each jurisdiction.

(2) This can be done by expressing an application to be made under the Corporations Law (rather than under the Corporations Law of a particular jurisdiction), so that it has effect as an application under the relevant provision of the Corporations Law of each jurisdiction.

(3) Subject to subsection (6), this section applies to an application under section 601CB, 601CE, 769, 770, 770A, 779B, 782, 1067, 1126, 1131, 1132, 1144 or 1279 of the Corporations Law of this jurisdiction.

(4) The application is not to be granted unless the applicant has also made (by the means described in subsection (2) or otherwise) a corresponding application under the corresponding section of the Corporations Law of each jurisdiction other than this jurisdiction.

(5) Also, the application is not to be granted if a corresponding application has been refused, or if it is proposed to refuse a corresponding application.

(6) This section does not apply in relation to an application that:

(a) was made under a previous law of this jurisdiction corresponding to a provision of this Law; and

(b) is taken because of a provision of this Law to have been made under the provision to which that previous law corresponds.

102B *In Australia or elsewhere*, *in this jurisdiction or elsewhere*

The expression ***in Australia or elsewhere***, or a similar expression, does not limit the generality of the expression ***in this jurisdiction or elsewhere*** or a similar expression.

103 Effect of certain contraventions of this Law

(1) This section has effect except so far as this Law otherwise provides.

(2) An act, transaction, agreement, instrument, matter or thing is not invalid merely because of:

(a) a contravention of section 115, 208, 209, 601CA, 601CD or of Chapter 8; or

(b) a failure to comply with a requirement of this Law that a person cause a notice, or a copy of a document, to be published in the *Gazette* or in a newspaper.

(4) In this section:

***invalid*** includes void, voidable and unenforceable.

(5) Nothing in this section limits the generality of anything else in it.

104 Effect of provisions empowering a person to require or prohibit conduct

Where, in accordance with a provision of this Law other than the replaceable rules, a person requires another person to do, or prohibits another person from doing, a particular act, that provision shall be taken to require the other person to comply with the requirement or prohibition, as the case may be.

105 Calculation of time

(1) Where, for any purpose, this Law:

(a) prohibits, permits or requires the doing of an act or thing within, or by or before the end of; or

(b) otherwise prescribes, allows or provides for;

a period or time before or after a particular day, act or event, the period shall be calculated without counting that day, or the day of that act or event, as the case may be.

(2) Without limiting the generality of subsection (1), in calculating how many days a particular day, act or event is before or after another day, act or event, the first‑mentioned day, or the day of the first‑mentioned act or event, shall be counted but not the other day, or the day of the other act or event.

(3) Where the last day of any period prescribed or allowed by this Law for the doing of anything falls on a day that is not a business day in the place in which the thing is to be or may be done, the thing may be done on the first day following which is a business day in that place.

106 Performance of functions by Commission delegate

For the purpose of the performance of a function, or the exercise of a power, under this Law by a Commission delegate, a reference to the Commission in a provision of this Law relating to the performance of the function, or the exercise of the power, includes a reference to the Commission delegate.

108 Parts of dollar to be disregarded in determining majority in value of creditors etc.

In determining whether a majority in value of creditors, or a particular proportion in value of creditors, has passed a resolution or done any other act or thing, if a creditor’s debt consists of a number of whole dollars and a part of a dollar, the part of the dollar shall be disregarded.

109 References to persons, things and matters

(1) Except so far as the contrary intention appears, a provision of this Law shall be interpreted in such a manner that any 2 or more references in the provision are capable of having the same referent or referents, or of having a referent or referents in common, as the case requires.

(2) In subsection (1), ***referent***, in relation to a reference in a provision, means:

(a) in so far as the reference is interpreted as being in the singular number—a person to whom, or a thing or matter to which; or

(b) in so far as the reference is interpreted as being in the plural number—any one or 2 or more persons to whom, or of 2 or more things or matters to which;

the reference is taken, in the application of the provision, to refer.

109A Reference to Commonwealth Acts

Unless the contrary intention appears, a reference in this Law to an Act by its short title is taken to be a reference to an Act of the Commonwealth having that short title.

109B References to amended or re‑enacted Acts of the Commonwealth, this jurisdiction etc.

(1) This section applies to a reference in this Law to a short title that is or was provided by law for the citation of:

(a) an Act of the Commonwealth or of this or another jurisdiction, as originally enacted; or

(b) such an Act as amended.

(2) Except so far as the contrary intention appears, the reference is taken as a reference to that Act as originally enacted and as amended from time to time.

(3) Where the Act referred to has been repealed and re‑enacted, with or without modifications:

(a) the reference is taken as including a reference to the re‑enacted Act as originally enacted and as amended from time to time; and

(b) where:

(i) particular provisions of the repealed Act are referred to; and

(ii) provisions of the re‑enacted Act correspond to those provisions;

the reference to those particular provisions is taken as including a reference to those corresponding provisions.

109C Every section a substantive enactment

Every section of this Law has effect as a substantive enactment, without introductory words.

109D Headings, schedules, marginal notes, footnotes and end notes

(1) The headings of the Chapters, Parts, Divisions and Subdivisions into which this Law is divided are taken to be part of this Law.

(2) A Schedule to this Law is taken to be part of this Law.

(3) Each heading to a section of this Law, and each footnote or end note to this Law, is taken not to be part of this Law.

109DA Exercise of certain powers between passing and commencing of amendments of Law

(1) This section applies where an Act (in this section referred to as the ***Act concerned***), being:

(a) an Act enacted on or after the date of commencement of this section that is not to come into operation immediately upon its enactment; or

(b) an Act enacted before the date of commencement of this section that did not come into operation on or before that date;

results in the amendment of this Law so that this Law, as amended, will confer power to make an appointment or to make an instrument of a legislative or administrative character (including rules, regulations or by‑laws).

(2) Unless the contrary intention appears, the power so conferred may be exercised, and anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment or instrument into effect, before the Act concerned comes into operation as if it had come into operation.

(3) An appointment or instrument made under subsection (2) or, if the instrument contains a number of provisions, each of those provisions, takes effect:

(a) on the day on which the Act concerned comes into operation; or

(b) on the day on which the appointment, instrument or provision, as the case may be, would have taken effect if the Act concerned had been in operation when the appointment or instrument was made;

whichever is later.

(4) Where a provision of this Law is to come into operation on a date to be fixed by a Proclamation or other instrument, the Proclamation or other instrument may be made and published at any time after the enactment of the originating provision.

(5) In subsections (1), (2), (3) and (4):

***Act*** includes a provision or provisions of an Act.

***Law*** includes a provision or provisions of this Law.

(6) This section applies in relation to a regulation that results in the amendment of the Corporations Regulations so that those Regulations, as amended, will confer power to make an appointment or to make an instrument of a legislative or administrative character, and so applies as if:

(a) the first‑mentioned regulation were an Act; and

(b) the Corporations Regulations were this Law.

109E Effect of repeal

Where a provision of this Law is repealed, the repeal does not:

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any provision so repealed, or anything duly done or suffered under any provision so repealed; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any provision so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any provision so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repeal had not taken effect.

109F Implied repeals etc.

A reference in section 109E to the repeal of a provision of this Law is a reference to the repeal of the originating provision concerned and includes a reference to:

(a) such a repeal effected by implication; and

(b) the abrogation or limitation (however effected) of the effect of the provision; and

(c) the exclusion (however effected) of the application of the provision to any person, subject‑matter or circumstance.

109G Effect of expiration of provision

Where a provision of this Law expires, lapses or otherwise ceases to have effect, sections 109E and 109F apply as if the provision had been repealed.

109H Regard to be had to purpose or object of law

In the interpretation of a provision of this Law, a construction that would promote the purpose or object underlying the Law (whether that purpose or object is expressly stated in the Law or not) is to be preferred to a construction that would not promote that purpose or object.

109J Use of extrinsic material in the interpretation of this Law

(1) This section applies where, in the interpretation of a provision of this Law, any material not forming part of this Law is capable of assisting in working out the meaning of the provision.

(2) Subject to subsection (4), consideration may be given to that material:

(a) to confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision taking into account its context in the Law and the purpose and object underlying the Law; or

(b) to determine the meaning of the provision when:

(i) the provision is ambiguous or obscure; or

(ii) the ordinary meaning conveyed by the text of the provision, taking into account its context in the Law and the purpose or object underlying the Law, leads to a result that is manifestly absurd or is unreasonable.

(3) The material that may be considered under subsection (2) in the interpretation of a provision of this Law includes, but is not limited to:

(a) all matters not forming part of the Law that are set out in the *Corporations Act 1989* or a corresponding law of a jurisdiction, or the document containing the text of the Law as printed by the Government Printer; and

(b) any relevant report of the Advisory Committee, or of a Royal Commission, Law Reform Commission, committee of inquiry or other similar body, that was made before either House of the Parliament before the time when the originating provision was enacted; and

(c) any relevant report of a committee of the Parliament or of either House of the Parliament that was made to the Parliament or that House of the Parliament before the originating provision was enacted; and

(d) any treaty or other international agreement that is referred to in this Law; and

(e) any explanatory memorandum relating to the Bill containing the originating provision, or any other relevant document, that was laid before, or furnished to the members of, either House of the Parliament by a Minister before the time when the originating provision was enacted; and

(f) the speech made to a House of the Parliament by a Minister on the occasion of the moving by that Minister of a motion that the Bill containing the originating provision be read a second time in that House; and

(g) any document (whether or not a document to which a preceding paragraph applies) that is declared by this Law to be a relevant document for the purposes of this section; and

(h) any relevant material in the Journals of the Senate, in the Votes and Proceedings of the House of Representatives or in any official record of debates in the Parliament or either House of the Parliament.

(4) In determining whether consideration should be given to any material in accordance with subsection (2), or in considering the weight to be given to any such material, regard is to be had, in addition to any other relevant matters, to:

(a) the desirability of persons being able to rely on the ordinary meaning conveyed by the text of the provision taking into account its context in the law and the purpose or object underlying the law; and

(b) the need to avoid prolonging legal or any other proceedings without compensating advantage.

109K Changes to style not to affect meaning

Where:

(a) a provision of this Law has expressed an idea in a particular form of words; and

(b) another provision of this Law appears to have expressed the same idea in a different form of words for the purpose of using a clearer style;

the ideas are not taken to be different merely because different forms of words were used.

109L Examples

Where this Law includes an example of the operation of a provision:

(a) the example is not taken to be exhaustive; and

(b) if the example is inconsistent with the provision, the provision prevails.

109M Parts of speech and grammatical forms of words

In this Law, unless the contrary intention appears, where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

109N References to offices and officers

(1) A reference in this Law in general terms to a person holding or occupying a particular office or position includes a reference to any person who at any time occupies that office or position for the time being, or performs the duties of that office for the time being.

(2) Unless the contrary intention appears, a reference in this Law to an office or officer is a reference to such office or officer in and for the Commonwealth.

109P References to companies etc.

Express references in this Law to companies, corporations or bodies corporate do not imply that expressions in this Law of the kind mentioned in section 85A do not include companies, corporations or bodies corporate.

109Q References to Commonwealth laws

(1) In this Law, unless the contrary intention appears, a reference to the law of the Commonwealth or to a law of the Commonwealth does not include a reference to a law in force in a Territory in so far as the law is so in force by virtue of an Act providing for the acceptance, administration or government of that Territory.

(2) For the purposes of this section, none of the following is an Act providing for the administration or government of a Territory:

(a) the *Corporations Act 1989*;

(b) the Corporations Law of the Capital Territory;

(c) the *Australian Securities and Investments Commission Act 1989*.

109R Rules as to gender and number

In this Law, unless the contrary intention appears:

(a) words importing a gender include every other gender; and

(b) words in the singular number include the plural and words in the plural number include the singular.

109S Production of records kept in computers etc.

Where a person who keeps a record of information by means of a mechanical, electronic or other device is required by or under this Law:

(a) to produce the information or a document containing the information to a court, tribunal or person; or

(b) to make a document containing the information available for inspection by a court, tribunal or person;

then, unless the court, tribunal or person otherwise directs:

(c) the requirement is taken to oblige the person to produce or make available for inspection, as the case may be, a writing that reproduces the information in a form capable of being understood by the court, tribunal or person; and

(d) the production of such a writing to the court, tribunal or person constitutes compliance with the requirement.

109T Change of name of body or office

Where:

(a) the name of a body is changed by law (whether or not the body is incorporated); or

(b) the name of an office is changed by law;

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

109U Compliance with forms

Where this Law prescribes a form, strict compliance with the form is not required and substantial compliance is sufficient.

109V Content of statements of reasons for decisions

Where this Law requires a tribunal, body or person making a decision to give written reasons for the decision, whether the expression ***reasons***, ***grounds*** or any other expression is used, the instrument giving the reasons must also:

(a) set out the findings on material questions of fact; and

(b) refer to the evidence or other material on which those findings were based.

109W Attainment of particular age

For the purposes of this Law, the time at which a person attains a particular age expressed in years is the commencement of the relevant anniversary of the date of the birth of that person.

109X Service of documents

(1) For the purposes of any law, a document may be served on a company or recognised company by:

(a) leaving it at, or posting it to, the company’s registered office; or

(b) delivering a copy of the document personally to a director of the company who resides in Australia or in an external Territory; or

(c) if a liquidator of the company has been appointed—leaving it at, or posting it to, the address of the liquidator’s office in the most recent notice of that address lodged with ASIC; or

(d) if an administrator of the company has been appointed—leaving it at, or posting it to, the address of the administrator in the most recent notice of that address lodged with ASIC.

(2) For the purposes of any law, a document may be served on a director or company secretary (in addition to the methods of service set out in subsection (4)) by leaving it at, or posting it to, the alternative address notified to ASIC under subsection 205B(1), (2) or (4) or section 117 or 601BC. However, this only applies to service on the director or company secretary:

(a) in their capacity as a director or company secretary; or

(b) for the purposes of a proceeding in respect of conduct they engaged in as a director or company secretary.

(3) Subsections (1) and (2) do not apply to a process, order or document that may be served under section 9 of the *Service and Execution of Process Act 1992*.

(4) For the purposes of this Law, a document may be served on an individual by:

(a) delivering it to the person personally; or

(b) leaving it at, or posting it to, the residential or business address of the person last known to the person serving the document.

(5) For the purposes of this Law, a document may be served on a body corporate other than a company, recognised company or registered body by leaving it at, or posting it to, the head office, a registered office or the principal place of business of the body corporate.

(6) This section does not affect the operation of a law or the power of a court to authorise a document to be served in a different way.

(7) This section applies to provisions of a law dealing with service whether it uses the expression “serve” or uses any other similar expression such as “give” or “send”.

109Y Meaning of service by post

Where a provision of this Law authorises or requires any document to be served by post, whether the expression ***serve*** or the expression ***give*** or ***send*** or any other expression is used, then:

(a) the service is taken to be effected by properly addressing and posting (under pre‑paid post) the document as a letter to the last known address of the person to be served; and

(b) unless the contrary is proved, the service is taken to have been effected at the time at which the letter would have been delivered in the ordinary course of post.

109Z Measurement of distance

In the measurement of any distance for the purposes of this Law, that distance is, unless the contrary intention appears, to be measured in a straight line on a horizontal plane.

109ZA Expressions of time

Where in this Law any reference to time occurs, such time is, unless it is otherwise specifically stated, taken in each jurisdiction to mean the standard legal time in that jurisdiction.

109ZB Exercise of powers and duties

(1) Where this Law confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty must be performed from time to time as the occasion requires.

(2) Where this Law confers a power or imposes a duty on the holder of an office as such, then, unless the contrary intention appears, the power may be exercised and the duty must be performed by the holder for the time being of the office.

(3) Where this Law provides that a person, court or body may do a particular act or thing, and the word ***may*** is used, the act or thing may be done at the discretion of the person, court or body.

(4) Where this Law confers a power or function, or imposes a duty, on a body, whether incorporated or unincorporated, the exercise of the power or the performance of the function or duty is not affected merely because of a vacancy or vacancies in the membership of the body.

(5) Where this Law confers a power to make, grant or issue any instrument (including rules, regulations or by‑laws) the power is, unless the contrary intention appears, taken as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument.

(6) Where this Law confers a power to make, grant or issue any instrument (including rules, regulations or by‑laws) with respect to particular matters (however the matters are described), the power is taken to include a power to make, grant or issue such an instrument with respect to some only of those matters or with respect to a particular class or particular classes of those matters and to make different provision with respect to different matters or different classes of matters.

(7) Where this Law confers a power to make, grant or issue any instrument (including rules, regulations or by‑laws), the power is not taken, by implication, not to include the power to make provision for or in relation to a particular aspect of a matter by reason only that provision is made by the Law in relation to another aspect of that matter or in relation to another matter.

(8) Subject to subsection (9), where this Law confers upon any person or authority a power to make appointments to any office or place, the power is, unless the contrary intention appears, taken to include a power to appoint a person to act in the office or place until:

(a) a person is appointed to the office or place; or

(b) the expiration of 12 months after the office or place was created or became vacant, as the case requires;

whichever first happens, and also to include a power to remove or suspend any person appointed, and to appoint another person temporarily in the place of any person so suspended or in place of any sick or absent holder of such office or place.

(9) Where the power of such a person or authority to make any such appointment is only exercisable upon the recommendation or subject to the approval or consent of some other person or authority, the power to make an appointment to act in an office or place or the power of removal is, unless the contrary intention appears, only exercisable upon the recommendation or subject to the approval or consent of that other person or authority.

(10) Where this Law confers a power to make, grant or issue an instrument (including rules, regulations or by‑laws) prescribing penalties not exceeding a specified amount or imprisonment for a specified period, that limitation on the penalties that may be prescribed does not prevent the instrument from requiring the making of a statutory declaration.

109ZBA Power to make instruments etc. may be exercised by reference to classes

Where this Law confers upon an authority power to make an instrument (including rules, regulations or by‑laws) or a resolution:

(a) specifying, declaring or prescribing a matter or thing; or

(b) doing anything in relation to a matter or thing;

then, in exercising the power, the authority may identify the matter or thing by referring to a class or classes of matters or things.

109ZC Power to determine includes authority to administer oath

Any court, Judge, justice of the peace, officer, commissioner, arbitrator, or other person authorised by law, or by consent of parties, to hear and determine any matter, has authority to receive evidence and examine witnesses and to administer an oath to all witnesses legally called before them respectively.

109ZD Delegations

Where this Law confers power to delegate a function or power, then, unless the contrary intention appears, the power of delegation is not limited to delegating the function or power to a specified person but includes a power to delegate the function or power to any person from time to time holding, occupying, or performing the duties of, a specified office or position.

109ZE Effect of delegation

Where this Law confers power on a person or body (in this section called the ***authority***) to delegate a function or power:

(a) the delegation may be made either generally or as otherwise provided by the instrument of delegation; and

(b) the powers that may be delegated do not include that power to delegate; and

(c) a function or power so delegated, when performed or exercised by the delegate, is, for the purposes of this Law, taken to have been performed or exercised by the authority; and

(d) a delegation by the authority does not prevent the performance or exercise of a function or power by the authority; and

(e) if the authority is not a person, section 109ZF applies as if it were.

109ZF Exercise of certain powers and functions by a delegate

Where, under this Law, the exercise of a power or function by a person is dependent upon the opinion, belief or state of mind of that person in relation to a matter and that power or function has been delegated in pursuance of this Law or any Act of the Commonwealth, of a State or of a Territory, that power or function may be exercised by the delegate upon the opinion, belief or state of mind of the delegate in relation to that matter.

Division 9—Interpreting the regulations

110 Expressions have the same meaning as in this Law

(1) Subject to subsection (2), an expression has in the regulations the same meaning as it has in this Law.

(2) Where a provision of the regulations has effect for the purposes of a particular provision of this Law, an expression has in that provision of the regulations the same meaning as it has in that provision of this Law.

(3) Subject to subsection (2), this Part applies in relation to the regulations as if the provisions of the regulations were provisions of this Law.

(4) This section has effect except so far as the contrary intention appears in the regulations.

110A Severing invalid provisions

(1) The regulations are to be interpreted subject to this Law.

(2) It is intended that where, but for this section, a provision of the regulations would have been interpreted as being inconsistent with this Law, the provision is nevertheless to be valid in so far as it is not so inconsistent.

Division 10—Interpreting other subordinate instruments

110B Expressions have the same meaning as in this Law

(1) An expression has in an instrument made, granted or issued under this Law the same meaning as it has in this Law.

(2) This Part applies in relation to an instrument made, granted or issued under this Law as if the instrument’s provisions were provisions of this Law.

(3) This section has effect in relation to an instrument except so far as the contrary intention appears in the instrument.

110C Severing invalid provisions

(1) An instrument made, granted or issued under this Law is to be interpreted:

(a) subject to this Law; and

(b) so as not to exceed the powers under which it was made, granted or issued.

(2) It is intended that where, but for this section, such an instrument would have been interpreted as exceeding the powers under which it was made, granted or issued, it is nevertheless to be valid in so far as it does not exceed those powers.

Division 11—Application of certain provisions

110D Chapters 1 to 6 and 9

Chapters 1 to 6, inclusive, and 9, apply, according to their 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.

110E Application of this Law in coastal sea

This Law has effect in and in relation to the coastal sea of this jurisdiction as if that coastal sea were part of this jurisdiction.

Part 1.2A—Disclosing entities

Division 1—Object of Part

111AA Object of Part

The object of this Part is:

(a) to define ***disclosing entity*** and other key terms relevant to disclosing entities (this is done in Division 2); and

(b) to outline the significance for this Law of being a disclosing entity (this is done in Division 3); and

(c) to provide for exemptions from, and modifications of, the special requirements imposed by this Law in relation to disclosing entities (this is done in Division 4).

Division 2—Definitions

111AB Terms defined in Division

This Division contains definitions of the following terms:

(a) disclosing entity (section 111AC);

(b) ED securities (section 111AD);

(c) ED securities of a disclosing entity (section 111AK);

(d) listed disclosing entity (subsection 111AL(1));

(e) quoted ED securities (section 111AM);

(f) unlisted disclosing entity (subsection 111AL(2)).

111AC Disclosing entity

(1) If any securities of a body (except interests in a managed investment scheme) are ED securities, the body is a ***disclosing entity*** for the purposes of this Law.

(2) If any interests in a managed investment scheme are ED securities, the undertaking to which the interests relate is a ***disclosing entity*** for the purposes of this Law.

111AD ED securities

(1) Securities of a body are ***ED securities*** (short for “enhanced disclosure securities”) for the purposes of this Law if, and only if:

(a) they are ED securities under section 111AE, 111AF, 111AG or 111AI; and

(b) they are not declared under section 111AJ not to be ED securities.

(2) For the purposes of sections 111AE, 111AF, 111AG and 111AI, a class of shares or debentures is taken to include units of shares or debentures in that class.

111AE Securities quoted on a stock market

(1) Securities in a class of securities of a body are ED securities if securities in that class are quoted on a stock market of a securities exchange.

(2) Subsection (1) does not apply to securities of a body if:

(a) the body is a public authority of the Commonwealth or an instrumentality or agency of the Crown in right of the Commonwealth; and

(b) the only securities of the body that are quoted as mentioned in subsection (1) are debentures; and

(c) both the repayment of principal, and the payment of interest, in respect of those debentures is guaranteed by the Commonwealth.

(3) Subsection (1) does not apply to securities of a body that is:

(a) a public authority of a State or Territory; or

(b) an instrumentality or agency of the Crown in right of a State or Territory.

111AF Securities to which lodged or deemed prospectus relates

(1) Securities (except debentures) in a class of securities of a body are ***ED securities*** if:

(a) a disclosure document in relation to securities in that class has been lodged with ASIC under Chapter 6D; or

(b) securities in that class have been issued pursuant to the disclosure document; and

(c) after an issue of securities in that class pursuant to the disclosure document, 100 or more persons held securities in that class; and

(d) securities in that class have been held by 100 or more persons at all times since the issue of securities referred to in paragraph (c).

(2) In this section:

***corresponding previous law*** does not include a law, or part of a law, in force before 1 July 1982 (which is when the *Companies Act 1981* commenced).

111AG Securities issued as consideration for an acquisition under an off‑market takeover bid or Part 5.1 compromise or arrangement

(1) Securities (except debentures) in a class of securities of a body are ***ED securities*** if:

(a) securities in that class have been issued by the body as consideration for offers under an off‑market bid; and

(b) after an issue of securities in that class under the off‑market bid, 100 or more persons held securities in that class; and

(c) securities in that class have been held by 100 or more persons at all times since the issue of securities referred to in paragraph (b).

(2) Securities in a class of securities of a body are ***ED securities*** if:

(a) securities in that class have been issued as consideration for the acquisition or cancellation of securities of another body pursuant to a compromise or arrangement under Part 5.1 or a corresponding previous law; and

(b) securities in that class, or those or any other securities of the other body, were ED securities immediately before securities in that class were first issued pursuant to the compromise or arrangement; and

(c) after an issue of securities in that class pursuant to the compromise or arrangement, 100 or more persons held securities in that class; and

(d) securities in that class have been held by 100 or more persons at all times since the issue of securities referred to in paragraph (c).

(3) In this section:

***corresponding previous law***:

(a) when used in subsection (1), does not include a law, or part of a law, in force before 1 July 1981 (which is when the *Companies (Acquisition of Shares) Act 1980* commenced); and

(b) when used in subsection (2), does not include a law, or part of a law, in force before 1 July 1982 (which is when the *Companies Act 1981* commenced).

111AH When a person holds securities for the purposes of sections 111AF and 111AG

(1) For the purposes of sections 111AF and 111AG, a person holds securities if, and only if:

(a) the person is registered as the holder of the securities in a register under section 169, 170, 171, 601CZB or 1070; or

(b) the person is entitled to be so registered.

(2) For the purposes of sections 111AF and 111AG, joint holders of securities count as one person.

111AI Debentures that need trustee appointed under section 260FA

Debentures of a borrower are ***ED securities*** if section 260FA requires the borrower to appoint a trustee.

111AJ Regulations may declare securities not to be ED securities

(1) The regulations may declare specified securities of bodies not to be ED securities.

(2) Regulations in force for the purposes of subsection (1) have effect accordingly, despite anything else in this Division.

111AK ED securities of a disclosing entity

For the purposes of this Law, ED securities because of which (having regard to section 111AC) a disclosing entity is such an entity are ED securities of the entity.

111AL Listed or unlisted disclosing entity

(1) For the purposes of this Law, a disclosing entity is a ***listed disclosing entity*** if all or any ED securities of the entity are quoted ED securities.

(2) For the purposes of this Law, a disclosing entity that is not a listed disclosing entity is an ***unlisted disclosing entity***.

111AM Quoted ED securities

For the purposes of this Law, ED securities are ***quoted ED securities*** if they are ED securities because of section 111AE.

Division 3—Significance of being a disclosing entity

111AN Division contains outline of significance of being a disclosing entity

This Division outlines the significance for this Law of being a disclosing entity.

111AO Accounting requirements

A disclosing entity has to prepare financial statements and reports for half‑years as well as full financial years. These requirements are set out in Chapter 2M.

111AP Continuous disclosure requirements

(1) A disclosing entity is subject to the continuous disclosure requirements of sections 1001A and 1001B.

(2) Section 1001A applies to listed disclosing entities and requires them to comply with certain obligations in the listing rules of a securities exchange requiring the notification of information.

(3) Section 1001B applies to unlisted disclosing entities and requires them to lodge documents containing information.

111AQ Prospectus relief

Section 713 applies (subject to certain qualifications) to prospectuses for quoted ED securities of disclosing entities. The section’s requirements for the content of prospectuses are less comprehensive than those that apply to other prospectuses under section 710.

Division 4—Exemptions and modifications

111AR Meaning of *disclosing entity provisions*

(1) For the purposes of this Division, the disclosing entity provisions are the provisions of the following:

(a) Chapter 2M as it applies to disclosing entities;

(d) sections 1001A and 1001B;

(2) A reference in subsection (1) to a Part, Division or section includes a reference to regulations in force for the purposes of the Part, Division or section.

111AS Exemptions by regulations

(1) The regulations may exempt specified persons from all or specified disclosing entity provisions:

(a) either generally or as otherwise specified; and

(b) either unconditionally or subject to specified conditions.

(2) Without limiting subsection (1), an exemption may relate to specified securities.

111AT Exemptions by the Commission

(1) The Commission may, by writing, exempt specified persons from all or specified disclosing entity provisions:

(a) either generally or as otherwise specified; and

(b) either unconditionally or subject to specified conditions.

(2) Without limiting subsection (1), an exemption may relate to specified securities.

(3) The Commission must cause a copy of an exemption to be published in the *Gazette*.

111AU Enforcing conditions of exemptions

(1) A person must not intentionally or recklessly contravene a condition to which an exemption under section 111AS or 111AT is subject.

(2) If a person contravenes such a condition, the Court may, on the application of the Commission, order the person to comply with the condition.

111AV Modifications by regulations

(1) The regulations may make modifications of all or specified disclosing entity provisions.

(2) Without limiting subsection (1), a modification may relate to specified securities.

111AW Exemptions and modifications have effect

Exemptions and modifications under this Division have effect accordingly.

111AX Effect of Division

Nothing in this Division limits, or is limited by, any other exemption or modification power (for example, section 340, 341 or 741).

Part 1.3—Application orders

111A Power to make

(1) The Minister may make written orders, to be known as application orders, specifying matters that this Law requires or permits to be specified by or in application orders.

(2) An order under this section must not be inconsistent with this Law.

111B Orders under this Part and corresponding laws

(1) The object of this section is to make it easier to find out how the Corporations Law of each jurisdiction operates so far as concerns matters that, because of differences in the circumstances of the various jurisdictions, are dealt with by application orders under section 111A of that Law.

(2) An order under section 111A of this Law may be included in the same document as an order that is, or as 2 or more orders each of which is, an order under section 111A of the Corporations Law of another jurisdiction.

(3) Where, under subsection (2), 2 or more orders are included in the same document, the text of the respective orders:

(a) may be integrated and arranged so as to present more clearly and simply the matters that are specified by or in the orders for the purposes of corresponding provisions of the laws of the jurisdictions concerned; and

(b) in particular, may be arranged so as to allow the reader to compare more easily the matter specified for the purposes of a provision of one law with the matter specified for the purposes of the corresponding provision of another law.

(4) Where:

(a) under subsection (3), the text of 2 or more orders (in this subsection called the ***principal orders***) has been integrated and arranged as mentioned in that subsection; and

(b) under subsection (2), 2 or more orders each of which amends any of the principal orders are included in the same document;

the text of the amending orders may be integrated and arranged so that the arrangement of the amendments corresponds to the arrangement of the text of the principal orders.

(5) Nothing in this section prejudices the validity of a document that purports to set out, in any form, an order under section 111A.

111C Specifying a matter by reference to another instrument

(1) Subject to subsection 111A(2), an application order may specify a matter by applying, adopting or incorporating, with or without modifications:

(a) the provisions of:

(i) an Act of this jurisdiction; or

(ii) regulations under such an Act;

as in force at a particular time or as in force from time to time; or

(b) matter contained in any other instrument or writing as in force or existing when the order takes effect.

(2) Except as otherwise expressly provided in this Law, an application order must not specify a matter by applying, adopting or incorporating matter contained in an instrument or other writing as in force or existing from time to time.

111D Notification in the *Gazette*

As soon as practicable after an application order is made, the Minister must cause to be published in the *Gazette* a notice of the order having been made, and of the place or places where copies of the order can be bought.

111E When order takes effect

An application order takes effect from:

(a) a specified day; or

(b) a specified time on a specified day; or

(c) the day, or day and time, of commencement of a specified Commonwealth Act or of a specified provision of a Commonwealth Act; or

(d) otherwise—the day on which notice of the order having been made is published under subsection 111D(1).

111F Interpretation of application orders

(1) Subject to subsection (2), an expression has in an application order the same meaning as it has in this Law.

(2) Where a provision of an application order has effect for the purposes of a particular provision of this Law or the regulations, an expression has in that provision of the order the same meaning as it has in that provision of this Law or the regulations.

(3) Subject to subsection (2), Part 1.2 applies in relation to an application order as if the order’s provisions were provisions of this Law.

(4) This section has effect in relation to an order except so far as the contrary intention appears in the order.

111G Severing invalid provisions

(1) An application order is to be interpreted:

(a) subject to this Law; and

(b) so as not to exceed the powers conferred by this Part.

(2) It is intended that where, but for this section, an application order would have been interpreted as exceeding the powers conferred by this Part, the order is nevertheless to be valid in so far as it does not exceed those powers.

111H Effect of certain instruments made before 1 January 1991

(1) This section applies where:

(a) before 1 January 1991, a Minister made an instrument that purported to be an application order specifying a matter for the purposes of a provision of this Law, or for the purposes of a provision of the Corporations Law of each of 2 or more jurisdictions including this jurisdiction; and

(b) the instrument was expressed to take effect on 1 January 1991; and

(c) if a law of this jurisdiction in force at the commencement of this section provides that an order under section 111A may only be made with the consent of the Minister for this jurisdiction—the person who was, when the instrument was made, the Minister for this jurisdiction within the meaning of that law as so in force, consented to the making of the instrument; and

(d) a notice of the instrument having been made was published in the *Gazette*.

(2) The instrument has effect, and is taken always to have had effect, as an application order duly made under section 111A.

(3) The requirements of this Division are taken to have been complied with in relation to the instrument.

(4) The instrument is taken to have taken effect on 1 January 1991.

(5) The effect that the instrument has, or is taken to have had, because of this section does not prejudice any other effect of the instrument, whether under a law corresponding to this section or otherwise.

Part 1.4—Technical provisions about aids for readers

111J Small business guide

(1) The regulations may amend the small business guide in Part 1.5 if the amendments are necessary to reflect the regulations or instruments issued by ASIC under this Law.

(2) The small business guide is divided into sections (numbered 1, 2, 3 ...) and the sections are divided into paragraphs (numbered 1.1, 1.2, 1.3 ...). For example, a reference in the guide to 3.1 is a reference to paragraph 3.1 of the guide.

Part 1.5—Small business guide

This guide summarises the main rules in the Corporations Law that apply to proprietary companies limited by shares—the most common type of company used by small business. The guide gives a general overview of the Corporations Law as it applies to those companies and directs readers to the operative provisions in the Law.

The notes in square brackets at the end of paragraphs in the guide indicate the main provisions of the Corporations Law, the regulations made under the Law, and Australian Securities and Investments Commission Practice Notes that are relevant to the information in the paragraphs.

Other Commonwealth, State and Territory laws also impose obligations on proprietary companies and their operators.

1 What registration means

1.1 Separate legal entity that has its own powers

As far as the law is concerned, a company has a separate legal existence that is distinct from that of its owners, managers, operators, employees and agents. A company has its own property, its own rights and its own obligations. A company’s money and other assets belong to the company and must be used for the company’s purposes.

A company has the powers of an individual, including the powers to:

• own and dispose of property and other assets

• enter into contracts

• sue and be sued.

Once a company is registered, its separate legal status, property, rights and liabilities continue until ASIC (Australian Securities and Investments Commission) deregisters the company.

[sections 119, 124–125, 601AA–601AD]

1.2 Limited liability of shareholders

Shareholders of a company are not liable (in their capacity as shareholders) for the company’s debts. As shareholders, their only obligation is to pay the company any amount unpaid on their shares if they are called upon to do so. However, particularly if a shareholder is also a director, this limitation may be affected by other laws and the commercial practices discussed in 1.3 and 1.4.

[section 516]

1.3 Director’s liability for company’s debts

A director of a company may be liable for debts incurred by the company at a time when the company itself is unable to pay those debts as they fall due.

A director of a company may be liable to compensate the company for any losses the company suffers from a breach of certain of the director’s duties to the company (see 5.3).

In addition to having liability for the company’s debts or to pay compensation to the company, a director may also be subject to a civil penalty.

If a company holds property on trust, a director of the company may be liable in some circumstances for liabilities incurred by the company as trustee.

[sections 197, 344, 588G, 588J, 588M, 1317H]

1.4 Director’s liability as guarantor/security over personal assets

As a matter of commercial practice, a bank, trade creditor or anyone else providing finance or credit to a company may ask a director of the company:

• for a personal guarantee of the company’s liabilities; and

• for some form of security over their house or personal assets to secure the performance by the company of its obligations.

The director of a company may, for example, be asked by a bank to give a mortgage over their house to secure the company’s repayment of a loan. If the company does not repay the loan as agreed with the bank, the director may lose the house.

1.5 Continuous existence

A company continues to exist even if 1 or more of its shareholders or directors sells their shares, dies or leaves the company. If a company has only 1 shareholder who is also the only director of the company and that person dies, their personal representative is able to ensure that the company continues to operate.

[sections 119, 224A]

1.6 Rules for the internal management of a company

The Law contains a basic set of rules for the internal management of a company (appointments, meetings etc.).

Some of these rules are mandatory for all companies. There are a few special rules for single shareholder/single director companies.

Other internal management rules in the Law are replaceable rules. The replaceable rules do not apply to:

• a single shareholder/single director company; or

• a company that had a constitution before the introduction of the replaceable rules regime and has not repealed it.

A company does not need to have a separate constitution of its own; it can simply take advantage of the rules in the Law. The company will need a constitution only if it wants to displace, modify or add to the replaceable rules.

[sections 134–141, 224B]

1.7 How a company acts

A company does not have a physical existence. It must act through other people.

Individual directors, the company secretary, company employees or agents may be authorised to enter into contracts that bind the company (see 7).

In some circumstances, a company will be bound by something done by another person (see 1.8).

1.8 Directors

The directors of a company are responsible for managing the company’s business. It is a replaceable rule (see 1.6) that generally the directors may exercise all the powers of the company except a power that the Law, a replaceable rule or a provision of the company’s constitution (if any) requires the company to exercise in general meeting.

The only director of a company who is also the only shareholder is responsible for managing the company’s business and may exercise all of the company’s powers.

The Law sets out rules dealing with the calling and conduct of directors’ meetings. Directors must keep a written record (minutes) of their resolutions and meetings.

There are 2 ways that directors may pass resolutions:

• at a meeting; or

• by having all of the directors record and sign their decision.

If a company has only 1 director, the sole director may also pass a resolution by recording and signing their decision.

[sections 224B, 226A, 248A–248G, 251A]

1.9 Shareholders

The shareholders of a company own the company, but the company has a separate legal existence and the company’s assets belong to the company.

Shareholders can make decisions about the company by passing a resolution, usually at a meeting. A “special resolution” usually involves more important questions affecting the company as a whole or the rights of some or all of its shareholders.

There are 2 ways that shareholders may pass a resolution:

• at a meeting; or

• by having all of the shareholders record and sign their decision.

If a meeting is held, an ordinary resolution must be passed by a majority of the votes cast by shareholders of the company entitled to vote on the resolution at the meeting in person or by proxy (if proxies are allowed). A special resolution must be passed by at least 75% of the votes cast by shareholders of the company entitled to vote on the resolution and who vote at the meeting in person or by proxy (if proxies are allowed).

The sole shareholder of a company may pass a resolution by recording and signing their decision.

A company must keep a written record (minutes) of the members’ resolutions and meetings.

[sections 9 (***special resolution***), 249A, 249B, 249L, 251A]

1.10 What others can assume about the company

Anyone who does any business with the company is entitled to assume that the company has a legal right to conduct that business unless the person knows, or suspects, otherwise. For example, an outsider dealing with the company is entitled to assume:

• that a person who is shown in a notice lodged with ASIC as being the director or company secretary of a company has been properly appointed and is authorised to act for the company; and

• that a person who is held out by the company to be a director, company secretary or agent of the company has been properly appointed and is authorised to act for the company.

[sections 128–130]

2 The company structure for small business

2.1 Proprietary company for small business

Generally, a proprietary company limited by shares is the most suitable company for use by small business. Such a proprietary company must have a least 1 shareholder but no more than 50 shareholders (not counting employee shareholders). It may have 1 or more directors.

[sections 112–113]

3 Setting up a new company

The operators of small businesses can either buy “shelf” companies or set up new companies themselves.

3.1 “Shelf” companies

The operator of a small business may find it more convenient to buy a “shelf” company (a company that has already been registered but has not traded) from businesses which set up companies for this purpose or from some legal or accounting firms.

3.2 Setting up a company

To set up a new company themselves, the operator must apply to ASIC for registration of the company.

A proprietary company limited by shares must have at least 1 shareholder.

To obtain registration, a person must lodge a properly completed application form with ASIC. The form must set out certain information including details of every person who has consented to be a shareholder, director or company secretary of the company.

The company comes into existence when ASIC registers it.

[sections 117–119, 135–136, 140]

3.3 ACN and name

When a company is registered, ASIC allocates to it a unique 9 digit number called the Australian Company Number (ACN). (For use of the ACN see 4.1).

In practice, a new company must have a name that is different from the name of a company that is already registered. A proprietary company limited by shares must have the words “Proprietary Limited” as part of its name. Those words can be abbreviated to “Pty Ltd”.

A proprietary company may adopt its ACN as its name. If it does so, its name must also contain the words “Australian Company Number” (which can be abbreviated to “ACN”). For example, the company’s name might be “ACN 123 456 789 Pty Ltd”.

[sections 119, 147–161]

3.4 Contracts entered into before the company is registered

A company can ratify a contract entered into by someone on its behalf or for its benefit before it was registered. If the company does not ratify the contract, the person who entered into the contract may be personally liable.

[sections 131–133]

3.5 First shareholders, directors and company secretary

A person listed with their consent as a shareholder, director or company secretary in the application for registration of the company becomes a shareholder, director or company secretary of the company on its registration.

The same person may be both a director of the company and the company secretary.

See 5.1 and 5.2 for directors and 5.4 for company secretaries. See 6.1 for shareholders.

[section 120]

3.6 Issuing shares

It is a replaceable rule (see 1.6) that, before issuing new shares, a company must first offer them to the existing shareholders in the proportions that the shareholders already hold. A company may issue shares at a price it determines.

[sections 254B, 254D]

3.7 Registered office

A company must have a registered office in Australia and must inform ASIC of the location of the office. A post office box cannot be the registered office of a company. The purpose of the registered office is to have a place where all communications and notices to the company may be sent.

If the company does not occupy the premises where its registered office is located, the occupier of the premises must agree in writing to having the company’s registered office located there.

A proprietary company is not required to open its registered office to the public but this does not affect its obligation to make documents available for inspection.

The company must notify ASIC of any change of address of its registered office.

[sections 100, 142, 143, 173, 1300]

3.8 Principal place of business

If a company has a principal place of business that is different to its registered office, it must notify ASIC of the address of its principal place of business and of any changes to that address.

[sections 117, 146]

3.9 Registers kept by the company

A company must keep registers, including a register of shareholders and a register of charges. A company must keep its registers at:

• the company’s registered office; or

• the company’s principal place of business; or

• a place (whether on premises of the company or of someone else) where the work in maintaining the register is done; or

• another place approved by ASIC.

A register may be kept either in a bound or looseleaf book or on computer.

If a register is kept on computer, its contents must be capable of being printed out in hard copy.

[sections 172, 1300–1302, 1306]

3.10 Register of shareholders

A company must keep in its register of shareholders such information as:

• the names and addresses of its shareholders; and

• details of shares held by individual shareholders.

[sections 168–169]

3.11 Register of charges

A company must keep a register of charges if the company gives a bank, trade creditor or anybody else a charge over company assets.

[section 271]

4 Continuing obligations after the company is set up

The Corporations Law and other laws impose obligations on companies themselves and on their directors and company secretaries. Some of the more important obligations imposed under the Corporations Law are discussed below.

4.1 Use of company name and ACN

The name of a company must be shown at all the company’s business premises (including its registered office) that are open to the public. The company’s name and its ACN must appear:

• on some of its public documents; and

• on its cheques and negotiable instruments; and

• on all documents lodged with ASIC; and

• if it has one, on its common seal.

[sections 123, 144, 147–156,  
Australian Securities Commission Practice Note 47]

4.2 Annual return

A company must lodge with ASIC an annual return which contains such information as:

• names and addresses of each director and company secretary; and

• issued shares and options granted; and

• details of its shareholders; and

• address of its registered office; and

• address of its principal place of business; and

• a statement that the directors have resolved in the last month that, in the directors’ opinion, there are reasonable grounds to believe the company will be able to pay its debts as and when they become payable (but if the company has lodged an annual financial report with ASIC within the last 12 months, it does not need to include this statement).

An annual return may be lodged with ASIC on a printed form or, if an agreement is in place to lodge electronically, in accordance with the agreement.

ASIC may send a partially completed annual return to a company that wants to lodge its annual return on a printed form for the company to check, amend if necessary, verify and send back to ASIC. However, a company must lodge an annual return with ASIC even if ASIC does not send a partially completed annual return to the company.

[sections 345–348, 352]

4.3 Annual fee

A company must pay an annual fee to ASIC on lodgment of the annual return.

[Corporations (Fees) Regulations]

4.4 Notification to ASIC of changes

The company must notify ASIC if certain basic changes to the company occur. The following table sets out these notification requirements.

| **Notification requirements** | | |  | |  |
| --- | --- | --- | --- | --- | --- |
|  | **If . . .** | **the company must notify ASIC of the change . . .** | **using  Form No. . . .** | **see section . . .** | |
| 1. | a company issues shares | within 1 month after the issue | 207 | 254X | |
| 2. | a company changes the location of a register | within 7 days after the change | 909 | 172, 1302 | |
| 3. | a company changes the address of its registered office or principal place of business | within 14 days after the change | 203 | 142, 146 | |
| 4. | a company changes its directors or company secretary | within 14 days after the change | 304 | 242 | |
| 5. | there is a change in the name or address of the company’s directors or secretary | within 14 days after the change | 304 | 242 | |
| 6. | a company creates certain kinds of charges | within 45 days after the charge is created | 309 | 263 | |

5 Company directors and company secretaries

5.1 Who can be a director

Only an individual who is at least 18 years old can be a director. If a company has only 1 director, they must ordinarily reside in Australia. If a company has more than 1 director, at least 1 of the directors must ordinarily reside in Australia.

A director must consent in writing to holding the position of director. The company must keep the consent and must notify ASIC of the appointment.

In some circumstances, the Corporations Law imposes the duties and obligations of a director on a person who, although not formally appointed as a director of a company, nevertheless acts as a director or gives instructions to the formally appointed directors as to how they should act.

The Court or ASIC may prohibit a person from being a director or from otherwise being involved in the management of a company if, for example, the person has breached the Corporations Law.

A person needs the Court’s permission to be a director if the person has been convicted of certain offences or is, in some circumstances, unable to pay their debts as they fall due.

Generally, a director may resign by giving notice of the resignation to the company. The company must notify ASIC of a director’s resignation. A director who resigns may also notify ASIC of the resignation.

[sections 60, 221, 222A, 224, 228–230, 242, 242C, 599, 600, 206C, 1317G]

5.2 Appointment of new directors

It is a replaceable rule (see 1.6) that shareholders may appoint directors by resolution at a general meeting.

[section 224C]

5.3 Duties and liabilities of directors

In managing the business of a company (see 1.7), each of its directors is subject to a wide range of duties under the Corporations Law and other laws. Some of the more important duties are:

• to act in good faith

• to act in the best interests of the company

• to avoid conflicts between the interests of the company and the director’s interests

• to act honestly

• to exercise care and diligence

• to prevent the company trading while it is unable to pay its debts

• if the company is being wound up—to report to the liquidator on the affairs of the company

• if the company is being wound up—to help the liquidator (by, for example, giving to the liquidator any records of the company that the director has).

A director who fails to perform their duties:

• may be guilty of a criminal offence with a penalty of $200,000 or imprisonment for up to 5 years, or both; and

• may contravene a civil penalty provision (and the Court may order the person to pay to the Commonwealth an amount of up to $200,000); and

• may be personally liable to compensate the company or others for any loss or damage they suffer; and

• may be prohibited from managing a company.

A director’s obligations may continue even after the company has been deregistered.

[Sections 180, 181, 182, 183, 184, 475, 530A, 588G, 596, 601AE, 601AH, 1317H]

5.4 Company secretaries

A company must have a company secretary. The directors appoint the company secretary. A company secretary must be at least 18 years old. If a company has only 1 company secretary, they must ordinarily reside in Australia. If a company has more than 1 company secretary, at least 1 of them must ordinarily reside in Australia.

A company secretary must consent in writing to holding the position of company secretary. The company must keep the consent and must notify ASIC of the appointment.

The same person may be both a director of a company and the company secretary.

Generally, a company secretary may resign by giving written notice of the resignation to the company. The company must notify ASIC of a company secretary’s resignation. A company secretary who resigns may also notify ASIC of the resignation.

The company secretary is an officer of the company and, in that capacity, may be subject to the requirements imposed by the Corporations Law on company officers. The company secretary has specific responsibilities under the Corporations Law, including responsibility for ensuring that the company notifies ASIC about changes to the identities, names and addresses of the company’s directors and company secretaries and that the company lodges its annual return.

A company secretary’s obligations may continue even after the company has been deregistered.

[sections 83, 142, 222A, 240, 242, 242C, 345, 601AD, 601AH]

6 Shares and shareholders

A proprietary company limited by shares must have a share capital and at least 1 shareholder. ASIC may apply to a Court to have a company wound up if it does not have any shareholders.

[sections 461– 462]

6.1 Becoming a shareholder and ceasing to be a shareholder

A person may become a shareholder of a company in several ways, including the following:

• the person being listed as a shareholder of the company in the application for registration of the company

• the company issuing shares to the person

• the person buying shares in the company from an existing shareholder and the company registering the transfer.

Some of the ways in which a person ceases to be a shareholder are:

• the person sells all of their shares in the company and the company registers the transfer of the shares

• the company buys back all the person’s shares

• ASIC cancels the company’s registration.

[sections 117, 120, 601AA–601AD]

6.2 Classes of shares

A company may have different classes of shares. The rights and restrictions attached to the shares in a class distinguish it from other classes of shares.

[sections 254A–254B]

6.3 Meetings of shareholders

Directors have the power to call meetings of all shareholders or meetings of only those shareholders who hold a particular class of shares.

Shareholders who hold at least 5% of the votes which may be cast at a general meeting of a company have the power to call and hold a meeting themselves or to require the directors to call and hold a meeting. Meetings may be held regularly or to resolve specific questions about the management or business of the company.

The Law sets out rules dealing with shareholders’ meetings.

A shareholder of a company may ask the company for a copy of the record of a meeting or of a decision of shareholders taken without a meeting.

[sections 249A–251B]

6.4 Voting rights

Different rights to vote at meetings of shareholders may attach to different classes of shares. It is a replaceable rule (see 1.6) that, subject to those different rights, each shareholder has 1 vote on a show of hands and, on a poll, 1 vote for each share held.

[sections 250E, 254A–254B]

6.5 Buying and selling shares

A shareholder may sell their shares but only if the sale would not breach the company’s constitution (if any). It is a replaceable rule (see 1.6) that the directors have a discretion to refuse to register a transfer of shares.

[sections 1091D–1091E]

7 Signing company documents

A company’s power to sign, discharge and otherwise deal with contracts can be exercised by an individual acting with the company’s authority and on its behalf. A company can deal with contracts without using a common seal.

A company may execute a document by having it signed by:

• 2 directors of the company; or

• a director and the company secretary; or

• for a company with a sole director who is also the sole secretary—that director.

If the document is to have effect as a deed, it should be expressed to be a deed.

[sections 126–127, 240]

A company is not required to have a common seal. If it does, the seal must show the company’s name and its ACN. The seal is equivalent to the company’s signature and may be used on important company documents such as mortgages.

[sections 123, 127(2)]

8 Funding the company’s operations

The shareholders may fund the company’s operations by lending money to the company or by taking up other shares in the company. Except if it is raising funds from its own employees or shareholders, a proprietary company must not engage in any fundraising activity that would require disclosure to investors under Chapter 6D (for example, advertising in a newspaper inviting people to invest in the company).

The company may also borrow money from banks and other financial organisations.

Anyone who has lent money, or provided credit, to the company may ask for a mortgage or charge over the company’s assets to secure the performance by the company of its obligations.

[sections 113, 124]

9 Returns to shareholders

Shareholders can take money out of the company in a number of ways, but only if the company complies with its constitution (if any), the Corporations Law and all other relevant laws. If a company pays out money in a way that results in the company being unable to pay its debts as they fall due, its directors may be liable:

• to pay compensation; and

• for criminal and civil penalties.

[588G, 1317H]

9.1 Dividends

Dividends are payments to shareholders out of the company’s after tax profits. It is a replaceable rule (see 1.6) that the directors decide whether the company should pay a dividend.

[sections 254T, 254U]

9.2 Buy–back of shares

A company can buy back shares from shareholders.

[sections 257A–257J]

9.4 Distribution of surplus assets on winding up

If a company is wound up and there are any assets left over after all the company’s debts have been paid, the surplus is distributed to shareholders in accordance with the rights attaching to their shares.

10 Annual financial reports and audit

10.1 The small/large distinction

The accounting requirements imposed on a proprietary company under the Corporations Law depend on whether the company is classified as small or large. A company’s classification can change from 1 financial year to another as its circumstances change.

A company is classified as small for a financial year if it satisfies at least 2 of the following tests:

• gross operating revenue of less than $10 million for the year

• gross assets of less than $5 million at the end of the year

• fewer than 50 employees at the end of the year.

A company that does not satisfy at least 2 of these tests is classified as large.

[section 45A]

As the great majority of proprietary companies are small under these tests, the discussion below deals mainly with the accounting requirements for small proprietary companies.

[sections 286–301]

10.2 Financial records

Under the Corporations Law, all proprietary companies must keep sufficient financial records to record and explain their transactions and financial position and to allow true and fair financial statements to be prepared and audited. ***Financial record*** here means some kind of systematic record of the company’s financial transactions—not merely a collection of receipts, invoices, bank statements and cheque butts. Financial records may be kept on computer.

[sections 286–289]

10.3 Preparing annual financial reports and directors’ reports

The Corporations Law requires a small proprietary company to prepare an annual financial report (an annual profit and loss statement, a balance sheet and a statement of cash flows) and a directors’ report (about the company’s operations, dividends paid or recommended, options issued etc.) if:

• the shareholders with at least 5% of the votes in the company direct it to do so; or

• ASIC directs it to do so.

Unless the shareholders’ direction specifies otherwise, the company must prepare the annual financial report in accordance with the applicable accounting standards.

Although the Corporations Law itself may not require a small proprietary company to prepare a financial report except in the circumstances mentioned, the company may need to prepare the annual financial reports for the purposes of other laws (for example, income tax laws). Moreover, good business practice may also make it advisable for the company to prepare the financial reports so that it can monitor and better manage its financial position.

Large proprietary companies must prepare annual financial reports and a directors’ report, have the financial report audited and send both reports to shareholders. They must also lodge the annual financial reports with ASIC unless exempted.

[sections 286–301, 319–320]

11 Disagreements within the company

11.1 Special problems faced by minority shareholders

There are remedies available to a shareholder of a company if:

• the affairs of the company are being conducted in a way that is unfair to that shareholder or to other shareholders of the company; or

• the affairs of the company are being conducted in a way that is against the interests of the company as a whole.

A Court may, for example, order the winding up of a company or the appointment of a receiver.

[sections 246AA, 461]

11.2 Buy–back of shares

A company may buy back the shares of a shareholder who wants to sever their relationship with the company.

[sections 257A–257J]

11.3 Selling shares

A shareholder in a company who wants to sever their relationship with the company may decide to sell their shares. However, the shareholder may not be able to sell their shares readily—particularly if they want to sell their shares to someone who is not an existing shareholder. Some of the difficulties they may face in that case are:

• under the replaceable rules the directors have a discretion to refuse to transfer the shares; and

• restrictions in the company’s constitution (if any) on transferring shares.

[sections 995, 707, 1091D–1091E]

12 Companies in financial trouble

12.1 Voluntary administration

If a company experiences financial problems, the directors may appoint an administrator to take over the operations of the company to see if the company’s creditors and the company can work out a solution to the company’s problems.

If the company’s creditors and the company cannot agree, the company may be wound up (see 12.3).

[Part 5.3A]

12.2 Receivers

A receiver, or receiver and manager, may be appointed by order of a Court or under an agreement with a secured creditor to take over some or all of the assets of a company. Generally this would occur if the company is in financial difficulty. A receiver may be appointed, for example, because an amount owed to a secured creditor is overdue.

[Part 5.2]

12.3 Winding up and distribution

A company may be wound up by order of a Court, or voluntarily if the shareholders of the company pass a special resolution to do so.

A liquidator is appointed:

• when a Court orders a company to be wound up; or

• the shareholders of a company pass a resolution to wind up the company.

[Part 5.2, section 495]

12.4 Liquidators

A liquidator is appointed to administer the winding up of a company. The liquidator’s main functions are:

• to take possession of the company’s assets; and

• to determine debts owed by the company and pay the company’s creditors; and

• to distribute to shareholders any assets of the company left over after paying creditors (any distribution to shareholders is made according to the rights attaching to their shares); and

• finally, to have the company deregistered.

[Parts 5.4B, 5.5]

12.5 Order of payment of debts

Generally, creditors who hold security over company assets are paid first.

[Division 6 of Part 5.6]

12.6 Cancellation of registration

If a company has ceased trading or has been wound up, it remains on the register until ASIC cancels the company’s registration. Once a company is deregistered, it ceases to exist.

[sections 601AA–601AB, 601AH]